Matukdhari Singh and Others

Vs

Janardan Prasad

Criminal Appeal No. 26 of 1965

(A. K. Sarkar, M. Hidayatullah, V. Ramaswami – I JJ)

20.07.1965

JUDGMENT

HIDAYATULLAH, J. -

By an order pronounced on May 7, 1965, we ordered the dismissal of this appeal but reserved our reasons which we now proceed to give.

The five appellants were tried on a complaint by the respondent Janardan Prasad before the Honorary Magistrate, First Class, Jehanabad for offences under ss. 420, 468, 406, 465/471, Indian Penal Code. They were acquitted on August 31, 1962. The complainant obtained special leave of the High Court at Patna under s. 417(3) of the Code of Criminal Procedure and filed an appeal against their acquittal. The High Court set aside the acquittal and remanded the case to the District Magistrate of Gaya with a direction that the case be inquired into under Chapter XVIII of the Code from the stage of taking evidence under s. 208, with a view to their committal to the Court of Session. The appellants now appeal by special leave against the judgment and order of the High Court. The facts of the prosecution case may now be stated briefly.

Janardhan Prasad and his brother Jangal Prasad were separate, having, prior to the present occurrence, partitioned their lands by metes and bounds. Plots Nos. 1810 and 1811 in village Kalpa Kalan fell to the share of Jangal and plot No. 1699 in the same village fell to the share of Janardan. Jangal Prasad's plots lie close to the dalan of Matukdhari and his brothers Rameshwar Singh and Dhanukdhari Singh (the first three appellants) and they coveted them. Janardan alleged that they forged a sale deed in respect of half the area of those two plots and presented the documents for registration. Janardan was aggrieved but on the intercession of Deoki Lal and Chhedi Lal (appellants 4 and 5) the dispute was compromised and it was agreed that Janardan would execute a sale deed for plot No. 1699 and half of another plot No. 1491 while Matukdhari and his brother Dhanukdhari Singh agreed to sell in return O. 10 acre in one of their plots (No. 1797) to him. The complainant executed two sale deeds in respect of the two s

The Sub-Divisional Officer, Jehanabad took cognizance under ss. 468, 406 and 420, Indian Penal Code and sent the case to the Hony. Magistrate for disposal. The Hony. Magistrate drew up charges against all the accused under s. 420, Indian Penal Code. In addition, Chhedilal and Deokilal were charged under s. 468, Indian Penal Code and s. 406, Indian Penal Code respectively. Matukdhari was charged under ss. 465/471, Indian Penal Code. These charges could be tried by the Honorary Magistrate. No charge under s. 467, Indian Penal Code was framed against any of the appellants. If it had been framed the case had to be committed to the Court of Session. On March 29, 1962 the complainant, by a written application, asked that action under Chapter XVIII of the Code be taken

but the Magistrate declined to commit the accused. Another application dated June 28, 1962, for the same purpose was also rejected. The learned Magistrate held that the evidence of entrustment of the receipts from the office of the Registrar was not

In his appeal before the High Court the complainant contended that the trial before the Magistrate was without jurisdiction as the Magistrate should have acted under Chapter XVIII with a view to committing the accused to the Court of Session for trial as the facts disclosed an offence under s. 467, Indian Penal Code, which is triable exclusively by the Court of Session. He contended that the offence was made out on his evidence and as registration receipts were valuable securities under s. 30 of the Indian Penal Code a charge under s. 467, Indian Penal Code should have been framed. This argument found favour with the High Court and it was held that although s. 467, Indian Penal Code was not mentioned in the complaint, a charge under that section ought to have been framed. The High Court pointed out that it was the duty of the Magistrate to apply the correct law and if the facts disclosed an offence exclusively triable by the Court of Session he ought to have framed that charge and not assumed jurisdiction ov

Mr. Garg relies strongly upon two cases of this Court. They are Abinash Chandra Bose v. Bimal Krishna Sen and Anr. and Ukha Kolhe v. State of Maharashtra. He contends that the trial before the Magistrate, in so far as it went, was with jurisdiction and it could not be set aside merely because the High Court thought that a charge under s. 467, Indian Penal Code might have been framed. He contends that such a proceeding is not contemplated under s. 423(1) (a). Criminal Procedure Code as explained by this Court in the two cases cited above. He further refers to Barhamdeo Rai and others v. King- Emperor, Balgobind Thakur and others v. King Emperor and K. E. V. Razya Bhagwanta as instances where, the trial being with jurisdiction, no retrial was ordered even though it was submitted to the High Court that some other offences triable exclusively by the Court of Session with which accused could be charged, were also disclosed. These cases need not detain us. They do not deny the power of the High Court to order a ret

The two cases of this Court were considered by us in Rajeshwar Prasad Misra v. State of West Bengal (1) [1966] 1 S. C. R. 178. We have pointed out there that a retrial may be ordered for a variety of reasons which it is hardly necessary or desirable to state in a set formula and the observations of this Court are illustrative but not exhaustive. The Code gives a wide discretion and deliberately does not specify the circumstances for the exercise of the discretion because the facts of cases that come before the courts are extremely dissimilar. We pointed out that it would not be right to read the observations of this Court (intended to illustrate the meaning of the Code) as indicating in advance the rigid limits of a discretion which the Code obviously intended should be developed in answer to problems as they arise. We gave some illustrations of our own which fell outside those observations but which might furnish grounds, in suitable cases, for an order of retrial. This case also furnishes an example which

It was open to the High Court, while hearing an appeal under s. 417(3) of the Code to direct the Magistrate to frame a charge for an offence which was prima facie established by the evidence for the prosecution and also to order that the accused be committed to the Court of Session. It is wrong to contend that the High Court had no jurisdiction in the matter because the trial before the Honorary Magistrate (in so far as it went) was with jurisdiction. If it were so there would be no remedy whenever a Magistrate dropped serious charges ousting him of his jurisdiction and tried only those within his jurisdiction. The High Court followed a case of the Sind Chief Court reported in Dr. Sanmukh Singh Teja Singh Yogi v. Emperor (1) A. I. R. 1945 Sind 125 where retrial was ordered in very similar circumstances. We were referred to that ruling and on reading it we do not

think the High Court was wrong in accepting it as a correct precedent. For, however hesitant the High Court may be to set aside an order of acquitta

Mr. Garg submitted finally that acquittals are not set aside in other jurisdictions and cited the example of English Criminal Law. He submitted further that the setting aside of an acquittal with a view to holding a second trial robs the accused "of the reinforcement of the presumption of innocence which is the result of the acquittal." As to the first submission it is sufficient to say that in our criminal jurisdiction a retrial is possible and we need not be guided by other jurisdictions. No doubt the High Court must act with great care and caution and use the power sparingly and only in cases requiring interference. As to the second it is not necessary to consider how the presumption of innocence is reinforced by an acquittal and to what extent. The phrase in any event is hardly apt to describe a case where the accused is acquitted perversely, or without jurisdiction. All that can be said is that these appellants were presumed to be innocent at their first trial and will not be thought less so at their s

In our judgment the High Court acted within its jurisdiction when it set aside the acquittal of the appellants and made an order for their retrial in the terms it did.

Appeal dismissed.

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