Supreme Court of India
Pramatha Nath Mukherjee vs The State Of West Bengal on 11 March, 1960
Equivalent citations: 1960 AIR 810, 1960 SCR (3) 245
Author: K D Gupta
Bench: Gupta, K.C. Das

PETITIONER:
PRAMATHA NATH MUKHERJEE

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT:
11/03/1960

BENCH:
GUPTA, K.C. DAS
BENCH:
GUPTA, K.C. DAS
SHAH, J.C.

CITATION:
1960 AIR 810 1960 SCR (3) 245

ACT:
Criminal Tyial-Accused discharged-of offence triable as Warrant case-If can be tried for any other triable as summons case on facts disclosed in the Police Report-Cognizance by Magistrate-Code of Criminal Procedure (V of 1898), SS. 251A(2), 190(1)(b).

HEADNOTE:
A Criminal case was instituted in the court of a Magistrate at Calcutta against the appellant under s. 332 of the Indian Penal Code for voluntarily causing hurt to the Bailiff of Calcutta Corporation and another. After hearing both sides the Magistrate was of the opinion that the charge under s. 332 could not be sustained but as there was evidence to establish a Prima facie case under s. 323 of the Indian Penal Code, he charged the appellant under that section. The appellant pleaded not guilty and
(1) [1955] 1 S.C.R. 991.
32
246
claimed to be tried and submitted that in view of the provisions Of S. 251A(2) of the Criminal Procedure Code, he should have been acquitted and the trial for the offence under s. 323 Indian Penal Code, could not be proceeded with.

The Magistrate rejected the contention and convicted the appellant.
On the question whether a magistrate after making an order of discharge under S. 251A(2) of the Criminal Procedure Code in respect of a charge of an offence triable as a warrant case can still proceed to try the accused for another offence, which would be made out from the police report:
Held, that an order of discharge made by the Magistrate in exercise of the powers under sub-s. (2) Of S. 251A, does not mean the discharge of the accused in respect of all the offences, which the facts mentioned in the police report would make out. The order of discharge being only in respect of the offences triable under Chapter XXI does not affect in any way the position that charges of offences triable under Chapter XX also are contained in the police report. In the instant case even after the order of discharge was made in respect of the offence under s. 332 Of the Indian Penal Code, the minor offence under S. 323 of which the Magistrate bad also taken cognizance remained for trial as there was no indication to the contrary. That being an offence triable under Chapter XX of the Code of Criminal procedure the Magistrate rightly followed the procedure under Chapter XX.
When a Magistrate takes cognizance under s. 190(1)(b) of the Criminal Procedure Code, he takes cognizance of all offences, constituted by the facts reported by the Police Officer and not of some only out of those offences.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 116 of 1958.

Appeal from the judgment and order dated February 28,1957, of the Calcutta High Court in Criminal Revision No. 1158 of 1956, arising out of the judgment and order dated June 26, 1956, of the Additional Chief Presidency Magistrate, Calcutta, in G. R. Case No. 284 of 1956.

K. R. Chaudhury, for the appellant.

B. Sen, P. K. Ghose for P. IC Bose, for the respondent. 1960. March 1 1. The Judgment of the Court was delivered by DAS GUPTA, J.-The question raised in this appeal is whether a Magistrate after making an order of discharge under s. 251A(2), Cr. P. C., in respect of a charge for an offence triable as a warrant case can still proceed to try the accused for another offence disclosed by the police report and triable as a summons case.

The case against the appellant was instituted on a police report which charged him with an offence under s. 332 of the I.P.C. for " voluntarily causing hurt by means of a piece of wood to the complainant, Sisir Kumar Bose, Bailiff of Calcutta Corporation and Chandra Sekhar Bhattacharjee,

an employee of Calcutta Corporation with the intent to prevent or deter those persons from discharging their duties as public servants." The Magistrate after satisfying himself that the documents referred to in s. 173 Cr. P. C. had been furnished to the accused examined the documents and was of opinion after hearing counsel of both parties that the charge under s. 332 I.P.C. could not be sustained. He was however of opinion that there was evidence to establish a prima facie case under s. 323 I.P.C. He accordingly charged the accused under s. 323 I.P.C. examined him and when he pleaded not guilty and claimed to be tried posted the case for the examination of prosecution witnesses. On the next hearing date a submission was made on behalf of the accused that in view of the provisions of s. 251(2) Cr. P. C. the accused should have been acquitted altogether and no trial for the offence under s. 323 I.P.C. could be proceeded with. The Magistrate rejected this contention and directed that the trial of the accused for an offence under s. 323 I.P.C. would proceed under Chapter XX. That procedure was followed and ultimately the accused was convicted under s. 323 I.P.C. and sentenced to pay a fine of rupees fifty only and in default to undergo rigorous imprisonment for one month. The appellant's application under s. 439 Cr. P.C. for revision of this order was rejected by the High Court. The learned Judge was of opinion that " if the Magistrate finds on the materials before him that a summons case offence has been committed by the accused, he has, the right and duty to proceed in accordance with the provisions of Chapter XX of the Cr. P.C. The word " discharge " used in sub-s. (2) of s. 251A Cr. P.C. must be read as having reference to a discharge in relation to the specific offence upon which the accused has been charge-sheeted. It does not necessarily mean that the accused cannot be proceeded against for some other.

offence, say a summons case offence, under Chapter XX Cr. P.C." in spite of the discharge under s. 251A(2). The present appeal is filed on the strength of a certificate granted by the High Court under Art. 134(1)(c) of the Constitution.

The relevant provisions of ss. 251 and 251A of the Code of Criminal Procedure are in these words:

" S. 251 :-In the trial of warrant-cases by Magistrates, the Magistrates shall:-

(a)in any case instituted on a police-report, follow the procedure specified in s. 251A; and

(b)in any other case, follow the procedure specified in the other provisions of this Chapter.

S. 251 A. (1)..... (2) If, upon consideration of all the documents referred to in s. 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him. (3)If, upon such documents being considered, such examination' if any, being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused." It is quite clear that, in deciding whether action shall be taken by him under sub-s. (2) or sub-s. (3) of s. 251A the Magistrate has to form an opinion whether there is any ground for presuming that an accused has committed an offence triable under

Chapter XXI or there is no such ground. When his opinion is that there is ground for a presumption that the accused has committed an offence punishable under Chapter XXI Which the Magistrate is competent to try and which could be adequately punished by him he shall proceed with the trial. But when he forms the opinion that there is no ground for presuming that an offence punishable under Chapter XXI has been committed by the accused his duty is to discharge the accused. The real question is, when an order of discharge is made by the Magistrate in exercise of the powers under sub-s. (2) of s. 251A is the discharge in respect of all the offences which the facts mentioned in the police report would make out ? The answer must be in the negative. When the Magistrate makes an order under s. 251A(2) he does so as, after having considered whether the charge made in the police report of the offences triable under Chapter XXI is groundless he is of opinion that the charge in respect of such offence is groundless; but the order of discharge has reference only/to such offences mentioned in the charge-sheet as are triable under Chapter XXI. It very often happens that the facts mentioned in the charge-sheet constitute one or more offences triable under Chapter XXI as warrant cases and also one or more other offences triable under Chapter XX. The order of discharge being only in respect of the offences triable under Chapter XXI does not affect in any way the position that charges of offences triable under Chapter XX also are contained in the police report.

But, says the learned counsel for the appellant, the Magistrate cannot proceed- with the' trial of these other offences friable under Chapter XX because no cognizance has been taken of such other offences. He contends that only after a fresh complaint has been made in respect of these offences triable under Chapter XX that the Magistrate can take cognizance and then proceed to try them after following the procedure prescribed by law, This argument ignores the fact that when a Magistrate takes cognizance of offences under s. 190(1)(b) Cr. P.C., he takes cognizance of all offences constituted by the facts reported by the police officer and not only of some of such offences. For example, if the facts mentioned in the police report constitute an offence under s. 379 I.P.C. as also one under s. 426 I.P.C. the Magistrate can take cognizance not only of the offence, under s. 379 but also of the offence under s. 426. In the present case the police report stated facts which constituted an offence under s. 332 I.P.C. but these facts necessarily consti.

tute also a minor offence under s. 323 I.P.C. The Magistrate when he took cognizance under s. 190(1)(b) Cr. P.C. of the offence under s. 332 I.P.C. cannot but have taken cognizance also of the minor offence under s. 323 I.P.C. Consequently, even after the order of discharge was made in respect of the offence under s. 332 I.P.C. the minor offence under s. 323 of which he had also taken cognizance remained for trial as there was no indication to the contrary. That being an offence triable under Chapter XX Cr. C.P. the Magistrate rightly followed the procedure under Chapter XX. The appeal is accordingly dismissed.

Appeal dismissed.