Vadilal Panchal

Vs

Dattatraya Dulaji Ghadigaonker and Another

Criminal Appeal No. 117 of 1958

(S.K. Das, J.L. Kapur, M. Hidayatullah JJ)

06.05.1960

JUDGEMENT

S. K. DAS, J. -

This is an unfortunate case in which a complaint filed in the Court of the Presidency Magistrate, Bombay, on October 31, 1956, by one Dattatraya Dulaji Ghadigaonkar, respondent herein, has to be finally disposed of in the year 1960 in circumstances which we shall state at once. On June 3, 1956, in the evening, a public meeting was held at a place called Chowpatty in Bombay which was to be addressed by the Prime Minister of India. The meeting was called in connection with an agitation which was then going on for the reorganisation of the State of Bombay. There was considerable disturbance at the meeting as a result whereof it had to be dispersed, and large crowds of people began to wander about in various localities around Chowpatty including an area round Charni Road Station. The case of the complaining respondent was that at about 8 p.m. his younger brother Sitaram was crossing Queen's Road near a building called Laud Mansion. At that time there was a large crowd on the road and members of that crowd were stopping vehicles passing by that road. One taxi cab which had come from the direction of the Opera House and was going towards Churchgate was already stopped. Sitaram was then accompanied by Sashikant Kamtekar and Nand Kumar Vagal. When these three had crossed the road, they heard the reports of revolver shots and on looking back they found that a person called Bhayya was injured by one of the shots and fell down on the footpath. Sitaram and his friends went to help Bhayya; at this stage, another shot was fired by one of the occupants of a blue car which was near the taxi cab referred to earlier. Sitaram was hit on his chest, and the bullet having entered the chest cavity injured the right ventricle of the heart. Sitaram was removed to the G.T. Hospital but died before medical assistance could be given. Dr. H. S. Metha, Police Surgeon, who made a post-mortem examination of the dead body, opined that Sitaram died of shock and haemorrhage as a result of the gun shot wound he had received. The doctor further said that the charring round the wound indicated that the shot had been fired from a distance of 2 to 18 inches only.

The case of the respondent was that Vadilal Panchal, appellant before us, fired the shot from the blue car. The occupants of the car were K. K. Shah, advocate, his son Vinay, and one Ratilal Sanghvi on the back seat, and the appellant and chauffeur Mohiddin on the front seat. K. K. Shah was mentioned in the complaint as one of the complainant's witnesses. He was examined and said that after the meeting was over, he and his companions were returning in his car to his house. Because of the trouble, the car travelled by a longer route and when it reached Queen's Road, there were large crowds on that road who were pelting stones, shouting slogans and committing other acts of violence; a public bus was burnt, and a taxi cab which was proceeding ahead of K. K. Shah's car was stopped. Some three or four hundred people surrounded his car, pelted stones and shouted

"maro" "maro". Some of then attempted to drag out Ratilal Sanghvi who occupied a corner seat; some caught hold of the appellant by his neck and hair and wanted to drag him out of the car. The appellant then opened fire with his revolver. The rioters then held back, and the way was clear for the car to pass. The car then drove away and after some time K. K. Shah and the appellant went to Gamdevi Police Station where the latter made a report of what had happened. The appellant was sent to Nair Hospital where he was medically treated and allowed to go.

The Coroner of Bombay held an inquest into the death of Sitaram at which K. K. Shah, Sashikant Kamtekar and several other witnesses were examined. The Coroner's Jury returned a verdict that Sitaram died of the gunshot wound caused by a bullet fired by the appellant "under such circumstances as would render the firing to be in exercise of the right of private defence and as such justified". This verdict was returned on October 16, 1956. Sometime earlier, on July 3, 1956, to be precise, the complaining respondent had made an enquiry through his advocate from the Commissioner of Police, Bombay, as to whether the appellant had been arrested : the reply received was that the enquiries made by the police did not reveal any offence having been committed by the appellant and the police proposed to take no action.

On October 31, 1956, the respondent filed his complaint. The learned Presidency Magistrate to whom the complaint was made referred it to the Superintendent of Police, C.I.D., for enquiry and report. Presumably, he acted under s. 202 of the Code of Criminal Procedure. On November 15, 1956, the Superintendent of Police submitted the report of his Inspector in which it was stated :

> "From the exhaustive enquiries made immediately after the incident it was disclosed that Shri Vadilal Panchal was justified in resorting to firearms in self defence of himself and the other occupants of the motor car".

On January 17, 1957, the learned Magistrate gave the respondent another opportunity to examine his witnesses before the enquiring officer, because by reason of a revision application made to the High Court earlier against the order referring the case to the police for enquiry, the respondent did not produce his witnesses before the enquiring officer. The enquiring officer then examined all the witnesses and submitted his report on March 12, 1957. This time also the enquiring officer said :

> "From their statements and other evidence on record, it is clear that Shri Vadilal Panchal opened fire in the exercise of his right of private defence, which verdict the learned Coroner's Jury also brought after a protracted hearing of the Inquest Proceedings. Copies of all statements recorded by me, are attached for reference".

On April 30, 1957, the learned Presidency Magistrate considered the report of the enquiring officer in great detail with reference to the statements of all the witnesses and said :

> "The Police have recorded in detail the statements of all witnesses produced by the complainant as well as of all the occupants of the car. There is, therefore, material on record showing fully whether the circumstances existed making out the right of private defence available to the accused. The fact whether the case falls within one of exceptions or not can be established on the evidence of the witnesses produced by the prosecution itself though of course the burden of proof lies on the accused. From the statements, recorded by the Police in this case and from the surrounding circumstances of the case, I have come to the definite conclusion that the report of the police stating that the shot was fired by the accused in self-defence is true. As I

> have stated the statement of the police surgeon conclusively supports the conclusion. I have come to the conclusion that the statements of the four eye witnesses brought by the complainant are false. These eye witnesses are not credible witnesses. It will be harassment to the accused and waste of public time if any process is issued in this case".

Accordingly, he dismissed the complaint under s. 203, Code of Criminal Procedure.

Against this order of dismissal the respondent-complainant moved the High Court. The High Court set aside the order of dismissal and directed the learned Presidency Magistrate to issue process against the appellant and deal with the case in accordance with law, on a ground which the High Court expressed in the following words :

> "Now, in the case before us, causing of the death of Sitaram being indisputable, if it was found as the petitioner alleges that it was the shot fired by the respondent that caused the death of Sitaram, the accused would have to establish the necessary ingredients of the right of private defence as laid down in section 96 and onwards of the Penal Code. We do not find anything in any of the sections in Chapter XVI to show that such an exception can be held to be established from the mere report of the police. That, in out view, is contrary to the provisions of s. 105 of the Indian Evidence Act which are mandatory provisions. There is nothing in s. 202 or s. 203 of the Criminal Procedure Code which abrogates the rule as to the presumption laid down in s. 105 of the Evidence Act and the mode of proof of exception laid down in imperative language in that section.
>
> In these circumstances and for the reasons aforesaid, we find that this was not a case in which it was proper for the learned Magistrate to dismiss the complaint under s. 203, there being no evidence before the learned Magistrate as and by way of proof to establish the exception of the right of private defence pleaded by the respondent".

The appellant then moved this Court and obtained special leave to appeal from the order of the High Court dated September 13, 1957.

The short question before us is - was the High Court right in its view that when a Magistrate directs an enquiry under s. 202 of the Code of Criminal Procedure for ascertaining the truth or falsehood of a complaint and receives a report from the enquiring officer supporting a plea of self-defence made by the person complained against, it is not open to him to hold that the plea is correct on the basis of the report and the statements of witnesses recorded by the enquiring officer ? Must he, as a matter of law, issue process in such a case and leave the person complained against to establish his plea of self-defence at the trial ? It may be pointed out here that the High Court itself recognised that it would not be correct to lay down a proposition in absolute terms that whenever a defence under any of the exceptions in the Indian Penal Code is pleaded by the person complained against, the Magistrate would not be justified in dismissing the complaint and must issue process. Said the High Court : "As we have already observed, if there is a complaint, which itself discloses a complete defence under any of the exceptions, it might be a case where a Magistrate would be justified in dismissing such a complaint finding that there was no sufficient ground to proceed with the case."

We are of the view that the High Court was in error in holding in this case that as a matter of law, it was not open to the learned Presidency Magistrate to come to the conclusion that on the materials

before him no offence had been made out and there was no sufficient ground for proceeding further on the complaint.

The relevant sections bearing on the question are ss. 200, 202 and 203.

> "S. 200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :
>
> Provided as follows :-
>
> (a) ....
>
> (aa) ....
>
> (b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and where the complaint is made in writing need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;
>
> (c) ....
>
> S. 202 (1). Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other that a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint :
>
> Provided that ..... (it is unnecessary to read the proviso).
>
> (2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.
>
> (2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.
>
> (3) This section applies also to the police in the towns of Calcutta and Bombay.
>
> S. 203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after considering the statement on oath (if any) of the complainant and the witnesses and the result of the investigation or inquiry (if any) under section 202, there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing".

The general scheme of the aforesaid sections is quite clear. Section 200 says inter alia what a Magistrate taking cognizance of an offence on complaint shall do on receipt of such a complaint. Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. Section 203, be it noted, consists of two parts : the first part indicates what are the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint. Section 204 says that if in the opinion of the Magistrate there is sufficient ground for proceeding, he shall take steps for the issue of necessary process.

Now, in the case before us it is not contended that the learned Presidency Magistrate failed to consider the materials which he had to consider, before passing his order under s. 203 of the Code of Criminal Procedure. As a matter of fact the learned Magistrate fully, fairly and impartially considered these materials. What is contended on behalf of the respondent-complainant is that as a matter of law it was not open to the learned Magistrate to accept the plea of right of self-defence at a stage when all that he had to determine was whether a process should issue or not against the appellant. We are unable to accept this contention as correct. It is manifestly clear from the provisions of s. 203 that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. The section itself makes that clear, and it is not necessary to refer to authorities in support thereof. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment. In arriving at his judgment he is not fettered in any way except by judicial considerations; he is not bound to accept what the inquiring officer says, not is he precluded from accepting a plea based on an exception, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of an enquiry under s. 202 and has applied his mind judicially to the materials before him, we think that it would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment. What bearing such a plea has on the case of the complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses - all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions.

In support of its view the High Court has relied on some of its earlier decisions : Emperor v. Dhondu Bapu ((1927) 29 Bom. L.R. 713, 715); Emperor v. Finan ((1931) 33 Bom. L.R. 1182) and Tulsidas v. Billimoria ((1932) 34 Bom. L.R. 910). We do not think that any of the aforesaid decisions lays down any such proposition in absolute terms as is contended for on behalf of the respondent. In Emperor v. Dhondu Bapu ((1927) 29 Bom. L.R. 713, 715) a complaint charging defamation was dismissed by the Magistrate under s. 203 without taking any evidence, on the

ground that the accused was protected by s. 499, exception 8. It was held that the order of dismissal was bad. Patkar, J., significantly observed :

> "If the Magistrate in this case had taken evidence on behalf of the prosecution and on behalf of the accused, and passed a proper order for discharge, the order of the District Magistrate ordering a further enquiry without giving reasons might have stood on a different footing. We do not think that, under the circumstances of this case, there are adequate grounds for interfering with the order of the District Magistrate."

In Emperor v. Finan ((1931) 33 Bom. L.R. 1182) the accused did not dispute the correctness of the statements made by the complainant, but in justification pleaded the order passed by his superior officer and claimed protection under ss. 76 and 79 of the Indian Penal Code. It is worthy of note that the order of the superior officer was not produced, but that officer very improperly wrote a letter to the Magistrate saying that he had given such an order. In these circumstances, the same learned Judge who decided the earlier case observed :

> "It was, therefore, incumbent on the Magistrate to investigate the complaint and to find out whether the allegation of the accused that he was protected by ss. 76 and 79 of the Indian Penal Code was made out by legal evidence before him."

The facts in Tulsidas v. Billimoria ((1932) 34 Bom. L.R. 910) were different, and the question there considered was whether a member of the Bar in India had absolute privilege. That decision has very little bearing on the question now before us.

Our attention has also been drawn to a decision of the Lahore High Court where the facts were somewhat similar : Gulab Khan, deceased, through Karam Khan v. Gulam Muhammad Khan and Others (A.I.R. 1927 Lah. 30). In that case also the person complained against took the plea of self-defence, which was accepted. In the High Court an objection was taken to the procedure adopted and it was argued that the order of discharge should be set aside. In dealing with that argument Broadway, J., said :

> "Now a Magistrate is empowered to hold an enquiry into a complaint of an offence in order to ascertain whether there is sufficient foundation for it to issue process against the person or persons complained against. In the present case the Magistrate clearly acted in the exercise of these powers under s. 202, Criminal Procedure Code. He allowed the complainant to produce such evidence in support of his complaint as he wished to produce, and after a consideration of that evidence came to the conclusion that that evidence was so wholly worthy (unworthy ?) of credence as to warrant his taking no further action in the matter."

Therefore, none of the aforesaid decisions lay down as an absolute proposition that a plea of self-defence can in no event be considered by the Magistrate in dealing with a complaint under the provisions of ss. 200, 202 and 203 of the Code of Criminal Procedure.

On the facts, there is very little to be said. Learned Counsel for the State of Bombay supported the order of the learned Magistrate and pointed out that even on the narrow view taken by the High Court, a view to which he did not, however, subscribe, the learned Magistrate rightly held that there was no sufficient ground for proceeding; because the earlier version of some of the witnesses for the

complainant itself showed that there was a riotous mob on the road which attacked cars, burnt a public bus, pelted stones, etc., which was quite inconsistent with their later version that Sitaram and his companions were quietly crossing the road and a shot was fired from a passing or moving car. There was over-whelming material to show that K. K. Shah's car was surrounded by the mob and some of the rioters tried to drag out and attack the appellant. K. K. Shah was one of the witnesses mentioned by the complainant and so also two of the Inspectors of Police. Their evidence clearly supported the plea of the appellant and in any case, showed that the witnesses examined on behalf of the respondent were totally unworthy of credence as to the circumstances in which the shots were fired. We cannot therefore say that the learned Magistrate was wrong in his judgment that there was no sufficient ground for proceeding further on the complaint.

We accordingly hold that the High Court set aside the order of the learned Magistrate on an erroneous view of the scope of s. 203 of the Code of Criminal Procedure. We allow the appeal, set aside the order of the High Court dated September 13, 1957, and restore that of the learned Presidency Magistrate dated April 30, 1957.

Appeal allowed.##

</html