SUPREME COURT OF INDIA

Gopal Das Sindhi

Vs.

State of Assam

Crl.A.No.153 of 1959

(S. J. Imam, K. Subba Rao and Raghubar Dayal, JJ.)

20.01.1961

JUDGEMENT

IMAM, J.:

1. This is an appeal by special leave against the decision of the Assam High Court dismissing the appellants petition under section 439/561-A of the Code of Criminal Procedure read with Art. 227 of the Constitution.

2. The appellants alleged that they were tenants of respondents Rameshwar Lal Bazaz, owner of the premises in Holding No. 56 of Ward 6 of the Gauhati Municipal Board. A dispute had arisen between the appellants and respondents Rameshwar Lal Bazaz concerning this holding which led to criminal and civil proceedings. The civil suit filed by the respondent Rameshwar Lal Bazaz was Title Suit No. 21 of 1958, and the civil suit filed by the appellants was Title Suit No. 78 of 1957. One of the criminal proceedings was under S. 145, which was compromised on May 24, 1957, resulting in a Hath-chitha in favour of the appellants fixing a monthly rent of Rs. 125 for the first floor of the holding in question. The ground floor was already leased out to the appellants at Rs. 325 per month. By this compromise of May 24, 1957, the respondent Rameshwar Lal Bazaz has undertaken to erect a structure on the 1st floor. The total rent for the ground floor and the 1st floor was fixed at Rs. 450 per month. It appears, however, that in spite of the compromise there was trouble between the appellants and the respondent Rameshwar Lal Bazaz, resulting in a complaint being filed on August 3, 1957, before the Additional District Magistrate against the appellants under Ss. 147, 323, 342 and 484 of the Indian Penal Code. On September 2, 1957, at the instance of the respondent Rameshwar Lal Bazaz, a second proceeding under S. 145 of the Code of Criminal Procedure (case No. 232 of 1957) was started. Title Suit No. 21 of 1958, filed by the respondent Rameshwar Lal Bazaz, was, for ejectment of the appellants and Title Suit No. 78 of 1957, filed by the appellants, was for specific performance of the contract between them and the respondent Rameshwar Lal Bazaz and for executing a formal deed of tenancy. In this appeal we are not concerned with the proceedings under S. 145 (case No. 232 of 1957), which were dropped on April 9, 1958. Nor are we concerned with the Title Suit Nos. 78 of 1957 and 21 of 1958 filed by the appellants and respondent Rameshwar Lal Bazaz respectively. The criminal case with which we are concerned is G. R. Case No. 1403 of 1957 against the appellants for an offence alleged to have been committed by them under S. 448 of the Indian Penal Code.

3. As already stated, the respondent Rameshwar Lal Bazaz filed his complaint on August 3, 1957, before the Additional District Magistrate against the appellants for offences alleged to have been

committed by them under Ss. 323 342 and 448 of the Indian Penal Code. On this complaint the Additional District Magistrate made the following endorsement :

"To Shri C. Thomas, Magistrate 1st Class for disposal."

Mr. Thomas on receiving the complaint directed the Officer Incharge of Gauhati Police Station. "To register a case, investigate and if warranted submit charge-sheet by 23rd August, 1957." The police, after investigation, on October 10, 1957, submitted a charge sheet against the appellants under S. 448 of the Indian Penal Code only to the Additional District Magistrate. On receiving the charge-sheet, the Additional District Magistrate on October 23, 1957, recorded the following order in the order sheet of G. R. Case No. 1403 of 1957 (State v Gopal Das and two others) :-

"C. S. receiving against accused (1) Gopal Das (2) Bulchand (3) Khemchand under section 448, I. P. C., who are on police bail. To Shri R. Goswami, Magistrate, of favour of disposal please."

On November 25, 157, Mr. Goswami framed a charge purporting to act under S. 251-A of the Criminal Procedure Code. A petition for revision to the Additional District Magistrate was dismissed on November 27, 1957. Thereafter the appellants moved the Assam High Court under S. 439/561-A of the Code of Criminal Procedure and Art. 227 of the Constitution which was dismissed by the High Court on May 12, 1959.

4. On behalf of the appellants it was contended :

1. that the Magistrate Mr. Thomas acted without jurisdiction in directing the police to register a case, to investigate it and thereafter to submit a charge-sheet, if warranted ;

2. the Magistrate Mr. Goswami acted illegally in framing a charge under S. 448 under the provisions of S. 251-A of the Criminal Procedure Code as the provisions of the said section applied only to warrant cases whereas S. 448 of the Indian Penal Code was triable as a summons case; and

3. the case against the appellants should be quashed as the dispute was of a civil nature.

5. In support of the first submission it was urged that the Additional District Magistrate had on August 3, 1957, transferred under S. 192 of the Code of Criminal Procedure the complaint to Mr. Thomas for disposal. In these circumstances, it must be assumed that the Additional District Magistrate had taken cognizance of the offences mentioned in the complaint and Mr. Thomas had no authority to refer the case to the police for investigation. He was bound to have examined the complainant on oath and then proceeded in accordance with the provisions of the Code of Criminal Procedure which applied to disposal of complaints. Mr. Thomas had no authority in law to send the complaint under S. 156 (3) to the police for investigation. It was urged that S. 190 of the Code of Criminal Procedure sets out how cognizance may be taken of an offence. Section 190 (1) (a) authorizes a Presidency Magistrate, District Magistrate or a Sub-Divisional Magistrate and any other Magistrate specially empowered in this behalf, to take cognizance of an offence upon receiving a complaint stating facts which constitute such offence. Once a complaint is filed before a Magistrate empowered to take cognizance of an offence he was bound to take cognizance and the word 'may' in this sub-section must be read as 'shall'. Thereafter the proceedings with reference to the complaint must be under Chapter XVI and the procedure stated in the various sections under that Chapter must be followed. Consequently, it was not open to Mr. Thomas to direct the police to investigate the case under S. 156 (3) of the Code.

6. The real question for determination is whether the Additional District Magistrate took cognizance on August 3, 1957, of the offences mentioned in the complaint filed before him. The transfer of a case contemplated under S. 192 is only of cases in which cognizance of an offence has been taken. If the Additional District Magistrate had not taken cognizance of any offence on August 3, 1957, when the complaint was presented to him, his sending the complaint to Mr. Thomas for disposal would not be a transfer of a case under S. 192. We have already quoted the order passed by the Additional District Magistrate on August 3, 1957, on the complaint presented to him. That order, on the face of it, does not show that the Additional District Magistrate had taken cognizance of any offence stated in the complaint. He sent the complaint to Mr. Thomas by way of an administrative action, presumably because Mr. Thomas was the Magistrate before whom ordinarily complaints should be filed.

7. When the complaint was received by Mr. Thomas on August 3, 1957, his order, which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint under S. 156 (3) of the Code to the Officer Incharge of Police Station Gauhati for investigation. Section 156 (3) states. "Any Magistrate empowered under section 190 may order such investigation as above-mentioned." Mr. Thomas was certainly a Magistrate empowered to take cognizance under S. 190 and he was empowered to take cognizance of an offence upon receiving a complaint. He, however, decided not to take cognizance but to send the complaint to the police for investigation as Ss. 147, 342 and 448 were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Chapter XVI of the Code. It s clear, however, that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because S. 200 states that 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. If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provisions of S. 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable may well justify a Magistrate in sending the complaint, under S. 156 (3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Chapter XVI of the Code. Numerous cases were cited before us in support of the submissions made on behalf of the appellants. Certain submissions were also made as to what is meant by "taking cognizance". It is unnecessary to refer to the cases cited. The following observations of Mr. Justice Das Gupta in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee, AIR 1950 Cal 437.

"What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence under section 190 (1) (a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter-proceeding under S. 200 and thereafter sending it for inquiry and report under section 202.

When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e. g., ordering investigation under section 156 (3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence"

were approved by this Court in R. R. Chari v. State of Uttar Pradesh, 1951 S C R 312 : (AIR 1951 S C 207). It would be clear from the observations of Mr. Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of Chapter XVI but for taking action of some other kind, e. g., ordering investigation under S. 156 (3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. The observations of Mr. Justice Das Gupta above referred to were also approved by this Court in the case of Narayandas Bhagwandas Madhavdas v. State of West Bengal, 1960-1 S C R 93 : (AIR 1959 S C 1118). It will be clear, therefore, that in the present case neither the Additional District Magistrate nor Mr. Thomas applied his mind to the complaint filed on August 3, `1957, with a view to taking cognizance of an offence. The Additional District Magistrate passed on the complaint to Mr. Thomas to deal with it. Mr. Thomas seeing that cognizable offences were mentioned in the complaint did not apply his mind to it with a view to taking cognizance of any offence; on the contrary in his opinion it was a matter to be investigated by the police under S. 156 (3) of the Code. The action of Mr. Thomas comes within the observations of Mr. Justice Das Gupta. In these circumstances, we do not think that the first contention on behalf of the appellants has any substance.

8. Regarding the second contention, it is true that after the amendment of the Criminal Procedure Code an offence under s. 448 is triable as a summons case and Mr. Goswami adopted the procedure prescribed for a case triable as a warrant case. We are, however, of the opinion that this irregularity does not vitiate the proceedings and is curable by the provisions of S. 537, as no prejudice to the accused has been established in the case.

9. As to the third submission, in our opinion, this is not the stage to express any opinion on it. A charge under S. 448, I. P. C., had been framed by Mr. Goswami and it will be for the court trying the appellants to decide whether any offence had been committed and whether the matter is merely in the nature of a civil dispute rather than an offence having been committed under the Indian Penal Code.

10. The appeal is accordingly dismissed.

Appeal dismissed.

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