
(1990) 07 GAU CK 0013

Gauhati High Court

Case No: Criminal Revision No. 15 of 1982

Hari Sadhan Deb

APPELLANT

Vs

Dulal Deb

RESPONDENT

Date of Decision: July 24, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 244, 245, 245(2)
- Penal Code, 1860 (IPC) - Section 220

Citation: (1991) CriLJ 2800

Hon'ble Judges: J.M. Srivastava, J

Bench: Single Bench

Advocate: H. Dutta and B. Choudhury, for the Appellant; S. Barman Roy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Srivastava, J.

This petition by the complainant is directed against the order dated 2-4-82 passed by the learned Chief Judicial Magistrate, Agartala whereby the accused opposite-party was discharged.

2. The petitioner had filed complaint that on 21-2-81 at about 10-10 p.m. the complainant and 4 others had been arrested, on a false case registered at West Agartala P.S. by the opposite party who was then A.S.I., at the said police station. The opposite party appeared before the learned Magistrate. On 2-4-1982 the learned Chief Judicial Magistrate heard the learned counsel for the complainant i.e. the petitioner and also learned counsel for the accused who was also present and after consideration of the materials before him came to the conclusion that the accused should be discharged. Accordingly, the order impugned in this petition was made.

3. Aggrieved, the complainant has come to this court and Shri B. Choudhury, learned counsel appearing on his behalf has submitted that the complaint was for offence u/s 220 I.P.C. punishable up to sentence of 7 years" R.I. and accordingly the procedure followed by the learned magistrate has to be" as in warrant case, but that the learned magistrate had not given opportunity to the prosecution to produce evidence and had discharged the opposite party. Shri Choudhury, learned counsel for the petitioner, has referred to the provisions of Section 244 of the Code of Criminal Procedure hereinafter referred as the "Code".

4. I have considered the submissions and the materials on record.

5. On 2-4-1982 the learned Magistrate had heard the learned counsel for the complainant and the learned counsel for the accused opposite party herein as well and came to the conclusion that the opposite party who was the A.S.I., of police prima facie had not committed any offence.

6. Section 244 of the Code reads:--

"244. Evidence for prosecution.-- (1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing."

The provisions of Section 245 are also relevant, which read as follows:--

"245. When accused shall be discharged.--(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, in unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

7. While it is true that the above provisions require that in warrant case instituted otherwise than on a police report as in the present case the Magistrate was required to hear the prosecution and take all such evidence as might be produced in support of the prosecution, the learned Magistrate had heard the learned counsel for the complainant and also for the accused who had appeared. Besides the Magistrate had the necessary powers under Sub-section (2) of Section 245 above, to make an order like the one that was made, at any previous stage, for reasons to be recorded if he considered the charge to be groundless. The learned Magistrate therefore had the jurisdiction to make such an order and it should not be said that the impugned

order suffered from the vice of lack or absence of jurisdiction.

8. The question that whether the learned Magistrate was justified in making the order may be seen. The undisputed facts were that on 21-4-1981 at the hour stated earlier, the complainant and some of his friends had been taking liquor, according to the complainant in his house, while according to the opposite party it was in a hotel, as had been reported to him on the basis of which entry had been made in the General Diary, the case was registered at the police station and he had proceeded and made the arrest. The report of the Medical Officer, V.M. Hospital, Agartala where the complainant and his friends had been taken soon after their apprehension by the police, for medical examination was that they were "under the influence of alcohol unable to take care of themselves". Even though in the complaint it had not been stated that the complainant and his friends had been taking liquor when they had been apprehended, it was subsequently admitted that they had been drinking as had been observed by the learned Chief Judicial Magistrate in the order. On consideration of the above facts, in my opinion, the learned Magistrate was not unjustified in coming to the conclusion that the complaint had not made out any case against the accused opposite party, and had discharged the opposite party.

9. For the aforesaid reasons, this petition is dismissed.