
(1970) 06 GAU CK 0006

Gauhati High Court (Kohima Bench)

Case No: None

Ekdasi Gur and Others

APPELLANT

Vs

Diptendra Mukherjee

RESPONDENT

Date of Decision: June 3, 1970

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 173, 251A(2), 252

Citation: (1971) CriLJ 102

Hon'ble Judges: P.K. Goswami, C.J; D.M. Sen, J

Bench: Division Bench

Judgement

P.K. Goswami, C.J.

This Criminal revision is directed against an order of the learned Sessions Judge, Silchar; directing further enquiry in the case of ten accused persons who have been discharged by the trial Court u/s 251A (2) of the Code of Criminal Procedure,

2. The learned Sessions Judge has found that the learned Magistrate has not at all applied his mind and dealt with the matter perfunctorily. In this view of the matter, the learned Sessions Judge directed further enquiry into the case against these discharged accused u/s 436, Criminal Procedure Code.

3. Mr. Dey, the learned Counsel for the petitioners, submits that since u/s "251A trial has commenced, there is no meaning in sending a case for further enquiry. He seems to think that the enquiry is only possible by a Court after taking evidence as laid down u/s 252, Criminal Procedure Code in Warrant cases instituted on complaint. This submission has no substance. When the Magistrate will proceed for further enquiry, he will have to confine himself to the provisions of Section 251A and hence will only consider the documents referred to in Section 173, Criminal Procedure Code and after, examination, if any, of the accused and hearing the parties, pass the necessary orders in conformity with Sections 251A(2) or 251A (3).

4. There is another infirmity in the order of the learned Magistrate which even the learned Sessions Judge has not specifically noticed, Section 251A (2) runs as follows;

Section 251A (2) if, upon consideration of all the documents referred to in Section 178 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.

The Magistrate in a case instituted on a Police report can only discharge at this stage u/s 251A (2) when he comes to the conclusion that the charge is groundless. This Section is in sharp contrast to Section 253 of the Criminal Procedure Code regarding cases instituted on complaint. There the expression used is it the Magistrate "finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction", he shall discharge him, and under Sub-Section (2) thereof "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". There are, therefore, two stages in Section 253 but so far as Section 251A(2) is concerned, there is only one stage and that stage is that after Police papers have been handed over to the accused as required u/s 178 and the parties are heard the Magistrate can discharge the accused who have already been chargesheeted only on a finding that the charge is groundless. This conclusion is significantly absent in the brief order which the learned Magistrate passed on 29-11-67. He only observed "Others discharged as there is no sufficient evidence against them". This would be in line with Section 253 and not in conformity with Section 251A (2). We are of opinion that the learned Sessions Judge was perfectly justified in setting aside this order relating to the discharge of the accused and directing further enquiry into the matter.

5. Our attention has been drawn to a Division Bench decision of this Court in the case of [Tabarak Ali and Others Vs. Mantaj Ali](#), where the head-note states as follows :

Where trial has commenced and going on further enquiry has no meaning $\frac{1}{2}$ Sessions Judge cannot exercise jurisdiction u/s 436 of the Criminal Procedure Code and direct further enquiry.

We have, however, gone through the decision and we find that their Lordships have noticed Section 436, Criminal Procedure Code to be in wide terms and also observed as follows :

It does not debar the jurisdiction of the Sessions Judge to interfere with the order of discharge and to direct further enquiry after the trial has commenced.

In that view of the matter, the head-note seems to be misleading. The decision must be confined to the facts of that case which we find can be well supported on the footing that the learned Sessions Judge had in this case made up his mind and almost directed the

Magistrate to frame charges against the accused. This, of course, is not contemplated u/s 436, Criminal Procedure Code. All that a Sessions Judge can do in a revision application u/s 436 when he is satisfied, is to send the case back for further enquiry so that the trial Court has the freedom to act and come to its own conclusion whether" a charge should be framed or not, This was not done in the case cited at the Bar, decided by the Division Bench. We, therefore, do not see how this decision would come to the aid of the learned Counsel for the petitioners.

6. The application fails and is accordingly dismissed.

Sen, J.

7. I agree.