
(1998) 3 PLJR 787

Patna High Court

Case No: Government Appeal No. 47 of 1985

State of Bihar

APPELLANT

Vs

Gita Nand Jha

RESPONDENT

Date of Decision: Sept. 23, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 106, 313, 325, 325(3), 325(8)
- Penal Code, 1860 (IPC) - Section 409, 467

Citation: (1998) 3 PLJR 787

Hon'ble Judges: R.N. Prasad, J; N. Rai, J

Bench: Division Bench

Advocate: Lala Kailash Bihari Pd, for the Appellant; None, for the Respondent

Judgement

Nagendra Rai, J.

The question for determination in this case is as to the scope and extent of power of the Chief Judicial Magistrate in a case referred to him u/s 325 of the Code of Criminal Procedure (hereinafter referred to as the Code). In other words, the question to be determined is as to whether after reference by a trying Magistrate u/s 325 of the Code the Chief Judicial Magistrate has to form his own opinion regarding the evidence on record and decide the matter independently or he has to dispose of the matter in terms of the finding of the guilt arrived at by the referring Magistrate at the time of the reference.

2. The facts necessary to appreciate the points are as follows;

(1) Respondent Gita Nand Jha at the relevant time was the Secretary of Dharhan Multipurpose Cooperative Society. He is alleged to have misappropriated Rs. 20934/-. One Chandeshwar Pd. Sharma, the Cooperative Extension Supervisor, filed a written report alleging misappropriation of money against Gita Nand Jha and on the basis of which a F.I.R. u/s 409 and 467 I.P.C. was drawn up. Thereafter, the police after investigation submitted chargesheet under the aforesaid sections.

(2) On 16.4.80 the Chief Judicial Magistrate took cognizance under the aforesaid sections and the case was transferred to the Sub-divisional Judicial Magistrate, Katihar for trial, before whom the prosecution examined three witnesses and produced the documents and the subdivisional Judicial Magistrate after considering the evidence on the record came to the conclusion that Respondent Gita Nand Jha (hereinafter referred to as the Respondent) misappropriated Rs. 15713.18/- while working as a Secretary of the SMO society and thus found him guilty of the offence u/s 409 I.P.C. He acquitted him of the charge u/s 467 I.P.C. While deciding the question of sentence he opined that as criminal breach of trust was committed with regard to Rs. 15713.18/- he deserves severe sentence which is beyond his competence and accordingly he sent those records to the Chief Judicial Magistrate for passing an adequate sentence against the Respondent by judgment and order dated, 21.11.84.

(3) The Chief Judicial Magistrate after receipt of the records, examined the accused u/s 313 Code of Criminal Procedure heard the parties and perused the records and thereafter by judgment and order dated; 14th May, 85 acquitted the Respondent as according to him the prosecution has not been able to prove offence u/s 409 I.P.C. against him.

(4) The State has preferred the present appeal against the acquittal.. The learned single judge while hearing the appeal has referred this matter to the Division Bench as according to his lordship the Chief Judicial Magistrate, not being an appellate Court was not justified in acquitting the accused when the referring Court has found him guilty for the offence u/s 409 I.P.C.

3. The general rule is that the Magistrate recording the evidence should deliver the final judgment. There are exceptions to the said rule. Section 325 of the Code is one of such exceptions.

4. Answer to the question rererred to the Division Bench depends upon the interpretation of the provision of Section 325 of the Code as such it is apt to quote the aforesaid provision which runs as follows;

325. (1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond u/s 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under Sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.

5. The aforesaid provisions provide inter alia that when the trying Magistrate after hearing the evidence for the prosecution and the accused is of the opinion that the accused is guilty and he is not competent to pass an adequate sentence then after recording his opinion, will submit the proceedings and forward the accused to the Chief Judicial Magistrate. Even in cases where the referring Magistrate is of the opinion that he is not competent to pass an adequate sentence even in case of any one of accused he has to, refer the case of all the accused to the Chief Judicial Magistrate, who, according to his opinion, are guilty, to the Chief Judicial Magistrate. On receipt of the records, the Chief Judicial Magistrate either after hearing the parties will dispose of the proceedings or if he thinks fit, can examine the parties, recall the witness, take further evidence and thereafter shall pass such judgment, in case as he thinks fit, and as is according to law.

6. Thus, it is clear that so far the referring Magistrate is concerned, he is not required to deliver the judgment in terms of Section 354 of the Code. He has only to form an opinion about the guilt and record his opinion and thereafter will submit the proceedings to the Chief Judicial Magistrate. In other words, he has not to convict the accused. Only a(sic)r recording of his opinion he has to send the records to the Chief Judicial Magistrate, who will finally dispose of the matter in terms of Section 325(3) of the Code. If the referring Magistrate instead of only-forming an opinion proceeds further and convicts the accused and send the records only for awarding the sentence the same does not make any difference. Recording of conviction is only a surplusage which amounts to only an irregularity and that does not in any way affect or control the power of the Chief Judicial Magistrate to whom the matter is referred in terms of the aforesaid provision to pass an order in terms of Section 325 of the Code.

7. A Division Bench of this Court in the case of Pagla Kahar and Anr. v. Emperor AIR (33) 1946 Pat 412 while considering the provision of Section 349, which corresponds to the present section with certain modifications held that u/s 349(1) of the Code the Magistrate is only required to record his opinion that the accused is guilty of the offences charged and submit the proceedings to the Magistrate. While expressing opinion if the Magistrate uses the expression that he has convicted the accused the language used is erroneous. However, on, that ground the proceedings u/s 349 of the Code is not vitiated and the reference is not illegal. At best it is irregular for the Magistrate to have stated that he convicted the accused but the irregularity does not vitiate the proceedings.

8. Once the proceeding is referred to the Chief Judicial Magistrate he has to pass such judgment, sentence or order in the case as he thinks fit and as is according to law. Thus, he can do either on the basis of the material which has been sent to him by the referring Magistrate or he can take further evidence as envisaged under Sub-section (8) of Section

325 of the Code. In both the situations he has to render the judgment and pass an appropriate order in terms of Section 325(3) of the Code.

9. Judgment means a decision arrived at after due consideration of the evidence and the arguments, if any, in a trial which decides the question finally so far the Court trying the case is concerned which ends either in conviction or acquittal. When the matter is referred to the Chief Judicial Magistrate the referring Magistrate has not to deliver the judgment. He has only to give his opinion of the guilt and refer the matter to the Chief Judicial Magistrate. The referee Magistrate after receipt of the records u/s 325 of the Code has to record judgment and pass an order of sentence in case of conviction or order of acquittal or such orders as he thinks fit according to law. In other words, the opinion expressed by the referring Magistrate is neither final nor the same is binding upon the Chief Judicial Magistrate. He after considering the evidence may either acquit the accused or convict him or even pass any appropriate order as the situation of the case so demands. He has to form his opinion independently and dispose of the matter finally according to law. The opinion formed by the referring Magistrate in no way controls his discretion.

10. This point is no longer res-integra and has been decided by this Court as well as by the other Courts. The said question was first considered by a Full Bench of Madras High Court in the matter of Chinnimarigadu, ILR Vol. (1) Madras series), 1876-78 Page 289 wherein the similar provision was under consideration. It was held that the words of the section enabling the Magistrate to pass such judgment, sentence or order, etc., expressly provide for the disposal of the case otherwise than by acquittal or sentence, and they are of the opinion that it was quite competent to the Magistrate, to whom the case was referred to say that, either from the gravity of the matter or for any other sufficient reason, the Session Court was the proper tribunal for the disposal of the case and to make an order in accordance with that opinion.

11. A learned single Judge of this Court in the case of Thakur Singh and v. Anr. AIR 1919 Pat 290 (1) held that once the matter is referred to the Magistrate u/s 349 of the 1898 Code the accused person is entitled to have the independent judgment of the trying Magistrate and such judgment must be prepared in accordance with and contain the particulars required by Section 367 of the said Code, otherwise it is no judgment at all. The said decision of this Court was followed by a learned single Judge of Awadh High Court in the case of Lallu Ram and Ors. v. Emperor 193 Awadh 35 wherein it was held that it is not sufficient for the superior Magistrate (sic) whom a case has been referred u/s 349 of 1898 Code to accept the findings of the inferior Magistrate making reference. He has to form his own independent judgment and write judgment according to the provision of Section 367 of the Code.

12. In the case of State v. Nanu Pillai Janardhanan Pillai AIR 1954 T.C. 376, a Division Bench of Travancore-Cochin High Court while considering the scope of Section 349 of 1898 Code held that the Magistrate to whom the case has been transferred u/s 349 is

under obligation to hear the arguments of the pleaders present and to write a judgment giving his reasons for his order as in an ordinary calendar case tried entirely by him.

13. I am in respectful agreement with the views expressed in the aforesaid judgments.

14. Thus, it is held that if the Magistrate trying the case after considering the evidence on record and hearing the parties comes to the conclusion that the accused is guilty of an offence charged with and he deserves punishment which is beyond his jurisdiction then he has to record his opinion of guilt and refer the matter to the Chief Judicial Magistrate who on receipt of record will dispose of the matter finally either on the basis of material referred to him or will take further evidence as envisaged u/s 325(3) of the Code. At the time of final disposal of the matter he is neither controlled nor guided by the finding of guilt arrived at by the referring Magistrate. He has to form his own opinion independently on the evidence, on the record and to render the judgment in accordance with law. After appreciation of evidence and hearing the parties he may take a view or express an opinion different from that of the referring Magistrate and render a judgment in accordance with law which may be either judgment of conviction and sentence or acquittal.

15. Thus, the question referred to by the learned single Judge is being answered in the manner indicated above.

16. The Chief Judicial Magistrate has authority in law to take a view different from that of the referring Magistrate. The judgment of acquittal rendered by him cannot be said to be in breach of Section 325 of the Code.

17. It is made clear that the question of law referred to Division Bench has only been decided. No opinion has been expressed regarding the order of acquittal on merit. The said question has to be decided by the learned single Judge. Accordingly, this appeal be placed before a learned single Judge of this Court to dispose of the same on merit.