

(1982) 06 CAL CK 0030

Calcutta High Court

Case No: None

Purna Chandra Jana and Others

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision: June 2, 1982**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 148, 209, 228(1)(a), 23

Citation: 86 CWN 896**Hon'ble Judges:** Amitabha Dutta, J**Bench:** Single Bench**Advocate:** Prasun Chandra Ghosh and C.R. Das, for the Appellant; Pranati Banerjee and Himangshu Dey, for the Respondent

Judgement

Amitabha Dutta, J.

This Revisional Application is directed against an order dated 7.1.81 passed by the learned Sessions Judge, Midnapur in Criminal Motion No. 112 of 1980 setting aside the order dated 5.11.80 of the learned Judicial Magistrate, Second Court, Tumluk in G. R. Case No. 934 of 1979. In the wake of an incident of fight between two groups over cultivation of land on 16.8.79 two cross cases were registered of Panskura P.S. on the same date, at the instance of the petitioner No. 1 Purna Chandra Janah and the opposite party No. 2 Prakash Chandra Janah respectively as informants. The police investigated and submitted charge sheet in both the cases. The learned Magistrate committed the case under Sections 147|148|447|324|304 of the Indian Penal Code against the opposite party No. 2 and others in March 1980 to the Court of Session for trial. The learned Magistrate framed charge under Sections 147|447|324 of the Indian Penal Code in the other case being G. R. Case No. 934 of 1979 against the petitioners on 12.7.80 and fixed the case for evidence. At that stage the opposite party No. 2 filed a petition on 1.10.80 for committing the G. R. Case No. 934 of 1979 to the Court of Session for trial for just decision thereof as both the cross cases should be heard by the same judge contemporaneously to avoid

material prejudice to the defence in the case committed to the Court of Session, The learned Magistrate rejected the prayer by an order dated 5.11.80 on the ground that there is no provision for commitment of a case under Sections 147|447|324 IPC to the Court of Session for trial. Against the said order of the learned Magistrate the opposite party No, 2 moved the learned Sessions Judge Midnapur in Criminal Motion No. 112 of 1980. The learned Sessions Judge by his impugned order set aside the order of the learned Magistrate and in effect directed the learned Magistrate to commit the G. R. Case No. 934 of 1979 to the Court of Session to enable that Court to hear both the cases in quick succession for avoiding conflicting decisions in them.

2. Before this Court the learned advocate for the petitioners has raised three points. Firstly It is contended that in view of Section 209 of the Code of Criminal Procedure 1973 the learned Magistrate is not competent to commit a case which is not exclusively triable by the Court of Session and in this connection reference is made to the Supreme Court's decision in the case of [Sanjay Gandhi Vs. Union of India \(UOI\) and Others](#), laying down the limited power of the committing Magistrate who cannot probe beyond the face of the police report, in deciding whether or not to commit a case to the Court of Session. Secondly it is argued that the expression at any stage of the proceeding" in Section 323 of the Code signifies that the learned Magistrate has to decide whether the case before him ought to be tried by the Court of Session only in course of taking evidence during trial and not before evidence is taken. The Third submission on behalf of the petitioners is that learned sessions Judge has no power to direct the learned Magistrate to commit a case triable by the learned Magistrate to the Court of Session.

3. It appears that in coming to a finding the learned Session Judge has relied on the decision reported In 1978 Criminal Law Journal 209, 1978 Criminal Law Journal 259 and 1979(1) Calcutta Law Journal 416. In the case of V. V. Raghavaloo vs. State 1978 Criminal Law Journal 209 the learned Single Judge of the Andhra Pradesh High Court has held that a learned Magistrate can commit a case triable by him to the court of Session If he is of the opinion that It ought to be tried by a Court of session on the basis of the nature and gravity of the offence, the punishment to be awarded and such other matter of aggravation, But In the said reported case there was no question of trial of cross cases. In Girija Nanda vs. State of Assam 1978 Criminal Law Journal 259 the question was whether the High Court can transfer a case triable by the Magistrate u/s 407 of the Code to the Court of Session to which a cross case had been committed. A learned single Judge of Gauhati High Court held that the High Court can and should do so In view of the generally recognised rule that such cases should be tried In quick succession by the same judge who should not pronounce judgment till the hearing of both the cases is finished as in reality the case and counter case are conflicting versions of the Incident. In the case of Vivekananda Parul vs. Provash Chandra Parul 1979(1) CLJ 416 in which both the cross cases Involved an offence u/s 307 IPC exclusively triable by a Court of Session, the Division Bench held that both the cases and the counter case should be heard by

the same judge.

4. In my view as there is no provision in the Code laying down the procedure in cross cases, each case is to be decided on its own facts. There is no hard and fast rule that cross cases should always be tried by the same judge. At the same time it is in my opinion a salutary practice that cross cases arising out of a single incident of fight between two groups of persons are tried by the same judge in quick succession and judgment are not pronounced until both cases are heard. It is to be borne in mind that judgment in one case should not be based consciously or unconsciously on the evidence adduced in the other. This procedure will secure ends of justice by ensuring fair trial and avoiding conflict of decisions. The expression "at any stage of the proceeding" in Section 323 of the Code is in my view of widest amplitude to enable the learned Magistrate to take a decision at any stage of the trial which begins after the plea of the accused on the charge is taken, whether the case ought to be tried by a Court of Session. It is not always necessary that he must take some evidence before he takes the decision to commit the case to a Court of Session. The decision of the Supreme Court in the case of [The State of Uttar Pradesh Vs. Khushi Ram](#), supports the proposition that a Magistrate otherwise competent can commit a case to the Court of Session u/s 347 of the old Code (the corresponding provision being Section 323 in the Code of 1973) although the case is not exclusively triable by the Court of Session and the Magistrate has power to impose all the punishment prescribed for the offence.

5. Section 209 of the Code deals with the procedure for commitment of a case exclusively triable by the Court of Session. Ordinarily a Magistrate is to try a case involving offences triable by him. (Section 323 of the Code provides an exception to this rule. A Magistrate may commit a case when it appears to him at any stage of the proceeding that it is one which ought to be tried by the Court of Session either because (a) he finds on taking evidence that the evidence disclosed is exclusively triable by the Court of Session or (b) the offence is so grave that the adequate punishment for it is a sentence of imprisonment exceeding seven years or (c) where the cognizance is taken by a Chief Judicial Magistrate and he has tendered pardon and examined the approver u/s 306(4) of the Code or (d) where it is a cross case and the facts are such that it should be tried by the Court of Session to which the other cross case has been committed for ensuring fair trial and avoiding conflict of decisions. In that event the commitment is to be made u/s 209 of the Code as the expression "under the provisions hereinbefore contained" in Section 323 of the Code refers to such procedure. It may be mentioned that Section 228(1)(a) confers discretion on the Court of Session to try an offence which is not exclusively triable by it if circumstances justify such trial and Section 26 of the Code makes any offence under the Indian Penal Code triable by the Court of Session.

6. There is, however, no provision in the Code enabling the Sessions Judge to direct the Magistrate to commit a case to the Court of Session although the Sessions

Judge has power to direct that an accused be committed for trial u/s 399(1) read with Section 401(1) and Section 386 (a) of the Code.

7. In the result. I modify the impugned order passed by the learned Sessions Judge to this extent that the learned Magistrate shall re hear the matter arising out of the petition filed by the opposite party No 2 Prakash Chandra Jana on 1 10.80 before him, in the light of the foregoing observations and decide after considering the police report In the cross case committed to the Court of Session (a certified copy of which may be produced, If necessary by the petitioner before him) whether the G. R Case No. 934 of 1979 ought to be tried by the Court of Session and If he decides In the affirmative to commit the said case to the Court of Session observing the procedure in Section 209 of the Code (as if the offences were exclusively triable by the Court of Session). If commitment of the said case is made the Court of Session shall follow the procedure laid down in Chapter XVIII of the Code as far as applicable and the learned Public Prosecutor will conduct the prosecution. The Rule is thus disposed of. Let the records be sent down to the court below within a month.