Ajij Khan Vs Sirajuddin and Others

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: March 28, 1986

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 173, 202, 207, 208, 209
Penal Code, 1860 (IPC) â€" Section 147, 148, 307, 324, 34

Citation: (1987) CriLJ 1304

Hon'ble Judges: K. L. Shrivastava, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K. L. Shrivastava, J.
This revision petition is directed against the order dt. 4-2-1985 passed by the Judicial Magistrate First Class Kukshi

in Criminal Case No. 1176 of 1984 whereby it has been held that the complaint case, in view of the police challan, cannot be committed to the

Court of Session.

2. Facts giving rise to the petition are these : on 10-9-1984, the petitioner filed a complaint against the non-applicants in the" Court of Judicial

Magistrate First Class Kukshi in respect of offences under Sections 148, 307 and 506, IPC all read with Section 34 ibid. After inquiry u/s 202 of

the Code of Criminal Procedure 1973 (for short "the Code") the learned Magistrate found a prima facie case u/s 307, IPC and ordered issue of

process.

3. On 4-2-1985, the learned Magistrate has held that from the police challan in connection with the occurrence, prima facie offences only under

Sections 147,148,324 and 506 IPC appear to have been committed and in view of the challan, the case instituted on the complaint cannot be

committed to the Court of Session. The learned Magistrate has further ordered that the judgment in the case instituted on police report shall also

govern the disposal of the complaint case. Aggrieved by this order, the petitioner has preferred this revision petition.

4. The contention of the petitioner is that on the material placed by him on record, a prima facie case u/s 307 IPC was earlier found to exist and on

that basis there was order for issue of process and the case ought to have been committed to the Court of Session.

5. The learned Counsel for the non-applicants has supported the impugned order.

6. The point for consideration is whether the impugned orderdeserves to be interfered with in revision.

7. Section 210 of the Code which falls for interpretation has been enacted to avoid any miscarriage of justice that may result from obtaining an

order of acquittal by instituting a complaint when the case is still under investigation by police. Sub-section (1) thereof provides for stay of the

earlier instituted complaint and Sub-section (2) incorporating a fiction is in these terms:

Section 210(2). If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the

Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the

case arising out of the police report as if both the cases were instituted on a police report.

8. A plain perusal of the provision extracted above shows that it is not necessary that there should be identity of accused or the offences. It is

pertinent to note that the provision does not require amalgamation of the two cases into one but requires a particular procedure to be adopted for

the purpose of inquiry or trial together. All that the provision requires in that where the offence meaning occurrence vide Joseph Vs. Joseph

Annamma, is common to the complaint case and the case arising out of the police report, they have to be inquired into or tried together on the

footing that both the cases have been instituted on police report. As pointed out in the decision in State Vs. Har Narain etc., where the facts under

investigation by the police include the facts mentioned in the complaint case, the criteria laid down in Sub-section (1) of Section 210 of the Code is

satisfied. On cognizance of any offence on the police report, in respect of the complaint case also where it discloses offences triable by him, the

Magistrate has to adopt the procedure laid down in Chapter 1XX (Sees. 238 to 247) retaining its, separate identity. As already pointed out it is

not necessary that there has to be identity of offences and the accused persons. The provision does not lay down that on Magistrate: taking

cognizance of any offence on police report, the connected complaint case will verge with the former or will be dropped without any further inquiry

on trial. All that it provides is that the complaint case too has to be tried according to the procedure therein provided and together with the case

instituted on Police report and not separately. They have, however, to be inquired into or tried according to law in respect of the offences therein

disclosed. The learned Magistrate was certainly in error in holding that the complaint case, despite the offence u/s 307 IFC, could not be

committed because the case instituted on police report discloses no such offence as is exclusively triable by the Court of Session. It is certainly not

the intendment of law that if the complaint case discloses an offence not triable by him and the case instituted on police report discloses offences

triable by him, the Magistrate is not to deal with the complaint according to law. The fact that there is police report does not certainly clothe the

Magistrate with jurisdiction to try the complaint case even where it discloses an offence exclusively triable by the Court of Session. In such a

situation the Magistrate is bound u/s 209 of the Code to commit the complaint case to that Court and before so doing because of Section 210(2)

of the Code, he has to follow the provision of Section 207 of the Code and not that embodied in Section 208 which is applicable to a case other

than that instituted on a police report. If considered essential, witnesses may be examined u/s 311 of the Code in the complaint case before

committal order.

9. In the decision in Kewal Krishan Vs. Suraj Bhan and Another, it has been pointed out that to obviate risk of conflicting findings it is ordinarily

desirable that cross cases both exclusively triable by Sessions Court should be tried separately but by the same Court. On that analogy, the case

instituted on police report may also be committed to the Court of Session. The law permits committal of a case to the Court of Session even where

it is not exclusively triable by the Court of Session.

10. Reference may here be made to Section 323 of the Code. It reads thus:

Section 323 : If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing

judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions there in before

contained.

For invoking this provision, it is certainly not necessary that the case must relate to an offence triable exclusively by the Court of Session. In this

connection the decision in Rajendra Singh"s case 1984 MPWN 293 which relates to cross-cases may usefully be perused. For some guidance

reference may also be usefully made to Rule 293 of the Motor Vehicles Rules 1974 which provides for procedure in connected cases arising out

of the same accident.

11. For the foregoing reasons, I am of the view that the impugned order being illegal, deserves to be set aside. It may be expressly pointed out that

when it appears to the learned Magistrate that in the complaint case, the offence is triable exclusively by the Court of Session, he shall commit it to

the Court of Session and in respect of the other case he may consider the advisability of invoking the provision embodied in Section 323 of the

Code. If he thinks that the provision need not be invoked, he may himself try the case instituted on the police report. In case he does not commit

the case instituted on complaint to the Court of Session, he may deal with it as provided u/s 210(2) of the Code.

12. In the result, the revision petition succeeds and is allowed. The impugned order is set aside and the learned Magistrate is directed to deal with

the case according to law as directed above.