

(1951) 02 CAL CK 0001

Calcutta High Court

Case No: Criminal Revision No. 659 of 1950

Sripati Duley and
Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Feb. 1, 1951

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 210, 211, 212, 213, 537

Citation: AIR 1953 Cal 10 : (1952) 1 ILR (Cal) 320

Hon'ble Judges: P.N. Mookerjee, J; K.C. Das Gupta, J

Bench: Division Bench

Advocate: Ajit Kumar Dutt, for the Appellant; Harideb Chatterjee, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This Rule was issued on the District Magistrate of Bankura to show cause why the order passed by a Magistrate committing these petitioners to the Court of Session for trial for offences under Sections 147 and 436, Penal Code, should not be quashed.

2. It appears that information was lodged at the Thana on 20-8-1949, by Rashik Dome alleging that offences under Sections 143 and 436, Penal Code had been committed by a number of persons. The police after an enquiry sent up charge sheet only under Sections 147, Penal Code, against all these petitioners. After examination of 6 of the prosecution witnesses the learned Magistrate came to the conclusion that the evidence disclosed a case under Sections 436, Penal Code, and apparently he expressed his decision to enquire into the matter under the provisions of chap, XVIII Criminal P. C. There was a prayer on behalf of the de-fence that as the charge sheet had been submitted under Sections 147, Penal Code, they were not prepared for cross-examination at that stage.

Thereafter some more witnesses were examined in chief and after 11 witnesses had been examined in chief they were all cross-examined after which the learned Magistrate examined the accused. On 18-7-1950, the learned Magistrate framed charges against the accused persons under Sections 147 and 436, Penal Code and passed the following order:

"The accused are charged u/s 147/430, Penal Code, and are committed to the Court of Session by an order of commitment herewith. They are all taken in custody to be produced "before the Sessions Court as and when directed."

Later in the day a prayer for bail being made the learned Magistrate directed ad interim bail till 31-7-1950. Still later the learned Magistrate passed the following order:

"Accused are given s days" time to submit list of defence witnesses, if any."

3. The two points which have been pressed before us with particular stress by Mr. Dutt on behalf of the petitioners are: (1) that the order of commitment is bad inasmuch as the learned Magistrate failed to follow the procedure laid down in Sections 211, 212 and 213, Criminal P. C. and (2) that the evidence recorded is such that no reasonable man can conclude therefrom that any offence under Sections 486, Penal Code, was committed by any of the accused" persons.

4. Taking the second point for consideration first we think it sufficient to say for the purpose of this case that after going through the evidence recorded and considering Mr. Dutt's argument, we are unable to accept his contention that the evidence is such that no reasonable man can conclude therefrom that an offence under Sections 436, Penal Code, was committed by the accused person. Whether if and when the case goes to Sessions, the Jury as the Judges of facts would accept the evidence as satisfactory or not, is a matter which we need not consider and on that we express no opinion. We express no opinion at all as regards the merits of evidence except saying that we are unable to accept Mr. Dutt's extreme contention noted above.

5. The other contention raised by Mr. Dutt ought, in our opinion, to prevail. To understand whether the provisions in Sections 211 and 212, Criminal P. C., are matters of substance non-compliance with which should be considered in law to amount to illegality, not curable by Sections 537, Criminal P. C., it is necessary to examine the scheme in which these two sections appear. Chapter XVIII, Criminal P. C. deals with enquiry into cases tribal by the Court of Session or High Court and starts with Sections 206. That section states what Magistrates have the power to commit for trial. Section 207 says that the procedure in the following sections shall be adopted for such enquiries. Section 208 provides that when the accused appears before the Magistrate, the Magistrate shall proceed to hear the complainant and take such evidence as might be produced in support of the prosecution or on behalf of the accused. It contains provisions as regards right of the accused to

cross-examine the witnesses and also as regards the issue of process for compelling the attendance of any of the witnesses for the complainant or the accused. Then we come to Sections 209 and 210 which deal with the question of framing of charge or discharge of the accused.

These sections provide that after evidence mentioned in Section 208 has been recorded, and the accused has been examined for the purpose of enabling him to explain any circumstances appearing in the evidence, the Magistrate can do either of two things : if he finds that there are not sufficient grounds for committing the accused for trial he will record his reasons and discharge him unless it appears to him that he should be tried before himself or some other Magistrate in which case he should proceed accordingly. If, on the contrary, he is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge declaring with what offence the accused is charged and as soon as the charge is framed, it should be explained to the accused.

It is important to note that though u/s 210 the Magistrate, if satisfied that there are sufficient grounds for committing the accused for trial, is empowered to frame a charge, this section does not empower him to make the actual commitment. The commitment, if any, has to be made u/s 213, Criminal P. C. Before that stage is reached, the Magistrate has to follow the procedure under Sections 211 and 212, under the first of which the Magistrate has to ask the accused to give at once a list of the persons whom he wishes to be summoned and give evidence on his trial, and the second of which empowers the Magistrate to summon in his discretion and to examine any witness named in any list given to him u/s 211. If no such list is given by the accused, the Magistrate may make an order committing the accused to trial ; if the accused has given a list the Magistrate may still make an order committing the accused for trial but that only after the Magistrate has exercised his discretion u/s 212.

We are unable to agree that the fact that 8. 210 does not empower the Magistrate to make "a commitment but Section 213 does, and that Section 213 comes into operation after the procedure in Sections 211 "and 212 has been followed is a fortuitous circumstance ; it appears to us to be a clear and deliberate act of the legislature for the purpose of avoiding unnecessary and improper commitment. It may very well happen that after the Magistrate has obtained the list of witnesses, he will decide on scanning the list--it may very well be after suggestion has been made by the lawyers for the accused--to examine one or more of the witnesses named in the list. The evidence of such witness examined u/s 212 may conceivably be such as to make the Magistrate decide that though he originally did frame a charge under Section. 210, the charge should be cancelled and the accused discharged.

This is what is in so many words provided in Sub-section (2) of Section 213 which runs as follows :

"If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused."

The mere fact that a charge has been framed u/s 210, Criminal P. C. is not by itself sufficient for the commitment of the accused persons to the Court of Session.

6. On a careful consideration of this matter we have no doubt in our mind that these provisions in Sections 211 and 212 are substantial provisions of procedure and non-compliance with these is not curable by the provisions of Section 537, Criminal P. C.

7. Accordingly, we set aside the order of commitment made by the learned Magistrate and order that after giving a fresh opportunity to the accused to give a list of witnesses for the defence u/s 211, Criminal P. C. he will follow the procedure as laid down in Sections 212 and 213, Criminal P. C. and dispose of the matter in accordance with law.

8. The rule is disposed of accordingly.

9. Let each of the accused be released on bail of RS. 500 with one surety of the like amount during the period of enquiry.