

The State Vs. Baijnath and ors.

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Court : Allahabad

Decided On : May-29-1952

Reported in : AIR1953All191

Judge : Beg, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 193, 193(1), 210, 226, 227 and 537

Appeal No. : Criminal Ref. No. 29 of 1952

Appellant : The State

Respondent : Baijnath and ors.

Advocate for Def. : D.N. Hathwal, Adv.

Advocate for Pet/Ap. : P.N. Chaudhri, Dy. Govt. Adv.

Judgement :

ORDER

Beg, J.

1. This is a reference made by the learned Sessions Judge of Bara Banki for quashing the order of commitment made by the Judicial Officer of Fatehpur against twenty-two, accused. This reference has been made under the following circumstances :

2. The twenty-two accused committed to the court of session were initially tried by the committing Magistrate who started proceedings in the case against them not as a court of enquiry but as a trial court. He treated the case as a warrant case. Accordingly he framed a charge on 9th January 1951 under Section 254. After the proceedings had been gone through up to a certain stage it was pointed out to him that one of the offences for which the accused were being tried was that under Section 330 which was exclusively triable by the court of session. Thereupon the court proceeded under Section 347, Criminal P. C. but failed to observe the provisions of Ch. XVIII in so far as he omitted to frame a charge under Section 210, Criminal P. C. He, however, proceeded to pass an order of commitment.

3. The result of this irregularity of proceeding in the committing Magistrate's court was that the case reached the court of session without a charge. Under Section 210, Criminal P. C. it is laid down that

'when upon such evidence being taken and such examination (if any) being made the magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.'

Section 226 provides that

'when any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.'

The learned Sessions Judge was of opinion that Section 226 would apply to a case where some charge had been framed by the committing Magistrate's court but not to the case where no charge had been framed at all. This view is not borne out by the plain reading of the section itself. Section 226 deals not only with the cases of commitment without a charge but also with the cases of commitment with an imperfect or erroneous charge. The last two contingencies cover cases where a charge already exists but is imperfect or erroneous on some ground. The first contingency would cover a case where no charge has been framed at all.

4. Section 227, Criminal P. C. provides that:

'1. Any Court may alter or add to any charge at, any time before judgment is pronounced, or in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.'

The purpose of the Legislature in enacting both the sections seems to be to arm the Sessions Court and the High Court with the power of rectifying all defects relating to a charge. The combined effect of both those sections is to invest the Court with an all-comprehensive power of remedying such defects whether they arise out of the framing of a charge or the non-framing of a charge and whether they are discovered at the inception of the trial or at any subsequent stage of it, prior to the pronouncement of judgment or the return of verdict by the jury or the expression of opinion by the assessors. The above interpretation seems to be more in consonance with! the spirit of the statute.

5. It is to be noticed that the fact that the order of committal has been made without framing a charge would not affect the competency of the Sessions Court to take cognizance of the case. The law relating to the competency of the Sessions Court to take cognizance is laid down under Section 193(1), Criminal P. C., which says that

"except as otherwise expressly provided by this Code..... no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.'

Therefore, the condition precedent for taking cognizance of a case by the court of session is that there should be an order of commitment. Such an order admittedly exists in the present case. Thus there was nothing to bar the Sessions Court from taking cognizance of the case.

6. The learned counsel for the caused emphasised the use of the word 'shall' in

Section 210 (i), which according to him indicates that the framing of a charge is mandatory. In my opinion, however, Section 210 has got to be read along with, and in the light of Section 226 which shows that even where a charge has not been framed by the committing Magistrate's Court, it is still open to the sessions court to frame one. The distinction between illegality and irregularity has been obliterated now as a result of the ruling of their Lordships of the Privy Council in -- 'Abdul Rahman v. Emperor', 54 Ind App 96 (PC). In this case their Lordships were dealing with a breach of the provisions of Section 360, Criminal P. C. It is significant that the word used in Section 360 also is the word 'shall'. After referring to the case of -- 'Subramania Iyer v. Emperor', 28 Ind App 257 (PC), their Lordships held that the only distinction permissible under the Code of Criminal Procedure is one between a procedure that is positively prohibited and the other which is not prohibited. A perusal of Section 210 in the light of Section 226, Criminal P. C. shows that the omission to frame a charge is not a breach of a positive prohibition of a mandatory type but of an affirmative provision of a recommendatory nature. It could, therefore, be condoned under Section 537, Criminal P. C.

7. I am, however, of opinion that this reference should be accepted. The proceedings are still at a very initial stage and the trial of the case has not yet begun. The objection is being made on behalf of the accused on the ground that they might be prejudiced as a result of the non-framing of the charge. It is easily possible at this stage to rectify this error and to avoid any subsequent grievance on the part of the accused that they were prejudiced as a result of any such irregularity.

8. In the interests of justice, therefore, I consider it fit to accept this reference and order that the case should be sent back to the committing Magistrate for framing a proper charge and proceeding according to law.

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