Ramgopal Ganpatrai Ruia & Another

Vs

The State of Bombay

Criminal Appeal No. 3 of 1954

(B. P. Sinha, P. Govinda Menon, J. L. Kapur JJ)

08.10.1957

JUDGMENT

SINHA, J. –

The main question for determination in this appeal by special leave is whether the High Court has power, and, if so, the extent of such power, to revise an order of discharge passed by a Presidency Magistrate. The order impugned in this case was passed by a Division Bench of the Bombay High Court (Bhagwati and Vyas, JJ.), dated June 22, 1951, setting aside the order dated September 9, 1950, passed by a Presidency Magistrate of Bombay, directing the appellants who were accused 1 and 2 before the learned magistrate, to take their trial in the Court of Session, on a charge under s. 409, Indian Penal Code, as against the first accused and under s. 409, read with s. 109, Indian Penal Code, as against the second accused.

The facts leading upto this appeal, in bare outline, are as follows : On July 8, 1947, Raja Dhanraj Girji Narsingh Girji, Chairman of the Dhanraj Mills Limited, who will be referred to in the course of this judgment as the complainant, lodged a first information report before the Inspector of Police, General Branch, C.I.D., Bombay, in writing, to the effect that the Dhanraj Mills were formerly his private property which he converted into a limited concern in 1935. He is the life-Chairman of the Board of Directors of the concern. Till 1937, he was the Managing Agent, but, in that year, he transferred the managing agency to Ramgopal Ganpatrai, the first appellant who converted the managing agency into a private limited concern consisting of himself and members of his family. In 1943, the first appellant floated two private limited concerns under the name and style of (1) Ramgopal Ganpatrai and Sons as the Managing Agents and (2) Ramrikhdas Balkisan and Sons Limited, as the selling agents. Thus, the first appellant came to have control of the managing agency and the selling agency as also of the Mills, all inter-connected. The complainant had six annas share in the managing agency and the remaining interest therein was owned by the first appellant and his family. Differences arose between the complainant and the first appellant in respect of the affairs of the Mills. The complainant's suspicions were aroused with respect to the accounts of the Mills, and as a result of his private enquiries, he claims to have discovered that "there were large defalcations committed in the management of this Mill". It appeared to him that during September to December, 1945, the first appellant as the Managing Agent, in the course of his large purchases of cotton bales for consumption in the Mills, had "dovetailed in these transactions about 20 bogus entries of so-called purchases of 3,719 cotton bales from fictitious merchants in the Bombay market. The cost of these purchases involved an approximate sum of Rs. 8,27,000." Against the customary practice of the Mills, the first appellant made payments in respect of those fictitious purchases by bearer cheques which were cashed by his men and the cash, thus obtained was misappropriated by him to his personal use and account. In order to cover up those fictitious and bogus purchases, false entries

had been made in the books and registers and the receipts, kept by the Mills. In order to balance the stock-in-hand of cotton bales, the first appellant and his associates in the crime like the second appellant, who is described as the office manager, showed bogus sales of an equal number of bales said to contain deteriorated cotton at reduced rates. The sale-price of such bogus sales amounted to Rs. 4,19,000, thus, causing a loss of over four lacs of rupees to the shareholders. The sale price is also said to have been received in cash by bearer cheques which have, likewise, been cashed by the employees of the Mills and similarly misappropriated to the appellant's account. A third series of bogus purchases are said to have been in respect of stores, dyes and chemicals, etc., approximately of the value of five lacs of rupees "by falsely debiting various sums of money to a number of non-existent parties". In order to conceal the fraud, thus perpetrated on the Mills, other false entries in the books of account and other documents relating to those bogus transactions were alleged to have been made by the first appellant and his underlings. It was, further, alleged that the complainant's suspicions were further strengthened by the false statement made at a Directors' meeting that there was a strike and that the strikers had burnt some records of the Mills. Three persons, namely, the first appellant, Harprasad Gupta, the second appellant and A.R. Mulla Feroz who was subsequently discharged by the magistrate, were named as the three accused persons concerned in the crime of embezzlement in respect of the funds of the Mills. During their investigation, the Police had taken possession of the relevant books of account from the precincts of the Mills. On July 19, 1948, a charge-sheet under s. 409 and s. 409/109, Indian Penal Code, was submitted by the Police, against the aforesaid three persons, for defalcation of Rs. 8,97,735 and odd between August 1, 1945 to July 31, 1956. The names of 40 witnesses appear in the charge-sheet.

The learned Presidency Magistrate, Shri C.B. Velkar, passed a 'preliminary order' in which he considered the question whether the enquiry against the accused persons should take the form of the procedure for summons trial or for a warrant trial or commitment proceedings preliminary to their being placed on trial before a Court of Session. After a consideration of the police charge-sheet and his own powers adequately to punish the offenders if their offence were made out, and the relevant provisions of the Criminal Procedure Code, he recorded the following order :

> ".....I hold that this case is governed by s. 207 Criminal Procedure Code and as such I order that this case should be proceeded with on Sessions Form."

Thereafter, the learned magistrate examined as many as 42 witnesses for the prosecution between November, 1948 and October, 1949. He also considered the written statements of the accused persons, filed in October and December that year and a very large volume of documentary evidence, which was exhibited in the case, numbering many hundreds of exhibits and running into thousands of pages, as will presently appear. On December 17, 1949, after hearing counsel for the parties and considering their respective versions as contained in the oral and documentary evidence, the learned magistrate recorded the following order :

> ".....I agree with this view and order that accused No. 3 should be discharged.
>
> As regards accused Nos. 1 and 2 I hold that there is a prima facie case to charge them and for reasons already mentioned I restrict the charges to the following counts :".

Then, he framed seven separate charges in respect of much smaller sums against the two accused persons under s. 409, read with s. 109, Indian Penal Code.

He also decided, apparently on a misunderstanding of a circular issued by the Registrar of City Civil

and Sessions Court, of August, 1949, to try the case himself. This, in our opinion, was a serious mistake on his part inasmuch as he lost sight of those very considerations on which he had previously, in his order of May 6, 1948, decided to hold only a preliminary inquiry "on Sessions Form". The learned magistrate appears to have thought that, as an offence under s. 409, Indian Penal Code, was not exclusively triable by a Court of Session, irrespective of the enormity of the offence alleged and his power properly and adequately to punish such an offence, he was empowered by the Circular aforesaid to try the case. This was a grave error in exercise of judicial discretion vested in the magistrate.

The State Government of Bombay moved the High Court against the order aforesaid of the learned Presidency Magistrate deciding to try the case himself on the seven mutilated charges framed by him. The application in revision was heard by a Division Bench consisting of Bavdekar and Chainani, JJ. The High Court by its order dated March 1, 1950, remitted the proceedings to the learned magistrate, after reframing the charges which are as under :

> "That you, accused No. 1 Ramgopal Ganpatrai Ruia being an agent of the Dhanraj Mill Ltd., and in such capacity entrusted with property, viz., the amount of Rs. 6,06,661-3-6, being the proceeds of the cheques Nos. Exhibits J/22, J/23, J/25, H/3, H/4, J/1, J/2, J/4, J/5, J/30 to J/32, J/33, J/34, J/10 to J/13, belonging to the said Mills, committed at Bombay, between the dates of the 21st August, 1945 and the 31st of December, 1945, criminal breach of trust with respect to the above property, and thereby committed an offence punishable under section 409 of the Indian Penal Code and within the cognizance of the Court of Session of the City of Greater Bombay.
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> And I further charge you, accused No. 2 Harprasad Ghasiram Gupta, and the said Ramgopal Ganpatrai Ruia, accused No. 1, between the dates of the 21st of August, 1945 and the 31st of December, 1945, at Bombay committed the offence of criminal breach of trust as an agent in respect of the amount of Rs. 6,06,661-3-6, being the proceeds of the cheques Exhibits J/22, J/23, J/25, H/3 and H/4, J/1, J/2, J/4, J/5, J/30 to J/32, J/33, J/34, J/10 to J/13 belonging to the said Mills, and that you between the said dates and at the same place abetted the said accused No. 1. Ramgopal Ganpatrai Ruia, in the commission of the said offence of criminal breach of trust as an agent, which was committed in consequence of your abetment, and you have thereby committed an offence punishable under section 109, when read with section 409 of the Indian Penal Code, and within the cognizance of the Court of Session, Greater Bombay."

After setting out the case of the parties in some detail, the High Court acceded to the arguments made on behalf of the State that the charges framed by the learned Presidency Magistrate, required to be completely changed in form and substance. Though it did not "desire to fetter the discretion of the magistrate", it clearly expressed the view that "the case ought to be committed to the Court of Session". The High Court clearly took the view that the magnitude of the case and the amount of punishment in the event of a conviction, clearly justified a committal. But inspite of giving that clear direction in view of the fact that the magistrate himself had found a prima facie case for the prosecution, it returned the proceedings to the learned magistrate after re-framing the charges, with a direction to expedite the case.

On receiving the case back from the High Court, the learned magistrate recorded the evidence of two defence witnesses in great detail, covering about 50 pages in print and accounting for the

months of March to June, 1950. It appears that in spite of the expression of opinion by the High Court, as aforesaid, that it was a fit case for committal to the Court of Session, the learned magistrate decided to discharge the accused. On September 9, 1950, after hearing the arguments, he wrote a very elaborate judgment running into more than 30 pages in print. Though in form it is an order passed in commitment proceedings, it reads like a judgment after a full trial. The learned magistrate stated the prosecution case in all its details, setting out the documentary evidence on which the charges were based, running into 33 paragraphs and ten pages in print. Then, he proceeded to state the defence version equally elaborately, and embarked upon a very detailed examination of the evidence in the case, to find which version is the more acceptable one. He felt convinced that the defence version depending as it did, on the large mass of documentary evidence, explained by oral evidence of both sides, was the more acceptable one. He discussed seriatim the evidence which according to the prosecution lent itself to the sinister inferences to be drawn against the accused persons, and then weighed all that evidence and balanced it as against the innocent interpretations sought to be put on that large mass of evidence on behalf of the accused. In the results, he passed the following order in the last paragraph of this judgment :

> "This case is pending with me for about two years and had gone on practically on the basis of audit of the mill accounts in respect of these transactions in a Criminal Court. I do not think that I will be justified in permitting the time of another court being occupied for this case unless a conviction in the case is reasonably probable. For several reasons given above and looking to the evidence of the prosecution as regards the question of delivery being taken or not, I am of the opinion that on the evidence before me no criminal court would convict the accused and I therefore hold that there are no sufficient grounds for committing the accused for trial and this is not a fit case to go to the sessions."

The Government of Bombay moved the High Court in revision against the aforesaid order of discharge against the two appellants. The revisional application was heard and disposed of by a Division Bench by its judgment and order, dated June 22, 1951, which is almost as long as that of the learned Presidency Magistrate, running into about 30 printed pages. The High Court, after going into the history of the case, set out the prosecution version and the voluminous evidence on which the prosecution case was founded. The High Court pointed out that from a cursory examination of the evidence led on behalf of the prosecution, it appeared : that 3,719 bales of cotton were purported to be purchased by the Mills, and an equal number of bales of that commodity were purported to be sold on behalf of the Mills, during the months of September to December, 1945; that not only the number of bales was the same but also the classification of cotton purchased and sold; that except in two instances, in almost all cases of purchases and sales, the transactions of sales purported to have taken place some days after the alleged purchases, and that in no case did any sale purport to have taken place earlier than the purported purchase; that unlike admittedly genuine transactions, weighment certificates were not taken by the sellers but by the accused No. 2 to P.W. Chottey Lal; that the invoices from Chottey Lal were not taken by the sellers but by the accused No. 2; that cheques for large amounts running into thousands and lacs of rupees, prepared by Bhatt - a bank employee - were not crossed and order cheques but bearer cheques; that such bearer cheques were not made over to the alleged sellers or their agents but were taken away by accused No. 2; that those cheques were not cashed by the alleged sellers but by the employees of the Mills; that the receipts for the amounts were signed by persons like accused No. 2 for fictitious agents of fictitious vendors. These were some of the circumstances which had been strongly relied upon by the prosecution for showing that all those alleged transactions of sale and purchase of cotton bales were bogus transactions which had been entered in the books of account kept by the company with a view to

benefiting the accused persons, particularly the first accused. It was also pointed out that most of the moneys obtained in the course of the alleged transactions of sales and purchases were in one-thousand-rupee notes. 278 of such one-thousand-rupee notes were traced to a bank on account of the first appellant, and 118 of such one-thousand-rupee notes were traced to another bank on similar account. It was also pointed out in the judgment that no previous permission of the Textile Controller was obtained in respect of the movement of cotton, which, during the relevant period, was necessary under the law. Similarly, in respect of the purchases of stores, etc., the persons shown in the memoranda of purchase were not found in the market to be dealing with any such commodities and did not possess the necessary licence.

The High Court also noticed the arguments advanced on behalf of the accused persons to the effect that the transactions of sales and purchases which were alleged by the prosecution to be mere fictitious transactions which had no existence in fact, were real transactions but had been in the ostensible names of some persons for the benefit of the second accused and his partners who did not think it advisable or expedient to use their own names; that the transactions have been regularly entered in the books and registers maintained by the Mills and passed through several hands in the usual course of business, as done by the Mills and as evidenced by the large number of entries relating to the transactions impeached in this case. The High Court also noticed the several explanations offered by the defence to show that the transactions had no sinister significance, and that they were capable of bearing innocent interpretations supporting the defence versions. In our opinion, the High Court need not have examined the defence version in as great a detail as they have done; but, perhaps, they took that course in view of the very elaborate judgment written by the learned Presidency Magistrate. The High Court expressed their conclusions in these terms :

> "We have referred to the evidence on which the prosecution relies and also to the evidence on which the defence relies. We do not wish, nor is it our function in this application, to express our views regarding its eventual acceptance or otherwise. We wish to appraise it only prima facie and from that point of view it appears to us that having regard to the mass of circumstances and evidence in the case it is not possible to say that no Court would ever convict the accused or that the Judge would withdraw the case from the Jury on the ground of there being no evidence at all."

The High Court then examined the legal arguments advanced on behalf of the parties, and a number of rulings of the different High Courts in India. Upon such an examination, the High Court's conclusion is as follows :

> "The correct position is not that he should commit the case to the Sessions Court only if a conviction, in his opinion, is bound to follow. If there are circumstances for and against, if there are probabilities for and against, if there is evidence for and against with which there is nothing wrong prima facie, which on an appraisement by the jury may lead to a conviction or may not, his duty is to commit the case and not discharge the accused. The test is that if there is credible evidence which, if accepted, may lead to conviction, he ought to commit. If the magistrate comes to the conclusion that the evidence is such that no Court would ever convict, he should not commit the case."

In the result, the High Court allowed the application setting aside the order of the learned magistrate and directing that the appellants shall stand committed to the Court of Session, the first appellant for a charge under s. 409, Indian Penal Code, and the second appellant under s. 409, read with s. 109, Indian Penal Code, that is to say, on the charges as framed by the Division Bench of the High Court

in their order dated March 1, 1950, when the matter was before them on the previous occasion.

The accused persons then moved this Court and obtained special leave to appeal from the order aforesaid of the High Court, directing their committal to the Court of Session. The special leave was granted by this Court, on January 15, 1952, and further proceedings against the appellants in the Court of Session were stayed.

The learned counsel for the appellants has raised three main contentions against the order passed by the High Court : (1) that this Court should not direct a trial of the accused persons after such a long delay of about 12 years from the time the offence is alleged to have been committed; (2) that the High Court had no jurisdiction to revise the order of discharge passed by a Presidency Magistrate, and (3) that assuming that the High Court had such a jurisdiction, it erred in setting aside the order of the magistrate when there was no mis-direction in the order of discharge, nor had it been shown that it was an improper order in all the circumstances of the case. Under the last heading, a further contention was raised that the High Court had not considered all the grounds on which the order of discharge was passed.

It is convenient to deal with the contentions in the order in which they have been raised at the Bar. As regards the delay in bringing the case to trial, it cannot be said that the blame lies all at the door of the prosecution. As will presently appear, the accused persons themselves have largely contributed to this inordinate delay in bringing the case to trial. During the period of 1948 to 1951, the case travelled to the High Court of Bombay four times on interlocutory matters. Only two of those revisional proceedings have been noticed above, the other two not being necessary to be referred to for the purposes of this appeal. As already stated, special leave was granted by this Court in January, 1952. The records, the preparation of which lay mainly with the appellants, was not received until January, 1954. The record as prepared at the instance of the appellants and as it stands now, runs into eleven big volumes running into over 5,700 closely printed pages. Of these volumes, only the first three have been referred to in the course of the arguments at the Bar - only portions of them. The remaining eight volumes have all gone waste. This case is a very telling illustration of waste of public time and private funds. Even after the receipt of the records, the parties between them have succeeded in preventing the case from being put up for final hearing and disposal for another three years. It is not necessary to go into any further details, but the Court must look with great disfavour upon, and publicly denounce, the way in which the appeal has been prosecuted during the last more than 5 years that the case has remained pending in this Court. It cannot, therefore, be said that the appellants have any just grievance that the case has remained pending for more than nine years since after the submission of the charge-sheet and has not yet been brought to trial. They have largely to thank themselves for this result. We cannot, therefore, for a moment, entertain the plea that on the ground of delay, the case should not proceed to trial, if this Court upholds the order of commitment made by the High Court.

The most important ground of attack against the order of the High Court is that it had no jurisdiction to set aside the order of discharge passed by a Presidency Magistrate. This contention is based upon the ground, firstly that s. 437 of the Code of Criminal Procedure, which specifically deals with the power to order commitment, does not, in terms, apply to a case dealt with by a Presidency Magistrate. It was, therefore, suggested that the Legislature did not intend that an order of discharge passed by such a magistrate should be interfered with at all. Secondly, it was contended that those cases, to be presently noticed, which have held that the authority of the High Court to interfere with such an order is derived from the provisions of ss. 435 and 439, read with s. 423 of the Code, have been wrongly decided. In other words, it is contended that on a proper construction of those sections

of the Code, it should be held that there was no power in the High Court to set aside an order of discharge passed by a Presidency Magistrate, though it has been taken as settled law during the last about half a century, so far as High Courts are concerned, that such an order is revisable by the High Court. Before examining the rulings of the High Courts of Bombay and Calcutta, bearing on this controversy, we shall first examine the relevant provisions of the Code itself and find out for ourselves whether as a matter of interpretation of those sections, the contention has any force. Under s. 435, the High Court or any Sessions Judge or a District Magistrate or a Sub-Divisional Magistrate, specially so empowered, has been vested with the power to call for and examine the record of any proceeding before any inferior criminal court, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order. Section 436, dealing as it does with the power to direct further inquiry, need not detain us. Section 437 is equally out of the way, because it deals with the powers of a Sessions Judge or a District Magistrate, to order commitment in cases triable exclusively by a Court of Session. Section 439 is the operative section and the question now before us must be answered with reference to the terms of that section. It provides that on examining the record of "any proceeding", the High Court "may, in its discretion, exercise any of the powers conferred on a court of appeal by sections 423.....", (omitting portions not necessary for our present purpose), except that the section does not authorise a High Court to "convert a finding of acquittal into one of conviction." We have, therefore, to examine the terms of s. 423 which contains the powers of an appellate court in dealing with appeals. The learned counsel for the appellants contended that as an order of discharge is not appealable under the Code, it can be set aside only under the specific provisions of the Code contained in ss. 436 and 437 and not otherwise. It has already been pointed out that these two sections are out of the way in this appeal. In other words, the argument is that only that order is revisable under s. 439 of the Code which is appealable under the Code. This argument has only to be stated to be rejected in view of the very wide terms in which s. 439 has been worded. Section 439 has to be read along with s. 435 so far as the present controversy is concerned. Section 435 certainly authorizes the High Court besides other courts mentioned therein, to "call for and examine the record of any proceeding before any inferior criminal court". It has not been, and it cannot be contended that a Presidency Magistrate is not such an inferior criminal court. If the High Court is empowered to call for the record of any proceeding before a Presidency Magistrate, it follows that it may examine the correctness, legality or propriety of any order passed by him and if it finds that the order is not correct or is illegal or improper, it may, acting under s. 439, exercise any of the powers conferred on a court of appeal by s. 423. But at this stage, it has been pointed out that the power to order committal for trial is contained in clause (a) of s. 423(1), and that clause begins with the words "in an appeal from an order of acquittal". It has, therefore, been contended that unless there is an appeal against an order of acquittal, the High Court's power to order that the accused be committed for trial, cannot be exercised under s. 439. But s. 417 of the Code specifically deals with an appeal to the High Court against acquittal, and its powers in dealing with such an appeal are contained in s. 423(1)(a). If the appellant's argument is well-founded, s. 439 becomes redundant in so far as it deals with the power of the High Court to order committal for trial. In our opinion, the fallacy of this argument lies in reading all the words of s. 423 into s. 439, which the latter section does not contemplate. Section 439 only authorizes the High Court in revision to exercise any of the powers conferred under s. 423. It does not further make reference to the cases in which such powers have to be exercised. The latter question does not arise because s. 439 itself makes the sweeping provision that "in the case of any proceeding", the High Court may exercise the powers enumerated in s. 423. We have, therefore, to look into s. 423 to find out not the cases in which the High Court can interfere but only the nature of the power that it can exercise in a case, in its revisional jurisdiction, that is to say, we have to incorporate only the several powers contained in s. 423, into s. 439, except the power to convert a finding of acquittal

into one of conviction.

The argument that the power of revision contained in s. 439 can be exercised only in cases of appealable orders, is also negatived by referring to s. 441 which incorporates s. 435. Section 441 specifically provides for the record "of any proceeding of any Presidency Magistrate" being called for by the High Court under s. 435. In such a case, such a magistrate is empowered to submit, along with the record, a statement setting forth the grounds of his decision or order, and the High Court shall then "consider such statement before over-ruling or setting aside the said decision or order." Section 441 is so widely worded as to include the decision or order of a Presidency Magistrate in any proceeding, which the High Court may set aside in a proper case. Under the Code, a Presidency Magistrate may pass an order without recording the reasons for such an order, for example, an order under s. 213(1) committing the accused for trial. If such an order is called in question before the High Court, the Presidency Magistrate concerned, unlike other magistrates, is permitted by the Code to supplement the record by a statement setting forth the grounds of his decision or order, so that the High Court may have before it not only the order or decision in question but also a statement of the reasons therefor. It is manifest, therefore, that on a consideration of the relevant provisions of the Code, there is no warrant for the extremely wide proposition which has been canvassed before us.

Until the decision of the Calcutta High Court in Malik Pratap Singh v. Khan Mahomed [(1909) I.L.R. 36 Cal. 994], there was a divergence of judicial opinion in that Court as to the power of the High Court under s. 439 to revise an order of discharge passed by a Presidency Magistrate. The cases pro and con are discussed in that ruling and need not be specifically cited here. The learned counsel for the appellants has not drawn our attention to any decision of any High Court in India to the contrary. A Division Bench of the Bombay High Court also in the case of Emperor v. Varjivandas alias Kalidas Bhaidas [(1902) I.L.R. 27 Bom. 84], has taken the same view after discussing the Calcutta and Allahabad cases. In view of these considerations, it must be held that there is no merit in the second contention raised on behalf of the appellants.

Having held that the High Court had the necessary jurisdiction, it remains to consider the last serious objection raised on behalf of the appellants to the exercise of that jurisdiction by the High Court. In this connection, it was contended that the High Court erred in reversing the order of the Presidency Magistrate and directing the accused to take their trial in the Court of Session, because, it was further argued, the High Court has not shown any misdirection in the well-considered order passed by the Presidency Magistrate, or that it was otherwise improper. It was further urged that the sole ground on which the High Court has set aside the order of discharge was that the jury may spell out a case which was not alleged by the prosecution - a case which is wholly inconsistent with the case set out in the first information report and sought to be made out in evidence. In order to appreciate the grounds on which this part of the appellants' contentions has been rested, it is necessary to examine the relevant provisions of the Code of Criminal Procedure. Chapter XVIII deals with the procedure before a committing magistrate. Under s. 208, the magistrate has to take all such evidence as may be produced by the prosecution and by the accused. Section 209 authorizes the magistrate to discharge the accused person "if he finds that there are not sufficient grounds for committing the accused person for trial." Similarly, s. 210 authorizes the magistrate to frame a charge declaring with what offence the accused is charged if he "is satisfied that there are sufficient grounds for committing the accused for trial." If the magistrate frames a charge against the accused person as aforesaid, it is open to the latter to examine witnesses in defence. After such defence witnesses have been examined by the magistrate, s. 213 authorizes him either to commit the accused for trial or to cancel the charge and to discharge the accused if he is satisfied that there are not sufficient grounds for committing him to the Court of Session. As will presently appear, there is a

large volume of case law on the question as to when a magistrate should or should not commit an accused person for trial. The controversy has centred round interpretation of the words "sufficient grounds", occurring in the relevant sections of the Code, set out above. In the earliest case of Lachman v. Juala [(1882) I.L.R. 5 All. 161], decided by Mr. Justice Mahmood in the Allahabad High Court, governed by s. 195 of the Criminal Procedure Code of 1872 (Act No. X of 1872), the eminent judge took the view that the expression "sufficient grounds" has to be understood in a wide sense including the power of the magistrate to weigh evidence. In what view of the matter, he ruled that if in the opinion of the magistrate, the evidence against the accused "cannot possibly justify a conviction" there was nothing in the Code to prevent the magistrate from discharging the accused even though the evidence consisted of statements of witnesses who claimed to be eye-witnesses, but whom the magistrate entirely discredited. He also held that the High Court could interfere only if it came to the conclusion that the magistrate had committed a material error in discharging the accused or had illegally or improperly underrated the value of the evidence. Thus, he overruled the contention raised on behalf of the prosecution that the powers of the committing magistrate did not extend to weighing the evidence and that the expression "sufficient grounds" did not include the power of discrediting eye-witnesses. Though the Code of Criminal Procedure was several times substantially amended after the date of that decision, the basic words "sufficient grounds" have continued throughout. That decision was approved by a Division Bench of the Bombay High Court in In re Bai Parvati [(1910) I.L.R. 35 Bom. 163], and the observations aforesaid in the Allahabad decision were held to be an accurate statement of the law as contained in s. 209 of the Code, as it now stands. The High Court of Bombay held in that case that where the evidence tendered for the prosecution is totally unworthy of credit, it is the duty of the magistrate to discharge the accused. It also added that where the magistrate entertains any doubt as to the weight or quality of the evidence, he should commit the case to the Court of Session which is the proper authority to resolve that doubt and to assess the value of that evidence.

The question of the extent of the power of a committing court under ss. 209 and 210 of the Criminal Procedure Code of 1882 (Act X of 1882), arose in the case of Queen Empress v. Namdev Satvaji [(1887) I.L.R. 11 Bom. 372, 374], and a Division Bench of the Bombay High Court, presided over by Mr. Justice West, made the following observations which correctly laid down the legal position :

> ".....an accused ought to be committed when there is a prima facie case substantiated against him by the testimony of credible witnesses. According to the English law, a commitment ought to be made whenever one or two credible witnesses give evidence showing that the accused has perpetrated an indictable offence (see Hale's Pleas of the Crown, II, 121; Hawkins' Pleas of the Crown, Ch. XVI; Cox v. Coleridge (14 Calc. W.R., Cr. Rul., 16). And the sort of prima facie case that warrants a committal is defined by Stat. 11 and 12 Vic., Ch. 42, s. 25, as one "that is sufficient to put the party upon his trial for an indictable offence." According to our Criminal Procedure Code, ss. 209 and 210, the magistrate is to commit, or not, as there are or are not, in his opinion, "sufficient grounds for committing". What are "sufficient grounds for committing" is not in any way defined, but it is manifest that they are not identical with grounds for convicting, since, taken in that sense, the provisions would enable the magistrate virtually to supersede the Court of Session to which the cognizance of the case for actual trial belongs. The true principle appears to be that expressed in the English statute. The magistrate ought to commit when the evidence is enough to put the party on his trial, and such a case obviously arises when credible witnesses make statements which, if believed, would sustain a conviction. The weighing of their testimony with regard to improbabilities and

apparent discrepancies is more properly a function of the Court having jurisdiction to try the case."

A Division Bench of the same High Court dealing with a case arising under the Code of 1898 (Act V of 1898), observed that the words "sufficient grounds for committing", do not mean sufficient grounds for convicting, but have reference to a case in which the evidence is sufficient to put the accused on his trial, that is to say, when there is credible evidence which, if believed, would sustain a conviction. Hence, a committing court has only to be satisfied that there is a prima facie case made out by the prosecution evidence. In the same High Court, on account of certain observations made in the case of Parasram Bhikha v. Emperor [(1932) I.L.R. 57 Bom. 430], the question of the ambit of the powers of a committing court was referred to a Full Bench presided over by Sir John Beaumont C.J. The learned Chief Justice, in the course of his judgment, overruled the previous decision in I.L.R. 57 Bom. 430, to the effect that the magistrate was entitled and bound to value and weigh the evidence and that the revisional court could interfere only if the order was perverse or manifestly contrary to the evidence. He also observed that under s. 209, a magistrate has the power to consider the evidence and, thus, to satisfy himself that there are sufficient grounds for committing the accused for trial, and, for that purpose, he has to look into the nature of the evidence and credibility of the witnesses, but that is not the same thing as examining evidence with a view to reaching a conclusion that a case for convicting the accused had been made out. In other words, it is not the magistrate's duty to try the accused, which duty is cast upon the Court of Session. In his view, if the magistrate came to the conclusion that there was evidence which required to be weighed, he ought to commit the accused for trial and he ought not to discharge the accused simply because in his view, the evidence was not sufficient for the conviction of the accused. Thus, according to the learned Chief Justice, there is a difference between the power of a committing court to consider and appreciate the evidence and its power to weigh the evidence. Rangnekar J. who delivered a separate but concurring judgment, does not appear to have agreed with the learned Chief Justice in all his observations, particularly in so far as he made a distinction between considering the evidence and weighing the same. (See Ramchandra Babaji Gore v. Emperor [(1934) I.L.R. 59 Bom. 125]).

It is not necessary to multiply instances where the High Courts in India have, in some cases, held that the duty of the committing court is only to satisfy itself that there are sufficient grounds for committing the accused for trial in the sense that there is prima facie evidence which, if believed by the Court of Session, may lead to conviction of the accused. Whereas, there are also cases, as laid down in the earliest case referred to above in I.L.R. 5 Allahabad 161 (judgment of Mahmood J.), to the effect that the magistrate holding a preliminary inquiry is empowered to weigh the evidence led on behalf of the prosecution, and to decide for himself whether there is a probability of the trial ending in the conviction of the accused. An examination of the large number of rulings cited before us, which we do not think it necessary to refer to in detail, shows that though it is easy to say that a magistrate should commit the accused for trial if he is satisfied that sufficient grounds for doing so have been made out, it is difficult to apply those crucial words "sufficient grounds" to individual cases. Apparently conflicting observations about the powers of a committing magistrate have been made in the reported cases, but those observations have to be read in the light of the facts and circumstances disclosed in the case then before the Court.

In our opinion, the law in India and the law in England, on the question now under consideration, appears to be the same. In "Halsbury's Laws of England", Vol. 10, 3rd. (Lord Simonds), in art. 666 at p. 365, the law has been stated thus :

"When all the evidence has been heard, the examining justices then present who have heard all the evidence must decide whether the accused is or is not to be committed for trial. Before determining this matter they must take into consideration the evidence and any statement of the accused. If the justices are of opinion that there is sufficient evidence to put the accused upon trial by jury for any indictable offence they must commit him for trial in custody or on bail." In each case, therefore, the magistrate holding the preliminary inquiry has to be satisfied that a prima facie case is made out against the accused by the evidence of witnesses entitled to a reasonable degree of credit, and unless he is so satisfied, he is not to commit. Applying the aforesaid test to the present case, can it be said that there is no evidence to make out a prima facie case, or that the voluminous evidence adduced in this case is so incredible that no reasonable body of persons could rely upon it ? As already indicated, in this case, there is a large volume of oral evidence besides an unusually large volume of documentary evidence - the latter being wholly books and registers and other documents kept or issued by the Mills themselves, which may lend themselves to the inference that the accused are guilty, or to the contrary conclusion. The High Court has taken pains to point out that this is one of those cases where much can be said on both sides. It will be for the jury to decide which of the two conflicting versions will find acceptance at their hands. This was pre-eminently a case which should have been committed to the Court of Session for trial, and it is a little suprising that the learned Presidency Magistrate allowed himself to be convinced to the contrary.

The learned counsel for the appellants also raised a number of points bearing on the merits of the controversy on facts. In view of the fact that we do not propose to interfere with the orders passed by the High Court, directing that the accused be committed for trial, we think it inexpedient to express any opinion on those controversial matters. We do not think it desirable that any observations made by us, should prejudice either party at the trial. In our opinion, both the courts below have travelled beyond the limits proper for decision at the stage at which the case was before them. In our opinion, the accused persons did not consult their best interests when they invited the courts below to go into those questions which did not properly arise for determination at that stage. We do not agree with the last contention raised on behalf of the appellants that the High Court has said too little on the merits of the case. In our opinion, the High Court, in the circumstances of the case, had been taken into matters which should have been left to be determined at the trial. Perhaps, they had to cover the ground which had been so elaborately discussed in the order of the learned Presidency Magistrate.

For the reasons given above, we have come to the conclusion that there are no merits in this appeal. It is accordingly dismissed. It is hoped that the Court of Session, which will now be in seizin of the case, will conduct the trial and conclude the proceedings with all reasonable speed and without any avoidable delay. We hope that the inordinate delay in bringing this case to trial has not prejudicially affected the case of either party.

Appeal dismissed.

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