

Kewal Krishan S/o Lachman Das

Vs

Suraj Bhan and Another

Special Leave Petition (Criminal) No. 3450 of 1979

(R. S. Sarkaria, R. S. Pathak JJ)

01.08.1980

JUDGMENT

SARKARIA, J. –

1. The facts giving rise to this special leave petition as alleged by the complainant Kewal Krishan in his complaint filed before the Chief Judicial Magistrate, Sirsa are follows :

2. An area of more than 3 acres of agricultural land situated in the revenue estate of Gidderanwali was declared "surplus area" by the Collector of Agrarian Reforms (Sub-Divisional Officer, Sirsa) and was allotted to Tehla Ram, Chander Bhan, Nihal Chand, Lal Chand and Chaman Ram. On May 25, 1979 Ram Saran Kanungo and Ram Nath Patwari accompanied by Chander Bhan, Tehla Ram, allottees, Suraj Bhan, a relation of Chander Bhan and their friend Banta Singh deceased went to village Gidderanwali to deliver possession of the land to the allottees, but the possession could not be delivered and the warrant was returned. On May 28, 1979 at 5 p.m. the complainant and his clerk, Charanjit, were going to his fields. When they reached near the sugar-cane field cultivated by Ranjha Ram, Banta Singh (deceased) and the said Suraj Bhan, armed with rifles, along with Chander Bhan and Tehla Ram allottees appeared there. Chander Bhan and Tehla Ram shouted that the complainant was the same person who had prevented them in taking possession on the previous day and that he should be finished. Thereupon, Banta Singh fired a gunshot at the complainant but the latter took cover in a watercourse, and could not be hit by that shot. The complainant then tried to run away, whereupon Suraj Bhan fired his gun as a result of which the complainant received a gunshot injury in the right leg. Suraj Bhan fired another shot at the complainant but perchance that shot hit and killed Banta Singh. Suraj Bhan, Chander Bhan and Tehla Ram accused then took the dead body of Banta Singh and there it is the field of the complainant. They took away Banta Singh's 'rifle', leaving the dead body there. Niamat Ram and Hans Rao who were loading a cart nearby in the field witnessed the occurrence. Devki Nandan then took the complainant to the Civil Hospital, Sirsa for treatment on the following morning. The complainant informed the police about the occurrence. He remained in the hospital till June 13, 1979. The police, however, took no action on his report and on the contrary registered a case against him and others on the false complaint of Tehla Ram. The officials of the Revenue Department also made a false report on the warrant of possession in favour of the accused.

3. In the complaint Kewal Krishan had accused not only Suraj Bhan, Chander Bhan, Tehla Ram of the commission of offences under Sections 302 and 307, Indian Penal Code, etc., but also implicated the Assistant Collector Rajinder Singh, Ram Saran Dass Kanungo and Ram Nath Patwari and alleged that by making false reports they had helped and abetted the criminal acts of the other accused persons. The magistrate examined the complainant, Kewal Krishan under Section 200,

Criminal Procedure Code. He also examined the complainant's witnesses Charanjit, Niamat Ram and Hans Raj under Section 202, Criminal Procedure Code. After concluding the inquiry under Section 202, Criminal Procedure Code, the magistrate recorded a detailed order, discussed the evidence by him and reached the conclusion that the occurrence had not taken place in the manner alleged by the complaint, and that there was no prima facie case against the accused. He also noted that there was no evidence against the said three Revenue Officers, showing that they had made any false report or abetted any offence committed by the other accused persons. In the result, the magistrate dismissed the complaint under Section 203, Criminal Procedure Code, by his order dated September 29, 1979.

4. The cross-case was instituted in the police station under Sections 302 and 307 read with Sections 34 and 27 of the Indian Arms Act against Kewal Krishan petitioner herein, and two of his companions, Thakar Dass and Anil Kumar. After investigation, the police challanged Kewal Krishan and his companions in court for the murder of Banta Singh and causing injuries to this companions, Jinda Ram and Waryam Ram. The Additional Sessions Judge, Sirsa, by an elaborate judgment has acquitted Kewal Krishan and his companions with the finding that the evidence of the prosecution witnesses produced in that case "does not inspire confidence" and "the prosecution has miserably failed to prove the charges framed against the accused, beyond reasonable doubt". In the result he gave benefit of doubt to the accused Kewal Krishan and his companions and acquitted them.

5. Mr. Bhandare, learned counsel for the petitioner, vehemently contends that the magistrate had far exceeded his jurisdiction in dismissing the complaint under Section 203, Criminal Procedure Code, by recording a positive finding that no prima facie case had been made against any of the accused named thereunder. It is submitted that the magistrate has elaborately discussed and appraised the evidence as if he were the trial Court himself. It is pointed out that these two cross-cases had arisen out of the same transaction, one sponsored by the police and other initiated by the complainant on this complaint. The complainant, Kewal Krishan had also received a gunshot injury; while on the side of the accused, one Banta Singh, also, received fatal gunshot injury. In such cases, it is argued, as a matter of sound practice, both the connected case must have been committed to the Court of Session to be tried concurrently (albeit separately) to avoid inconsistent findings. It is further submitted that under Section 202, Criminal Procedure Code, the magistrate is not required to weigh the evidence meticulously. All that he has to see is whether there are sufficient grounds for proceeding against the accused. It is urged that at this stage if the evidence discloses even a strong suspicion of the commission of an offence by the accused, the prudent course to be adopted by the magistrate is to issue process to the accused. In support of this contention, reference has been made to *State of Bihar v. Ramesh Singh*. ((1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018)

6. Learned counsel has further taken us through the provisions of Sections 202, 203 and 227 of the Code of Criminal Procedure, 1973 and pointed out that in a case exclusively triable by the Sessions Judge, these provisions of the new Code abolish commitment proceedings and greatly restrict the scope of the preliminary enquiry under Section 202, even where such a case is initiated on a criminal complaint. It is argued that in the instant case, which was exclusively triable by the Court of Session, the magistrate has arbitrarily usurped the jurisdiction of the trial Court. It is contended that the magistrate exceeded his jurisdiction when he put numerous questions to the witnesses himself by way of cross-examination.

7. On the other hand, learned counsel for the respondents, submits that the magistrate was not supposed to be merely a post office. He could himself make a prima facie appraisal of the

statements recorded by him under Section 200/202, with a view to ascertaining whether or not a prima facie case had been out against the respondents. It is maintained that the story propounded by the witness examined by the magistrate was inherently improbable and the case was foredoomed to failure at the trial. In any event - proceeds the argument - no injustice has been caused, which would justify the invocation of the extraordinary powers of this Court under Article 136 of the Constitution. As against the Revenue Officer, it is pointed out, there was not a shred of evidence and the preliminary inquiry did not disclose any case at all. It is submitted that the part attributed to Suraj Bhan also, particularly, the allegation that he shot dead his friend Banta Singh, was manifestly false and patently incredible. It is argued that the allegations in the complaint against all the accused were frivolous and transparently incredible.

8. We had deferred the final hearing of this case because we were told that in the connected case which was pending for trial before the Additional Sessions Judge, Sirsa, the judgment was going to be pronounced shortly. A copy of that judgment, which has since been pronounced by the Additional Sessions Judge has been produced by the counsel for the petitioner for our perusal. Kewal Krishan, petitioner and his two companions have been acquitted by the trial Court in that case. Learned counsel for the petitioner want to make only a limited use of this judgment. He wants to show that the defence story set up in that case by Kewal Krishan was substantially the same as adumbrated in the complaint filed by him in the instant case. According to the counsel, the acquittal of Kewal Krishan implies that his counter-story was not frivolous, at least against Suraj Bhan accused.

9. So far as the three Revenue Officers, named as co-accused in the complaint are concerned, there was absolutely no ground to proceed against them. Similarly so far as the accused who were allottees of the land are concerned, the order of the magistrate dismissing the complaint against them is also unassailable. The only debatable question is : whether the magistrate should have summarily dismissed the complaint under Section 203, Criminal Procedure Code against Suraj Bhan accused. The witnesses examined under Sections 200 and 202 in the preliminary inquiry did state that it was Suraj Bhan who had shot dead Banta Singh and had also caused the serious gunshot injury to Kewal Krishan, complainant. The question as to in what circumstances, Banta Singh received the fatal gunshot injuries, was in issue in the cross-case also, which was instituted on a police report under Section 173, Criminal Procedure against Kewal Krishan and others, and had been committed to the Court of Session for trial. That is to say, the story set up by Kewal Krishan in his complaint in regard to the death of Banta Singh, was likely to be his defence version in the counter-case in which he was being tried for the murder of Banta Singh. In short, both these cases exclusively triable by the Court of Session, one instituted on a police-report under Section 173, Criminal Procedure code and the other initiated on a criminal complaint, arose out of the same transaction. Where was thus a risk of two courts coming to conflicting findings. To obviate such a risk, it is ordinarily desirable that the two cases should be tried separately, but by the same Court. If any authority is needed, reference may be made to *Banappa (Banappa Kallappa Ajawan v. Emperor, AIR 1944 Bom 146 : ILR 1944 Bom 344 : 213 IC 213 : 45 Cri LJ 701)*; *fudisthir (fudisthir Gope v. Sheik Samir, 27 CWN 700 : AIR 1923 Cal 644 : 24 Cri LJ 940)* and *Biraswami (1937 MWN 998 : 1937 MCrC 283)*.

10. In the instant case, there was prima facie evidence against Suraj Bhan accused which required to be weighed and appreciated by the Court of Session. At the stage of Section 203 and 204, Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the magistrate has to do is to see whether on a cursory perused of the complaint and the evidence recorded during the preliminary inquiry under Section 200 and 202, Criminal Procedure Code, there is prima facie

evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused. At this stage, the magistrate is not to weigh the evidence meticulously as if he were the trial Court. The standard to be adopted by the magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This Court has held in Ramesh Singh case ((1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018), that even at the stage of framing charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204, if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing then for trial to the Court of Session.

11. The proposition that in cases instituted on complaint in regard to an offence exclusively triable by the Court of Session, the standard for ascertaining whether or not the evidence collected in the preliminary inquiry discloses sufficient grounds for proceeding against the accused is lower than the one to be adopted at the stage of framing charges in a warrant case triable by the magistrate, is now evident from the scheme of the new Code 1973. Section 209 of the Code of 1973 dispenses with the inquiry preliminary to commitment in cases triable exclusively by a Court of Session, irrespective of whether such a case is instituted on a criminal complaint or a police report, Section 209 says : "When in a case instituted on a police report or otherwise the accused appears or is brought before the magistrate and it appears to the magistrate that the offence is triable exclusively by the Court of Session, he shall commit the case to the Court of Session". If the Committing Magistrate thinks that it is not necessary to commit the accused who may be on bail to custody, he may not cancel the bail. This has been made clear by the words "subject to the provisions of this Code relating to bail" occurring in clause (b) of Section 209. Therefore, if the accused is already on bail, his bail should not be arbitrarily cancelled. Section 227 of the Code of 1973 has made another beneficent provisions to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial. This section provides that if upon considering the record of the case, the documents submitted with it and the submissions of the accused and the prosecution, the judge is not convinced that there is sufficient ground for proceeding against the accused, he has to discharge the accused under this section and record his reasons for so doing.

12. Although the reasons given by the magistrate for rejecting the evidence produced by the complainant in the preliminary inquiry against Suraj Bhan in regard to the accusation that he had shot dead Banta Singh, are not devoid of merit, yet, it appears that in meticulously appreciating the evidence the magistrate had overstepped the limits of his discretion. In other words, this is not a case where the magistrate lacked inherent jurisdiction to pass the impugned order. This is only a case where the magistrate has committed an error amounting to an irregularity, if not a clear illegality, in the exercise of his jurisdiction. But in the facts of this case, the error has not resulted in gross miscarriage of justice. The complainant's story that Suraj Bhan aimed and fired a gunshot towards the complainant, but that shot fatally his Suraj Bhan's companion, Banta Singh was extremely improbable. The complainant's allegation is that Banta Singh armed with a rifle (gun ?) came and fired at the complainant but the complainant escaped being hit as he had laid himself flat in the watercourse. The complainant's story further was that Suraj Bhan armed with a gun was following Banta Singh and was behind him. But all the gunshot injuries were found on the front side in the chest of Banta Singh deceased. Thus, the story of the complainant in regard to the circumstances of the killing of Banta Singh, and his killer, being Suraj Bhan, was inherently

implausible and highly doubtful. Equally improbable was the story that thereafter, the respondents dragged the dead body of Banta Singh and threw it in the field of the complainant. In the connected case, in the Court of Session, this very story was set up by the complainant Kewal Krishan in defence to the charge of murdering Banta Singh. In that case, as already observed, Kawal Krishan was acquitted of that murder charge.

13. The question now is, whether in the circumstances of this case, where the error committed by the magistrate has not occasioned a gross failure of justice, this Court should interfere with the impugned order of the courts below, in the exercise of its discretionary jurisdiction under Article 136 of the Constitution. It must be remembered that where no right of appeal exists Article 136 does not serve to create such a right and this Court cannot be treated as a general court of review for correcting each and every error of law or fact, in criminal cases. This extraordinary constitutional power reserved to this Court is meant to be invoked in exceptional cases where the error committed by the courts below has occasioned grave and substantial miscarriage of justice.

14. In our opinion, in the instant case, the error committed by the magistrate has not caused such gross failure of justice which would warrant interference by this Court under Article 136.

15. The petition fails and is dismissed.

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