Dr. Jai Shanker (Lunatic)(Through ... vs State Of Himachal Pradesh on 30 August, 1972

Equivalent citations: 1972 AIR 2267, 1973 SCR (2) 1, AIR 1972 SUPREME COURT 2267, 1973 3 SCC 83, 1973 SCC(CRI) 145, 1973 MADLJ(CRI) 281, 1973 (1) SCJ 566, 1973 2 SCR 1, ILR 1974 H P 174

Author: J.M. Shelat

Bench: J.M. Shelat, I.D. Dua, Hans Raj Khanna

PETITIONER:
DR. JAI SHANKER (LUNATIC)(through Vijay Shanker brother guar

Vs.

RESPONDENT:
STATE OF HIMACHAL PRADESH

DATE OF JUDGMENT30/08/1972

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
DUA, I.D.
KHANNA, HANS RAJ

CITATION:
1972 AIR 2267 1973 SCR (2) 1
1973 SCC (3) 83

ACT:
Code of Criminal Procedure, 1898, Sec. 464 "Reason to believe that the accused is of unsound mind and consequently incapable of making his defence"-Belief must be of reasonable person-Enquiry into the facts by a Magistrate of unsoundness is mandatory and to be held at threshold before proceeding with the case.

HEADNOTE:
The appellant was charged of committing the murder at Kulu. His advocate made an application to the Magistrate of Kulu u/s Sec. 464 of the Code of Criminal Procedure stating that the accused has symptoms of impairment of cognitive faculties of mind and otherwise of an abnormal behaviour,

with a prayer to remove the appellant to the mental hospital. the Trial Magistrate came to the conclusion that the appellant was not suffering from unsoundness of mind, on the basis of the application made by the appellant for remitting the money seized from his person to his mother and on the basis of replies to the question put to the appellant regarding the supply of copies of documents relied on by the prosecution. A revision application filed by the appellant against the rejection of the application was dismissed by the Sessions Court. On revision to the High Court, the learned single Judge directed that the appellant should be examined and kept under observation in the Snowdown Hospital, Simla, which is a general hospital. After the examination by two psychistricts at Simla hospital, they recommended the examination of the appellant in the proper mental hospital. As the recommendation was not carried out the appellant moved the High Court under section 561(A) of the Code for the implementation of the earlier order. The High Court clarified the earlier order and rejected the application u/s 561(A) holding that the order was complied with. On an application for review, the High Court observed that whether the recommendations of the Simla Hospital should or should not be followed lay within the powers of the trial Magistrate. The trial Magistrate misunderstood the order to mean that no preliminarly enquiry, as required by Sec. 464 'was necessary and committed the appellant's case for trial by Sessions Court. The committal order was challenged by the appellant by way of revision in the Sessions Court, and then in the High Court. The High Court held that the committing Magistrate had sufficient material to believe that the appellant was not suffering from unsoundness of mind and therefore it was not necessary for him to act under Sec. 464.

Allowing the appeal,

HELD : The words "reason to believe" mean a belief which a reasonable person would entertain on facts before him. The burden was on the appellant to establish that he was suffering from the unsoundness of mind. The provisions regarding the enquiry in the unsoundness of mind are mandatory and the Magistrate is bound to enquire before he proceeds with the case. Such enquiry is to be held at the threshold. The trial Magistrate did not hold such enquiry and did not call upon the appellant to establish the mental infirmity. The proper course for the Magistrate in view of the directions of the High Court and the provisions of Sec. 464 was to send the appellant to the mental hospital for observations. [9 A]

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Both the committal order and the High Court's order were set aside and the trial Magistrate was directed to hold an enquiry u/s 464 and give opportunity to the appellant to produce the evidence regarding his unsundness of mind.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 279 of 1971.

Appeal by special leave from the judgment and order dated September 17, 1971 of the, Himachal Pradesh High Court at Simla in Criminal Revision No. 17 of 1971.

R. L. Kholi, for the appellant.

V. C. Mahajan and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by SHELAT, ACTING C.J.-The appellant was charged of having committed on April 24, 1970 the murder of a lady doctor, Dr. Vaidya, at Kulu. On May 4, 1970, he was arrested on the aforesaid allegation. On May 9, 1970, his advocate made an application before the Magistrate, Kulu under s. 464 of the Code of Criminal Procedure, 1898. The application stated that the advocate had interviewed the appellant in the judicial lock-up where he was detained and found him talking incoherently and showing symptoms of impairment of the cognitive faculties of mind and otherwise of an abnormal behaviour. The applicant prayed that he should be removed to the mental hospital at Amritsar for ascertaining whether he was in a position to make his defence. Since there was no response to the said application, a similar application was again addressed to the Magistrate on June 3, 1970. To this application were annexed three medical certificates by Dr. B. N. Sur, Dr. Pathak and Dr. K. P. Singh respectively dated May 10, 1970, May 15, 1970 and May 9, 1970 all the three certifying that even as a medical student the appellant had shown signs suggesting unsoundness of mind. In the meantime the case was transferred to the Court of the District Magistrate, Bilaspur. On September 11, 1970, the appellant's advocate once again filed an application for medical check up setting out therein various instances displaying abnormal and strange conduct on the part of the appellant right from his student days, as also during the proceedings in the Court on August 31, 1970 when the appellant, amongst other things, proclaimed that he was Lord Vishnu and the ruler of Delhi. By his order dated September 23, 1970, the Magistrate rejected the application stating that he had no reasons to doubt the appellant's sanity and decided to proceed with the committal proceedings. In this order the Magistrate cited an application made by the appellant on July 26, 1970 for remitting to his mother the money seized by the police from his person at the time of his arrest, as also his replies to the questions put to him if copies of documents relied on by the prosecution were supplied to him under s. 173 of the Code. This was done with a view to show that the appellant understood the proceedings and their nature. Against this order a revision application was filed before the Sessions Judge. That was dismissed by an order dated November 20, 1970. A further revision against that dismissal was then filed before the High Court.

By his order dated December 23, 1970, Rangarajan, J., ordered that "the larger interests of justice require that the accused should be examined for his mental condition and that such an inquiry should not in all fairness, and in order to be directly useful, be still further delayed". The learned Judge directed that the appellant should be produced before the Medical Superintendent,

Snowdoon Hospital, Simla for his examination by a competent doctor or doctors by keeping him in observation for such time as might be considered necessary. He further directed that the Superintendent should forward a report of the result of such examination to the committing magistrate "who will act according to law in the light of such report". Pursuant to the said order, the Superintendent of Snowdon Hospital sent his report dated January 7, 1971 to the Magistrate stating that the appellant had been examined by Dr. V. K. Mudgil, Assistant Professor of Psychistry, Himachal Pradesh Medical College and Hospital, who reported that from a mere examination of the appellant in Psychistric Out Patient Department it was difficult to give an opinion on the appellant's mental condition, and therefore, recommended that he should be sent to some mental hospital for observation. To an inquiry by the Magistrate, dated January 11, 1971, the Snowdon Hospital authorities replied on January 19, 1971 that the hospital had no provision for admission as in-door patients and care of alleged lunatics and once again suggested that the appellant should be sent to a mental hospital. It appears that at the instance of the committing magistrate the appellant was thereafter admitted in the Snowdon Hospital as an in-door patient. The report of the Superintendent dated March 26, 1971 shows that he was examined by the Psychistrist of the Hospital and the Assistant Professor of Psychistry, both of whom advised the appellant's admission to a mental hospital for further examination since a final opinion could only be given on the basis of psychological tests done by a qualified clinical psychologist' with a trained and experienced nursing staff. The recommendations contained in these reports. were not carried out. The appellant, therefore, through his brother, filed an application in the High Court under s. 561A of the Code praying for implementation of the order of Rangarajan, J. By its order dated March 30, 1971, the High Court observed that the said committal proceedings were pending for a considerable time, and referring to the said order of Rangajaran, J., observed that it was not for the High Court to intervene at an interlocutory stage and that in any event the Snowdon Hospital had examined the appellant as directed by Rangarajan, J., and made its report, and that therefore, nothing further remained to be done. The High Court ordered that that report should go to the committing Magistrate and it would be for that Magistrate to decide what order should be passed on the case. The High Court further observed that it w as not proper for the High Court to assume the Magis- trate's jurisdiction, and that the Magistrate would without doubt proceed in accordance with law. If he found a prima facie case, the case should be sent for trial to the court of competent jurisdiction which would decide on the plea taken by the appellant. The committing Magistrate had only to see whether there was a prima facie case and the truthfulness of the plea was for the trial court to determine. The appellant, through his brother, then filed an application for reviewing the said order. On April 5, 1971, that application was rejected on the ground that the earlier order was clear and unambiguous, acrid that there was no ground to review or revise the same. While dismissing the said application the High Court observed once again that it was for the cornmitting Magistrate to pass a suitable order under s. 464 of the Code, that the High Court ought not to intervene at an interlocutory stage during the pendency of committal proceedings and appropriate the jurisdiction of a Magistrate. The High Court also observed that the order of Rangarajan, J., had been carried out in the sense that the appellant had been examined by the authorities of the Snowdon Hospital as directed in that order and those authorities had recommended further observation of the appellant. "Whether this could or should be done or not", said the High Court, "lies within the powers of the committing Magistrate to decide". The matter then went back to the committing Magistrate. On May 4, 1971, an application was made on behalf of the appellant that in view of the aforesaid orders of the High Court, the

Magistrate should direct that the appellant should be sent to a mental hospital for ascertaining his mental condition. Apparently, the last order of the High Court on the aforesaid review application by the appellant dated May 4, 1971 had not reached the Magistrate. The Magistrate without waiting for that order to reach him decided to proceed. It seems that be misunderstood the High Court's order to mean that he had been ordered by the High Court to proceed with the committal Proccedings and to determine whether a prima facie case on the said charge was made out, or not. That is clear from his observation that "the question of the sanity or otherwise of the accused for purposes of standing his trial as envisaged by s. 464, Criminal Procedure Code, is to be determined by the Trial Court". On that understanding of the order the Magistrate rejected the application and proceeded to record the evidence of the prosecution witnesses. Next day, the Magistrate passed an order committing the appellant to the Sessions Court to stand his trial on the said charge under s. 303 of the Penal Code.

The appellant filed once more a revision application before the Sessions Court challenging the said order of commitment. The Sessions Court rejected that application holding that the Magistrate has sufficient grounds to infer that there were no reasons to believe that the appellant was of unsound mind, and that therefore, he was not in a position to make his defence and accordingly it was not incumbent upon the Magistrate to hold a preliminary inquiry under s. 464. Aggrieved by the said order, the appellant filed a revision application before the High Court challenging the validity of the said committal order. The High Court recited the several applications filed on behalf of the appellant, the said order of Rangarajan, J., the two orders passed by Beg, C.J., and finally, the order of commitment and the order of the Sessions Judge rejecting the revision filed against it. The High Court held that there was sufficient evidence before the, committing Magistrate from which that Magistrate could say that he had sufficient reason to believe that the appellant was not suffering from any unsoundness of mind, and that therefore, there was no necessity for him to act under s. 464. The High Court further observed that neither Rangarajan, J., nor Beg, C.J., had directed that the appellant should be taken to a mental hospital, that on the contrary, the two orders of Beg, C.J. indicated that it was left to the discretion of the committing Magistrate to decide whether he had any reason to believe that the appellant was suffering from any unsoundness of mind and that the authorities of the Snowdon Hospital also had not stated that the appellant was suffering from any unsoundness of mind. The High Court finally held that "from this point of view the order of the learned District Magistrate was right and when he did not find any cir- cumstance to indicate that the accused was of unsound mind and consequently incapable of making his defence, he rightly proceeded with the case and made the order of commitment". It is this order which is under challenge in this appeal. The situation arising in this case is governed by s. 464 of the Code which lays down the procedure which a magistrate is enjoined upon to follow when an accused person alleges that he is suffering from such mental infirmity as to render him incapable, of making his defence. The unsoundness of mind dealt with in this section is the one which such an accused person alleges to be suffering from at the time of the inquiry before the Magistrate and not one at the time of the incident during which he is said to have committed the offence in question. The section in plain terms provides that if the Magistrate holding the inquiry (in the present case the committal proceedings) has reason to believe that the accused at that point of time is suffering from unsoundness of mind, and consequently, is incapable of making his defence, he shall institute an inquiry into the fact of such unsoundness, and shall cause the accusd to be examined by a civil

surgeon of the district or such other medical officer as the State Government directs. It is clear from the mandatory language of the section that the first thing that the Magistrate has to do is to decide, when an accused person is brought before him who is suspected or alleged to be a person of unsound mind and before he proceeds with the inquiry, whether such person appears to him to be of unsound mind. The words "reason to believe"

> indicate that when an accused person is presented before a Magistrate for inquiry, who, it is alleged, is suffering from unsoundness of mind, the magistrate has, on such materials, as are brought before him, to inquire before he proceeds with the inquiry whether there are reasons to believe that the accused before him is suffering from any such infirmity. The next step is that if he has such reasons to believe, he is to institute an inquiry into the- fact of unsoundness of mind and cause him to be examined by the civil surgeon or such other medical officer as the State Government directs. Therefore, when a question is raised as to the unsoundness of mind of an accused person, the magistrate is bound to inquire before he proceeds with the inquiry before him whether the accused is or not incapacitated by the unsoundness of mind from making his defence. Such a provision clearly is in consonance with the principles of fair administration of justice. From the narration of the facts above it is fairly clear that right from the commencement of the inquiry applications were made before both the Magistrate at Kulu and the Magistrate at Bilaspur, that the accused was suffering from mental infirmity and that an inquiry into his mental state was necessary. Indeed, along with the application made to the Magistrate at Bilaspur certificates of three different doctors, who knew the accused during his student days, were annexed in support of the application for medical examination. It would appear that no regular inquiry was made by the Magistrate. But from the fact that the accused had applied for remittance to his mother of the money seized by the police from him and his answers to the Magistrate's query whether copies of documents were supplied to him under s. 173 of the Code, the Magistrate concluded that he had no reason to believe that the accused was at that stage suffering from such infirmity as would make him incapable of making his defence. The order passed by Rangarajan, J., against the Magistrate's said order would seem to indicate that what the Magistrate did was neither adequate nor satisfactory and it was for that reason that Rangarajan, J., directed that it was necessary in the larger interests of justice that the accused should be examined by the authorities of Snowdon Hospital, and if necessary, he should be kept under observation to enable the doctors there to ascertain properly whether the accused was suffering from any mental. infirmity. We may note that the learned Judge also ordered that the report of the hospital authorities should go to the Magistrate directly,. That was presumably done to enable the Magistrate to hold an inquiry into the fact of unsoundness of mind of the' accused, which is the ,second stage provided in s. 464. Unfortunately, the hospital authorities did not have the necessary facilities for keeping the accused under observation as directed by Rangarajan, J., and although the accused was examined by two psychiatrists, the Superintendent of the Hospital reported that with the inadequate facilities which they had it was not possible to give a satisfactory opinion as to the state of mind of

the accused and had recommended his removal to a mental hospital. As aforesaid, the recommendation made by the Superintendent was not carried out and although the Magistrate did not have any definite opinion one way or the other before him, he decided to proceed with the inquiry. The result was that the accused 'was obliged once again to go to the Sessions Court and then to the High Court for redress against the course adopted by the Magistrate. The High Court took up the attitude that it should not intervene at an interlocutory stage, that the matter should be left to the discretion of the Magistrate to decide whether he should hold the inquiry or not under s. 464, and that in any event Rangarajan, J., had not ordered that the appellant to be shifted to a mental hospital for a further examination, his order having been confined to his examination by Snowdon Hospital, which order had been complied with. It is not possible to agree with such an interpretation of the order passed by Rangarajan, J. It seems that learned Judge ordered the examination of the accused by the Snowdon Hospital because he was apparently under the impression that hospital has the necessary facilities, including that of keeping the appellant under observation and to come to some definite opinion. He would not have otherwise directed that the accused should be kept under observation for such time as the medical authorities there thought necessary. Had the order of Ranearajan, J., been carried out in the spirit in which it was made and arrangements had been made to have the appellant examined by doctors in a hospital with adequate facilities, the time that has been taken up in dealing with the appellant's further applications and revisions would have been saved. The two orders passed by Beg, C.J., clearly meant that the High Court left the matter to the Magistrate to decide whether lie had reason to believe or not that the accused was suffering from mental infirmity and it was only if he decided that he had no such reason to believe that he should next proceed with the committal proceedings. The order passed by the Magistrate thereafter shows that he misunderstood the High Court's order to mean that he was at once to proceed to decide whether there was a prima facie case against the appellant, and if so, to commit him to the Sessions Court for trial. Indeed, the Magistrate did not even wait for the second order passed by Beg, C. J., disposing of the review petition filed by the appellant for revising his earlier order. That being so, neither the Sessions Court in revision against the Magistrate's committal order, nor the High Court in a further revision, against the Sessions Court's order could have held that on the materials before the Magistrate, the Magistrate had held that he had no reason to believe that the appellant was suffering from infirmity which would incapacitate him from making his defence, and was therefore, not bound to hold any inquiry and could therefore proceed with the committal proceedings before him.

A perusal of the order passed by the Magistrate is enough to satisfy that the Magistrate had misapprehended the order passed by Beg, C. J., and as a result of such misapprehension thought that he had been directed, without anything more, to proceed with the committal proceedings. A fair reading of the order of Beg, C. J., shows that what he said was that under s. 464 it was for the Magistrate, and not the High Court, at that stage to decide whether there were reasons to believe that the

accused was suffering from unsoundness of mind and to proceed with the inquiry, if he came to the conclusion that he had no such reason. That order did not direct and could not have directed the Magistrate to proceed with the committal proceedings without first determining whether on the allegations made by the accused, the data produced by him and the conduct and behaviour of the appellant in his Court, the Magistrate had reasons or not to believe that the appellant was suffering from mental infirmity of the kind envisaged by s. 464. That we apprehend was never done as is clear from the very order passed the Magistrate nor was appellant called upon to show that he was suffering at that stage from unsoundness of mind which he ought to have been called upon to establish since the burden was upon him to so establish. The words "reason to believe" mean a belief which a reasonable person would entertain on facts before him. That would be the burden which the appellant would be expected to discharge. That was the proper course for the Magistrate to follow, both 'in view of the provisions of s. 464 and the orders passed by Beg, C.J., besides the report of the Superintendent of the Snowdown Hospital that before a definitive view could be taken of the mental state of the appellant he would have to be kept under observation in a mental hospital.

In this view, the High Court was not correct when it held that the Magistrate had held an inquiry, that he had held in that inquiry that he had no reason to believe that the appellant was suffering from any unsoundness of mind, and that therefore, he could straight away proceed with the committal proceedings. In our view, the Magistrate failed to make such an inquiry which it was incumbent upon him to make at the very threshold, and that having not been done, the committal proceedings, as also his order committing the appellant to the Sessions Court for trial were both vitiated. Consequently, the appeal must be allowed and the High Court's order and also the committal order passed by, the committing Magistrate must be-set aside and a de nova committal proceeding directed. We further direct the Magistrate to hold those proceedings in compliance with the requirements of s. 464 and give an opportunity to the appellant to produce evidence, if he so desires, to satisfy the Magistrate that there are reasons to believe that he is suffering from such unsoundness of mind as would incapacitate him from making his defence.

S.B.W. Appeal allowed
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