Matukdhari Singh And Others vs Janardan Prasad on 20 July, 1965

Equivalent citations: 1966 AIR 356, 1966 SCR (1) 255, AIR 1966 SUPREME COURT 356, ILR 45 PAT 1001

Author: M. Hidayatullah

Bench: M. Hidayatullah, A.K. Sarkar, V. Ramaswami

PETITIONER:
MATUKDHARI SINGH AND OTHERS

Vs.

RESPONDENT:
JANARDAN PRASAD

DATE OF JUDGMENT:
20/07/1965

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
SARKAR, A.K.
RAMASWAMI, V.

CITATION:
1966 AIR 356 1966 SCR (1) 255

ACT:
Code of Criminal Procedure, ss. 417, 423-Magistrate acquitting accused of charges in respect of which he had jurisdiction-Ignoring evidence of charges in respect of which he had no jurisdiction-High Court setting aside acquittal and ordering retrial-Legality of High Court's order.

HEADNOTE:
The appellants were tried on a complaint by the respondent before an Honorary Magistrate for offences under ss. 420, 468, 406 and 465/471 Indian Penal Code and acquitted. The Magistrate rejected the complainant's request to frame a charge under s. 467 Indian Penal Code, and commmit the accused to the Court of Sessions. The complainant appealed

to the High Court against the acquittal. The High Court held that the evidence prima facie disclosed an offence under s. 467 and even though the complaint did not mention that section it was the duty of the Magistrate to commit the case to sessions. It accordingly set aside the acquittal, and ordered a retrial. The appellants came to this Court by special leave.

It was contended on behalf of the appellants that the trial before the Magistrate, in so far as it went, was with jurisdiction and it could not be set aside merely because the High Court thought that a charge under s. 467 might be framed, and that such a proceeding is not contemplated. by s. 423(1) of the Code of Criminal Procedure.

HELD: (i) If the Magistrate had applied his mind to the relevant evidence he would have seen that the main offence was under s. 467 read with s. 471and the other offences were subsidiary. It was thus not proper for him tochoose for trial only such offences over which he had jurisdiction andto ignore the other offence over which he had none. His duty clearly wasto frame a charge under s. 467 and to commit the appellants to stand their trial before the Court of Sessions. [259 G]

(ii)It is wrong to contend that the High Court had no jurisdiction in the matter because the trial before the Honorary Magistrate (in so far as it went) was with jurisdiction. If it were so there would be no remedy whenever a Magistrate dropped serious charges ousting him of his jurisdiction and tried only those within his jurisdiction. [260 B-C]

Dr. Sanmukh Singh Teja Singh Yogi v. Emperor, A.I.R. 1945 Sind 125,

approved.

However hesitant the High Court may be to set aside an order of acquittal and to order retrial, it has jurisdiction under the code to do so if the justice of the case clearly demands it and a case of omission from the charge of a serious offence prima facie disclosed by the evidence, is one of those circumstances in which the power can properly be exercised particularly when the charge for the offence it framed would have ousted the jurisdiction of the trial court. [260 D-E]

Abinash Chandra Bose v. Bimal Krishna Sen, A.I.R. 1963 S.C. 316, Ukha Kolhe v. State of Maharashtra, A.I.R. 1963 S.C. 1531, Barhamdeo

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Rai and others v. King-Emperor, A.I.R. 1926 Pat. 36 Balgobind Thakur and others v. King-Emperor, A.I.R. 1926 Pat 393 and K.E.V. Razya Bhagwanta, 4 Bom. L.R. 267, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 26 of 1965.

Appeal by special leave from the judgment and order dated August 10, 1964 of the Patna High Court in Criminal Appeal No. 66 of 1962.

R.K. Garg, S. C. Agarwala and D. P. Singh, for the appel- lants.

D. Goburdhun, for the respondent.

The Judgment of the Court was delivered by Hidayatullah, J. B in order pronounced on May 7, 1965, we ordered the dismissal of this appeal but reserved our reasons which we now proceed to give.

The five appellants were tried on a complaint by the respon- dent Janardan Prasad before the Honorary Magistrate. First Class, Jehanabad for offences under ss. 420, 468, 406, 465/471, Indian Penal Code. They were acquitted on August 31, 1962. The complainant obtained special leave of the High Court at Patna under s. 417(3) of the Code of Criminal Procedure and filed an appeal against their acquittal. The High Court set aside the acquittal and remanded the case to the District Magistrate of Gaya with a direction that the case be inquired into under Chapter XVIII of the Code from the stage of taking evidence under s. 208, with a view to their committal to the Court of Session. The appellants now appeal by special leave against the judgment and order of the High Court. The facts of the prosecution case may now be stated briefly.

Janardban Prasad and his brother Jangal Prasad were separate, having, prior to the present occurrence, partitioned their lands by metes and bounds. Plots Nos. 1810 and 1811 in village Kalpa Kalan fell to the share of Jangal and plot No. 1699 in the same village fell to the share of Janardan. Jangal Prasad's plots lie close to the dalan of Matukdhari and his brothers Rameshwar Singh and Dhanukdhari Singh (the first three appellants) and they coveted them. Janardhan alleged that they forged a sale deed in respect of half the area of those two plots and presented the documents for registration. Janardhan was aggrieved but on the intercession of Deoki Lal and Chhedi Lal (appellants 4 and 5) the dispute was compromised and it was agreed that Janardhan would execute a sale deed for plot No. 1699 and half of another plot No. 1491 while Matukdhari and his brother Dhanukdhari Singh agreed to sell in return O.10 acre in one of their plots (No. 1797) to him. The complainant executed two sale deeds in respect of the two said plots and Dhanukdhari Singh executed a sale deed in respect of plot No. 1797 as it was in his name. The latter sale deed was taken in favour of Janardhan's son. All documents were scribed by Deokilal with the help of Chhedi Lal and were presented for registration. The receipts obtained from the Registration Office were left with Deokilal till the result of the first registration case (which was fixed for February 8, 1960) was known. When Janardhan asked for the receipts he was put off. He found later that the two documents had already been withdrawn by forging his signature. Matukdhari had withdrawn the deed executed by Janardhan and Dhanukdhari the sale dead executed by himself. The complainant was assured by Deokilal and Chhedilal that the deed executed in favour of his son would be returned by Rameshwar Singh with whom, it was said to be lying, but Rameshwar Singh refused to do so. The complaint was, therefore, filed. The Sub-Divisional Officer, Jehanabad took cognizance under ss. 468, 406 and 420, Indian Penal Code and sent the case to the Hony. Magistrate for disposal. The

Hony. Magistrate drew up charges against all the accused under s. 420, Indian Penal Code. In addition, Chhedilal and Deokilal were charged under s. 468, Indian Penal Code and s. 406, Indian Penal Code respectively. Matukdhari was charged under ss. 465/471, Indian Penal Code. These charges could be tried by the Honorary Magistrate. No charge under s. 467, Indian Penal Code was framed against any of the appellants. If it had been framed the case had to be committed to the Court of Session. On March 29, 1962 the complainant, by a written application, asked that action under Chapter XVIII of the Code be taken but the Magistrate declined to commit the accused. Another application dated June 28, 1962, for the same purpose was also rejected. The learned Magistrate held that the evidence of entrustment of the receipts from the office of the Registrar was not satisfactory and Deokilal could not be convicted under s. 406, Indian Penal Code. He further held, mainly on the ground that no handwriting expert was examined, that it was not possible to say that there was forgery of the signatures or that Matukdhari had used the receipts knowing them to, be forged. On these findings the appellants were acquitted.

In his appeal before the High Court the complainant con- tended that the trial before the Magistrate was without jurisdiction -as the Magistrate should have acted under Chapter XVIII with a view to committing the accused to the Court of Session for trial as the facts disclosed an offence under S. 467, Indian Penal Code, which is triable exclusively by the Court of Session. He contended that the offence was made out on his evidence and as registration receipts were valuable securities under S. 30 of the Indian Penal Code a charge under S. 467, Indian Penal Code should have been framed. This argument found favour with the High Court and it was held that although s. 467, Indian Penal Code was not mentioned in the complaint, a charge under that section ought to have been framed. The High Court pointed out that it was the duty of the Magistrate to apply the correct law and if the facts disclosed an offence exclusively triable by the Court of Session he ought to have framed that charge and not assumed jurisdiction over the case by omitting it. In the opinion of the High Court a prima facie case existed for framing a charge under s. 467, Indian Penal Code, which meant that the case ought to have been committed to the Court of Session. The acquittal was, accordingly, set aside and retrial ordered. In this appeal the judgment is assailed as erroneous and against the principles laid down by this Court for dealing with appeals against acquittals.

Mr. Garg relies strongly upon two cases of this Court. They are Abinash Chandra Bose v. Bimal Krishna Sen and Anr.(1) and Ukha Kolhe v. State of Maharashtra(1). He contends that the trial before the Magistrate, in so far as it went, was with jurisdiction and it could not be set aside merely because the High Court thought that a charge under s. 467, Indian Penal Code might have been framed. He contends that such a proceeding is not contemplated under S. 423(1)(a). Criminal Procedure Code as explained by this Court in the two cases cited above. He further refers to Barhamdeo Rai and others v. King-Emperor(3), Balgobind Thakur and others v. King Emperor (4) and K. E. V. Razya Bhagawanta(5) as instances where, the trial being with jurisdiction, no retrial was ordered even though it was submitted to the High Court that some other offences triable exclusively by the Court of Session with which accused could be charged, were also disclosed. These cases need not detain us. They do not deny the power of the High Court to order a retrial. The High Courts in those cases (1) A.I.R. 1963 S.C. 316. (2) A.I.R. 1963 S.C. 1531.

(3) A.I.R. 1926 Pat. 36. (4) A.I.R. 1926 Pat. 393.

(5) 4 Bom. L. R. 267.

did not order a retrial because the accused were convicted of lesser offences and the sentences imposed were considered adequate in all the circumstances of those cases. The two cases of this Court were considered by us in Rajeshwair Prasad Misra v. State of West Bengal(1). We have pointed out there that a retrial may be ordered for a variety of reasons which it is hardly necessary or desirable to state in a set formula and the observations of this Court are illustrative but not exhaustive. The Code gives a wide discretion and deliberately does not specify the circumstances for the exercise of the discretion because the facts of cases that come before the courts are extremely dissimilar. We pointed out that it would not be right to read the observations of this Court (intended to illustrate the meaning of the Code) as indicating in advance the rigid limits of a discretion which the Code obviously intended should be developed in answer to problems as they arise. We gave some illustrations of our own which fell outside those observations but which might furnish grounds, in suitable cases, for an order of retrial. This case also furnishes an example which may be added to that list. The High Court pointed out that there was evidence that the endorsements on the receipts were not made by Janardhan. Janardhan denied on oath that he had written them and stated that they were written by one of the respondents, with whose handwriting he claimed to be familiar. There was prima facie evidence to show that the two deeds which were presented for registration were taken out on the strength of forged receipts. No suggestion was made to Janardhan in cross- examination that he had endorsed the receipts in favour of Matukdhari or Dhanukdhari. If he had not written the endorsements, some one else must have done so. No doubt handwriting experts could have been examined. The Magistrate could have taken action under s. 73 of the Indian Evidence Act but this was not done. If the Magistrate had applied his mind to the problem he would have seen easily that a prima facie case of forgery was made out. He should then have considered whether the receipts were valuable security or not. If he had done that he would have seen that the main offence would prima facie be one under s. 467, Indian Penal Code read with s. 471 and the other offences were subsidiary. It was thus not proper for him to choose for trial only such offences over which he had jurisdiction and to ignore other offences over which he had none. His duty clearly was to frame a charge under s. 467, Indian Penal Code (1)[1966] 1 S.C.R. 178.

and to commit the appellants to stand their trial before the Court of Session.

It was open to the High Court, while hearing an appeal under s. 417(3) of the Code to direct the Magistrate to frame a charge for an offence which was prima facie established by the evidence for the prosecution and also to order that the accused be committed to the Court of Session. It is wrong to contend that the High Court had no jurisdiction in the matter because the trial before the Honorary Magistrate (in so far as it went) was with jurisdiction. If it were so there would be no remedy whenever a Magistrate dropped serious charges ousting him of his jurisdiction and tried only those within his jurisdiction. The High Court followed a case of the Sind Chief Court reported in Dr. Sanmukh Singh Teja Singh Yogi v. Emperor(1) where retrial was ordered in very similar circumstances. We were referred to that ruling and on reading it we do not think the High Court was wrong in accepting it as a correct precedent. For, however hesitant the High Court may be to set aside an order of acquittal and to order retrial, it has jurisdiction under the Code to do so, if the justice of the case clearly demands it and a case of omission from the charge of a serious offence

prima facie disclosed by evidence, is one of those circumstances in which the power can properly be exercised particularly when the charge for the offence, if framed, would have ousted the court of trial of its own jurisdiction.

Mr. Garg submitted finally that acquittals are not set aside in other jurisdictions and cited the example of English Criminal Law. He submitted further that the setting aside of an acquittal with a view to holding a second trial robs the accused "of the reinforcement of the presumption of innocence which is the result of the acquittal". As to the first submission it is sufficient to say that in our criminal jurisdiction a retrial is possible and we need not be guided by other jurisdictions. No doubt the High Court must act with great care and caution and use the power sparingly and only in cases requiring interference. As to the second it is not necessary to consider how the presumption of innocence is reinforced by an acquittal and to what extent. The phrase in any event is hardly apt to describe a case where the accused is acquitted perversely, or without jurisdiction. All that can be said is that these appellants were presumed to be innocent at their first trial (1) A.I.R. 1945 Sind 125.

and will not be thought less so at their second trial till their guilt is established legally and beyond all reasonable doubt.

In our judgment the High Court acted within its jurisdiction when it set aside the acquittal of the appellants and made an order for their retrial in the terms it did.

Appeal dismissed..