Mulakkal Konan Ramakrishnan Vs. M.C. Batachandran Ezthuthassan, Counter

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Court : Kerala

Decided On : Jan-04-1963

Reported in : 1963CriLJ569

Judge : Anna Chandy, J.

Appellant : Mulakkal Konan Ramakrishnan

Respondent : M.C. Batachandran Ezthuthassan, Counter

Judgement :

ORDER

Anna Chandy, J.

1. The revision petitioner lodged a complaint before the Second Class Magistrate, Trichur, against the respondent, the Head Constable of Valappad Police Station alleging offences under Sub-section 323, 324, 218 and 220, I.P.C. The allegations were that on 17th February 1960, the respondent arrested the complainant in connection with a case filed against him by one Velayi and Soman, took, him to the police station and beat him up. Some arrack was thrown on him and a false case under the Prohibition Act was charged against him. It is further alleged that to explain the injuries caused to the complainant as a result of the manhandling the Head Constable forced him to sign a false complaint against Velayi and Soman charging them of having caused hurt to him.

2. The case was enquired into by the Second Class Magistrate, Trichur, who after examining a number of witnesses on both sides, framed charges-against the Head Constable under Section 323 and 218, I.P.C. The learned Magistrate then examined the Munsiff-Magistrate, Chowghat, before whom the complainant had been taken by the Police in connection with the remand application. The testimony of this witness appears to have convinced the learned Magistrate that there was no case for committal to the Sessions Court and thereupon the charges framed were cancelled and the accused discharged. Aggrieved by this order the complainant took the matter up in revision before the District Magistrate, Trichur who refused to interfere with the lower Court's order.

3. The main point urged by the learned Counsel for the petitioner is that the learned Magistrate cancelled the charge without sufficient jurisdiction and assessed the, evidence before him as if he were trying the case and not with the view of ascertaining whether a prima facie case has been made out to commit the accused to stand his trial before the Sessions Court and as such he exceeded his jurisdiction. I

must say that I am inclined to agree with this argument.

4. As already noted, the learned Magistrate had actually framed charges against the respondent before throwing the case out. Section 210, Criminal Procedure Code under which the charge were framed reads:

210. (1) 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.

It means that the charge is to be framed only when the Magistrate has satisfied himself that there are sufficient grounds to commit the accused for trial. Here the learned Magistrate examined ten witnesses for the prosecution and an equal number for the defence and after presumably being 'satisfied that it was a fit case for committal framed the charge against the accused. Ordinarily framing of the charge would be tantamount to passing an order of committal, for, little remains to be done after framing the charge except to read and explain the charge to the accused and to require him to give the list of witnesses he wishes to examine at his trial. However, a further discretion is given to the Magistrate by Section 212 of the Code to examine any of the witnesses from the list submitted by accused and by Section 213(2), to cancel the charges already framed and discharge the accused. All the same, it stands to reason that if the framing of the charge is something done only after the Magistrate is satisfied that the accused should be committed to trial, then a later decision to retrace the step already taken and to cancel the charge will be justified only by some new item of evidence of fundamental importance revealed in the testimony of the witness or witnesses examined after the framing of the charge. Such is not the case here. The charge was framed by the learned Magistrate after examining twenty witnesses and taking into consideration some twenty-five items of documentary evidence. Nothing new or important enough to justify the revision of a conclusion based on such a mass of evidence has come out in the testimony of the MunsiffMagistrate examined as Court-witness after the framing of the charges. All that has been revealed by the witness is that the petitioner had no complaint of having been beaten by the police when he was brought before the witness in connection with the remand application. however we find that the fact that he had failed to report the manhandling to the Magistrate as well as his explanation for not doing so are clearly stated by the complainant in the complaint itself. These circumstances must have been taken into consideration by the learned Magistrate before he satisfied himself that the case was a fit one for committal. If so, one fails to understand why the same facts re-appearing in evidence at a later stage should have made any difference to the conclusion already arrived at. It appears as if the learned Magistrate considered the testimony of the last witness as merely an opportunity to re-assess the whole evidence and change his earlier decision. Needless to say, this is not proper exercise of the discretion granted to him by Section 213.

5. An equally valid objection taken by the petitioner against the lower Court's order is that the committing Magistrate adopted a wrong point of view in weighing the evidence placed before him. Though there appears to be some controversy regarding the extent to which a committing Court may analyses the evidence before it. some High Courts holding that the Magistrate is only to see whether there is enough evidence which if accepted will establish the prosecution case while some others take the view that the Magistrate may himself examine whether the evidence would be

acceptable to the trial Court, there is general agreement on the point that the committing Magistrate's appreciation of evidence should be qualitatively different from that of the trial Judge. The Supreme Court in Bipat Gope v. State of Bihar : AIR1962SC1195 while considering the test for discharging the accused under Sub-section 207-A and 209 observed:

But whatever the meaning of the two expressions, namely, 'disclose no grounds' (Section 207-A (6)) and 'not sufficient grounds' (Section 209), neither of them invests the Magistrate with the jurisdiction to decide the case, as if the Sessions trial was before him

In the present case we find that the learned Magistrate has weighed the evidence in all its aspects -- pointing out discrepancies in the version as given by the different witnesses, considering the degree of interest each witness has in the complainant and generally proceeding as if he himself were trying the case. For instance the learned Magistrate has rejected the evidence of Pw. 3 on the ground that while according to him he saw the assault on the complainant at 7-30 p.m. on 17th February 1960, the prosecution case is that the incident took place on 16th February 1960. This mistake was not brought to the notice of the witness and might well have been a slip of the tongue or even a mistake in recording. Similarly, the learned Magistrate discarded the evidence of Pw. 7, the father of the complainant, another alleged eye-witness. on the ground that the witness is interested in the complainant. Though indeed the father is an interested party, it might well be argued that it is precisely due to his interest that he went to the Police Station to bail out his son and so happened to witness the assault and as such the test of his credibility does not lie in his interest in the complainant. The above discussion is made not with a view to show that the learned Magistrate's assessment of the evidence is not right but merely to point out the error into which he has fallen, viz., in taking one view of the credibility of the witnesses where more than one view is possible, whereby he has usurped the functions of the trial Judge. I therefore think that in this respect also, the learned Magistrate has exceeded the jurisdiction granted to him by law.

6. For the reasons stated above, I set aside the order of discharge passed by the Second Class Magistrate, Trichur and also the order of the District Magistrate refusing to interfere with the said order. The Second Class Magistrate is directed to commit the accused to stand his trial before the Sessions Judge, Trichur under Section 323 and 218, I. P. C.

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