

ALLAHABAD HIGH COURT

Sri Dulap Singh

Vs.

State

Criminal Revn. No. 781 of 1952

(Mukerji, J.)

15.01.1952. 24.09.1953

JUDGMENT

Mukerji, J.

1. This is a revision by seven persons against whom an order has been made by the Deputy Commissioner of Naini Tal, acting of course as a District Magistrate, on 15.1.1952 directing the lower court to order the commitment of the applicants to the court of session for a trial under Sections 147 and 307/149, Indian Penal Code. The applicants were charged by a Magistrate for having committed offences punishable under Sections 147 and 323/149, Indian Penal Code in respect of a beating which they gave to the complainant of the case viz., Harinandan Prashad. It appears that Harinandan Prashad received serious injuries. Four of these at least were contused wounds on the head of some significance. Harinandan Prashad also received large contusions on his back. A 'prima facie' examination of the injury report indicates that Harinandan Prashad received a very sound beating. The trial proceeded before the Magistrate after the charge had been framed by him against the applicants. 3.12.1951 was fixed by the Magistrate for the production of defense evidence. On that date an application was made before the Magistrate to stay further proceedings in the case. On 5.12.1951 the complainant moved the District Magistrate under Section 437, Criminal Procedure Code and it is as a consequence of this that the order dated 15.1.1952, an order which is the subject-matter of this revision, was made by the Court.

2. It has been contended on behalf of the applicants that the District Magistrate had no jurisdiction to make the order of commitment which he has made. It was pointed out that there was no discharge by the Magistrate under section 307, Indian Penal Code and consequently in view of the decision of the Full Bench in - '*Nahar Singh v. State*', (A) the order of the District Magistrate was without jurisdiction. There can be no doubt after decision of the Full Bench referred to above that the order of the District Magistrate dated 15.1.1952 was an illegal order. On behalf of the opposite party Mr. Chaturvedi contended that although the order of the District

Magistrate was legally unsustainable yet it was open to me in the exercise of my revisional powers to order a commitment of the accused to the Court of session in the same manner in which their commitment has been made by the District Magistrate because on the facts of the case the applicants, 'prima facie' at any

¹ AIR 1952 All 231 (FB)

rate, appear to have committed an offence punishable under Section 307, Penal Code. In my view I should not resort to this course of action which is suggested by counsel for the opposite party. In my opinion it is not proper in the exercise of revisional jurisdiction to validate by a round-about method what the law declares as invalid. If I were to do what Mr. Chaturvedi wants me to do then I would in fact be validating the order of the District Magistrate, an order which was palpably illegal and without jurisdiction.

3. The circumstances of the case appear to me to be such as to call for the pointed attention of the trial Magistrate to the desirability or otherwise of framing a charge under Section 307, Indian Penal Code. The learned Magistrate does not appear to have considered this aspect of the matter at all when he framed the charges against the applicants. It is open to a Magistrate at any stage of a trial, before signing judgment, to make a commitment to the court of session this power is given to the Magistrates by Section 347, Criminal Procedure Code. I am therefore of the opinion that it would be better if the learned Magistrate should consider this matter afresh in the light of the observation which I have made as to whether or not there should be a charge under Section 307, Indian Penal Code and a commitment to the court of session of the applicants on that charge.

4. In the result I set aside the order of the Deputy Commissioner, Naini Tal, dated 15.1.1952 as also the consequential order of commitment made by the Magistrate on 4.6.1952. This order of commitment by the Magistrate had been made by him after an order of stay had been passed by this Court while admitting this petition in revision on 29.5.1952. The record of the case will be sent down to the court of the Magistrate for disposal of the case in accordance with what has been stated by me and in accordance with law.

Order accordingly.