SUPREME COURT OF INDIA

Khushi Ram

Vs.

Hashim

Crl.A.No.154 of 1957

(N. H. Bhagwati, J. L. Kapur and P. B. Gajendragadkar, JJ.)

06.02.1958

JUDGEMENT

P. B. GAJENDRAGADKAR, J.:

1. This is an appeal by special leave by Khushi Ram against the order passed by Mr. Justice B. R. James of the Allahabad High Court purporting to exercise his inherent power under S. 561A of the Code of Criminal Procedure. It a appears that on the evening of 6th June, 1955, the marriage procession to celebrate Khushi Ram's son's marriage was proceeding through a narrow street in the city of Meerut. This procession came into clash with a number of Rikshawpullers and that led to a riot. In this riot one person was killed and persons on both the sides were injured. Ultimately Sub-Inspector Lal Singh accompanied by constables rushed to the spot, quelled the riot and arrested a number of rioters on the spot. This incident gave rise to two cross-cases. Persons on Khushi Ram's side, numbering in all 31, were charged with having committed several offences. Puran Singh amongst them was charged under S. 302, while the others were charged under Ss. 323, 332, and 147 read with S. 149 of the Indian Penal Code. In the other case which was started on the complaint of Khushi Ram, 22 persons were charged with having committed offences under Ss. 395, 397, 147 and 325 read with S. 149 of the Indian Penal Code. Both the cases were heard by the learned Magistrate in the course of commitment proceedings and both of them ended with orders of commitment. In regard to the case which started on the complaint of Khushi Ram the learned Magistrate took the view that five persons, who were police officers, amongst the accused, should be discharged. According to the learned Magistrate all that the Sub-Inspector and the four constables did on the 6th June, 1955, was to restore peace and order by quelling the riot and no charge could therefore be framed against them. The learned Magistrate found in favour of the prosecution story against the remaining 17 persons that a prima facie case had been made out against them. It is on this finding that he made an order committing the 17 accused persons to trial before the Court of Sessions, for the offences already mentioned. This order was challenged by the accused persons before the Allahabad High Court by an application made under S. 561A of the Code. The learned Judge who heard this application was persuaded to take the view that it was competent for him to interfere with the order of commitment in question under S. 561A and that on the merits interference with the said order was justified. That is why the learned Judge allowed the application made by the accused persons and quashed the order of commitment passed by the learned Magistrate against them. It is this order which is challenged before us by Mr. Gopal Singh on behalf of Khushi Ram.

2. The judgment delivered by the learned Judge in exercising his jurisdiction under S. 561A shows that S. 215 had been cited before him by the complainant and it was urged before him that it was not

competent to the learned Judge to entertain the application for quashing the commitment proceedings under S. 561A of the Code. The argument was that under the Code of Criminal Procedure the commitment once made under S. 213 can be quashed only by the High Court and that also only on a point of law. The learned Judge, however, was not impressed by this argument. He held that the absence of evidence was a question of law pure and simple and since in his opinion, there was no evidence to justify the order of commitment, he was entitled to quash the said order.

3. In our opinion the learned Judge has clearly misdirected himself in dealing with the application before him. From the judgment it appears that the learned Judge was impressed by four circumstances in favour of the accused. He thought that the delay made by Khushi Ram in filing the complaint was a suspicious circumstance and he has observed that :

"The Courts uniformly disapprove of delayed reports or complaints, for delay inevitably gives an opportunity to interested persons for inventing charges and fabricating evidence."

The learned Judge also appears to have assumed that the record did not disclose what were the injuries suffered by Khushi Ram's party. In his opinion the order of discharge passed by the committing Magistrate in favour of the Sub-Inspector and four Constables showed that the evidence against them was not accepted by the learned Magistrate and the learned Judge thought that on the same evidence the other accused could not possibly be asked to stand their trial in the Court of Sessions. Then the learned Judge proceeded to characterise the witnesses examined on Khushi Ram's side as those on whose testimony reliance could not be placed. It is on these grounds that the learned Judge reached the conclusion that there was no evidence to support the order of commitment. It would be obvious that the very reasons given by the learned Judge in support of his final conclusion negative the suggestion that there was no legal s evidence in support of the charges. The distinction must always be drawn between absence of level evidence and absence of reliable evidence. If it could be said with justification that there was no legal evidence at all in support of the prosecution case, it may lead to the inference that the commitment was bad in that it was not based on any legal evidence at all. But on the other hand where circumstances are relied upon to show that the evidence may perhaps not be delivered, they do not lead to the inference that there is no legal evidence on the record. Besides, some of the reasons given by the learned Judges do not appear to be sound. It is clear that the learned Judges was in error in assuming that there was no medical evidence on record to show the nature of the injuries suffered by Khushi Ram's men, and so the criticism made by the learned Judge in that behalf is clearly wrong. Besides the order of discharge passed by the committing Magistrate in favour of the Sub-Inspector and the four constables may not decisively be against the prosecution case in respect of the other accused. From the judgment delivered by the learned Magistrate in committal proceedings it appears that he took the view that the conduct of the Sub-Inspector and the constables was actuated solely by their desire to restore peace and order and whatever they did was in discharge of their official duty. That may be a relevant consideration when dealing with the charge against persons like the police officers. Therefore, the inference drawn by the learned Judge that the order of discharge in question necessarily makes the order of commitment in regard to the other accused invalid is clearly erroneous. When the learned Judge referred to the delay in filing the complaint he was clearly trespassing on the province of the judge of facts. It is clear that under the Code of Criminal Procedure it is only on a question of law that the order of commitment can be reversed and reading the judgment of the learned Judge as a whole we are unable to see even a trace of a point of law on which his jurisdiction under S. 215 could have been validly invoked. It is unnecessary to emphasise that the inherent power of the High Court under S. 561 A cannot be invoked in regard to matters which are directly covered by the specific provisions of the Code; and the matter with which the

learned Judge was concerned in the present proceedings is directly covered by S. 215. Therefore, in our opinion the learned Judge was clearly in error in allowing his inherent power to be invoked under S. 561 A and in setting aside the order of commitment. Applying the test laid down by S. 215 of the Code it would be impossible to hold that the order of commitment in question could or should have been set aside by the High Court in this case. The result is that the appeal must be allowed; the order passed by Mr. Justice B. R. James set aside, and the order of commitment restored.

Appeal allowed.

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