

Dr. S. S. Khanna

Vs

Chief Secretary, Patna and Another

Criminal Appeal No. 481 of 1980

(E. S. Venkataramiah, A. N. Sen JJ)

12.04.1983

JUDGMENT

VENKATARAMIAH, J.-

1. The question for consideration in this case is whether a person against whom a complaint is filed along with some other person and who after an inquiry under Section 202 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as 'the Code') is not proceeded against by the court can be summoned at a later stage under Section 319 of the Code to stand trial for the very same or connected offence or offences along with the other person against whom process had been issued earlier by the court.
2. This is an appeal by special leave against the judgment and order dated May 2, 1979 of the High Court of Patna in Criminal Miscellaneous No. 405 of 1979.
3. A complaint was preferred by the 2nd respondent here in before the Chief Judicial Magistrate, Ranchi, to take action against the appellant and one Banktesh Prasad alleging that Banktesh Prasad had committed certain acts which amounted to offences punishable under Sections 323 and 504, IPC and that the appellant had abetted the offence under Section 323 and had also committed an offence punishable under Sections 506, IPC. Banktesh Prasad was the Security Officer of the National Institute of Foundry and Foundry and Forge Technology, Ranchi. The appellant was its Director. The complainant was the General Secretary of the employees of the Institute. The alleged incident is stated to have taken place as a consequence of a certain labour dispute. After recording the statement of the complainant on solemn affirmation and the evidence of six witnesses, the Chief Judicial Magistrate felt that there was no prima facie case made out for proceeding against the appellant and accordingly he declined to issue process against him. He, however, took cognizance of the case against Banktesh Prasad and issued process against him for his appearance on September 15, 1976. The case was transferred to the file of the Judicial Magistrate, 1st class, Ranchi for disposal. The complainant filed a revision petition before the Judicial Magistrate dropping the proceedings against the appellant. That petition was dismissed by the Judicial Commissioner on November 24, 1976.
4. The proceedings against Banktesh Prasad were continued before the Judicial Magistrate, 1st class, Ranchi, as directed by the Chief Judicial Magistrate. In the course of those proceedings, it appears that the prosecution witnesses deposed on oath that the appellant had ordered Banktesh Prasad to hit the complainant and appellant had also taken out his revolver and threatened to shoot and kill the complainant's party by pointing the revolver towards them. After such evidence was recorded the complainant made an application under Section 319 of the Code to summon the appellant to stand

trial along with Banktesh Prasad. That application was allowed by the magistrate on April 2, 1979 holding that there was sufficient evidence in the case suggesting that the appellant had committed offences punishable under Sections 323/109 and 506, IPC and that the appellant should be summoned to face the trial along with the other accused. The appellant questioned the order of the magistrate before the Patna High Court at Ranchi in a revision petition. The petition was dismissed. This appeal by special leave is filed against the order of the High Court on the revision petition.

5. Section 319 of the Code reads :

319. Power to proceed against other persons appearing to be guilty of offence.- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then -

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

6. The provision corresponding to Section 319 of the Code was Section 351 of the former Criminal Procedure Code of 1898. Section 351 of the old Code provided that any person attending a criminal court although not under arrest or upon a summons, might be detained by such court for the purpose of inquiry into or trial of any offence of which such court could take cognizance and which from the evidence might appear to have been committed and might be proceeded against as though he had been arrested or summoned. It further provided that when such detention took place in the course of an inquiry under Chapter XVIII of the old Code or after a trial had begun the proceedings in respect of such person should be commenced afresh and the witnesses reheard. Under that Section it was not open to the court to summon a person who was not attending the court and join him in a pending criminal proceeding even though it appeared to the court that evidence in the proceedings disclosed that such person was also involved in the commission; of any offence connected with the one for which the accused already before the court was on trial. Since it was found desirable to empower the criminal court to take action against such person also. Parliament on the recommendation of the Law Commission in its 41st Report introduced Section 319 in the present Code as set out above.

7. The point to be decided in this case is whether when a magistrate had declined to issue process against a person at the stage of an inquiry under Section 202 of the Code, he can later on summon him under Section 319 of the Code.

8. An inquiry under Section 202 of the Code is not in the nature of a trial for there can be in law only after process is issued to the accused. The said proceedings are not strictly proceedings between the complainant and the accused. A person against whom a complaint is filed does not become an until it is decided to issue process against him. Even if he participates in the proceedings under Section 202 of the Code, he does so not as an accused but as a member of the public. The object of the inquiry under Section 202 is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need be taken. The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. Such a person cannot even be legally called to participate in the proceedings under Section 202 of the Code. The nature of these proceedings is fully discussed by this Court in two cases *Vadilal Panchal V. Dattatraya Dulaji Ghadigaonker* and *Chandra Deo Singh V. Prokash Chandra Bose* in which Section 202 of the former Code of Criminal Procedure arose for consideration. The present Section 202, the observations made by this Court on the nature of the proceedings under that section would have to be accepted as governing the proceedings under Section 202 of the Code.

9. Even so two of the modifications made in the present Section 202 (1) deserve attention. In Section 202 (1) of the old Code where a magistrate decided to postpone the issue of process for compelling the attendance of the person complained against he had to record reasons in writing in support of such decision. That obligation is no longer there under the present section. Secondly, the purpose of holding an inquiry under Section 202 (1) of the old Code was stated to be 'ascertaining the truth or falsehood of the complaint'. Under the new section the inquiry contemplated is 'for the purpose of deciding whether or not there is sufficient ground for proceeding'. The amendment now made brings out clearly the purpose of the inquiry under Section 202 even though the words used in the former section had also been understood by courts in the same way in which the present section is worded. Thus the section has been brought in accord with the language of Section 203 which empowers the magistrate to dismiss a complaint if he is of opinion 'that there is no sufficient ground for proceeding'. The object of the latter change in Section 202 is to be found in the 41st Report of the Law Commission which opined thus :

16.9. Section 202 says in terms that the further inquiry or investigation is intended for the purpose of "ascertaining the truth or falsehood of the complaint". We consider this inappropriate, as the truth or falsehood of the complaint cannot be determined at that stage; nor is it possible for a magistrate to say that the complaint before him is true when he decides to summon the accused. The real purpose is to ascertain whether grounds exist for "proceeding further", which expression is in fact used in Section 203. We think therefore that the language of Section 202 should correspond to the language of Section 203, and we have accordingly made suitable verbal alterations.

10. The effect of dismissal of a complaint under Section 203 of the Code has been dealt with by this Court in *Pramatha Nath Taluqdar V. Saroj Ranjan Sarkar*. Kapur, J. who wrote the majority judgment observed at SCR page 354 thus :

An order of dismissal under Section 203, Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the

previous proceedings have been adduced.

11. As rightly commented by the Law Commission, the circumstances mentioned by the court in the above passage cannot be exhaustive of all the circumstances when a second complaint can be entertained. A second complaint may be entertained in other appropriate cases too, though it should be for extraordinary reasons.

12. Having regard to the nature of the proceedings under Section 202 of the Code, it may be difficult to hold that there is a legal bar based on the principle of issue estoppel to proceed against a person complained against on the same material if the court has dismissed a complaint under Section 203. But it is not necessary to express any final opinion on that question since in the instant case, it is seen that the magistrate decided to take action under Section 319 of the Code on the basis of fresh evidence which was brought on record in the course of the proceedings that took place after the inquiry contemplated under Section 202 of the Code was over and in the course of the trial against Banktesh Prasad. The autrefois principle adumbrated in Section 300 of the Code cannot, however, apply to this case. under Section 319 remains unaffected if

13. Even when an order of the magistrage declining to issue process under Section 202 is confirmed by a higher court, the jurisdiction of the magistrate under Section 319 remains unaffected if other conditions are satisfied. In *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* to which one of us (Venkataramiah, J.) was a party, this Court had to deal with the scope of Section 319. In that case a Food Inspector filed a complaint before the magistrate requesting him to take action against the manager and all the directors of a company which was engaged in the business of manufacture of a certain brand to toffees for violating certain provisions of the Prevention of Food Adulteration Act. When the magistrate proceeded to take action against the accused, they approached the High Court under Section 482 of the Code with a prayer for quashing the proceedings. The High Court quashed the proceedings against all of them on the ground that there was no averment that any of them was in charge of the affairs of the Company which was manufacturing the toffees. On appeal to this Court, the order of the High Court insofar as the manager was concerned was set aside as from the very nature of his duties it was clear that he was liable to be proceeded against for the offence said to have been committed by the Company. But as regards the directors, the order of the High Court was upheld as at that stage it was found that there was not sufficient material to proceed against them. But it was, however, made clear that if the prosecution was able to produce evidence against any of those Directors at a later stage it was open to the trial court to proceed against him under Section 319 of the Code. In that connection this Court observed at SCC page 8 [paras 18 & 19 : SCC (Cri) p. 122] thus :

This provision gives ample power to any court to take cognizance and add any person not being an accused before it and try him along with the other accused. This provision was also the subject-matter of a decision by this Court in *Joginder Singh v. State of Punjab* where Tulzapurkar, J., speaking for the Court observed thus : [SCC para 6, p. 349 : SCC (Cri) 299]

A plain reading of Section 319 (1), which occurs in Chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the Courts including a Sessions Court and as such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused,...

In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondents 2 to 5 will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it.

14. It is thus clear that it cannot be said that the magistrate had no power to proceed against the appellant in this case. On looking into the record we are of the view that the magistrate had good reason to summon the appellant under Section 319 of the Code as it appears from the evidence led at the trial that there was a strong case made out against the appellant for joining him in the criminal case as an accused. It is, however, not necessary to refer to this aspect of the matter in detail having regard to the nature of the order we propose to pass in this case.

15. In the instant case, the complaint was filed in 1976. There was also a counter complaint filed against the 2nd respondent. The Magistrate convicted the 2nd respondent in that case. On appeal, the Additional Judicial Commissioner, Ranchi acquitted the 2nd respondent and the said order of acquittal has become final. The 2nd respondent who was an employee of the National Institute of Foundry and Forge Technology, Ranchi had been suspended for involvement in the incident in question. That order of suspension has since been revoked and he has rejoined his duties after receiving all back wages. No other workman has been discharged or punished for participating in the incident. On November 4, 1981, a settlement has been arrived at between the NIFFT Employees' Association and the management settling all pending issues. As a consequence of the settlement, it is stated that the 2nd respondent has also filed an application before the Magistrate to withdraw the original complaint out of which these proceedings have arisen. In view of these events which have taken place since the filing of the complaint and the nature of the offences alleged to have been committed by the appellant and in the interests of industrial peace, we feel that while we agree with the High Court on the order made by it, these proceedings initiated against the appellant should be dropped. We, therefore, set aside the orders passed by the High Court and by the Magistrate and dismiss the application filed by the 2nd respondent under section 319 of the Code.

16. The appeal is accordingly allowed.

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