

# GUJARAT HIGH COURT

Manilal Mavsang

Vs.

Thakorlal Himatlal

Criminal Revn. Appln. No. 165 of 1965, against order of Judl. Magistrate 1st Class, Kaira at Nadiad in Misc. Appln. No. 3 of 1964.

(V.B. Raju, J.)

12.09.1966

## JUDGMENT

### **V.B. Raju, J.**

1. On a police report, the learned Magistrate took cognizance of a case, and under Section 251-A(2) of the Criminal Procedure Code he discharged the applicant, who was one of the accused; but later on in the course of the trial against the other accused, the learned Magistrate thought it necessary to frame a charge against the present applicant. He, therefore, passed an order saying that he would take cognizance of offence under Section 190(c), Criminal Procedure Code. So he ordered a process to issue against the present applicant.

2. In Revision, it is contended that once cognizance taken, it cannot be taken again and once an order of discharge is passed, the same Magistrate cannot go behind the discharge order unless the appellate Court or revisional Court modifies the order of discharge. These arguments are not sound, because what the Magistrate takes is a cognizance of offence and not of a case. It is, therefore, not necessary to take cognizance again under Section 190(c) of Criminal Procedure Code. The cognizance taken on the police report continues until the whole matter is over.

3. Regarding the argument that once a discharge order has been passed, the learned Magistrate is functus officio. This argument is not sound, because the learned Magistrate is not functus officio till the cognizance which is properly taken comes to an end. The cognizance has not come to an end, because the inquiry is proceeding. At one stage, on the evidence as it then stood before him he found that there was no prima facie case against the present applicant, but subsequently in the inquiry as a result of further evidence if the learned Magistrate feels that there is a prima facie case against the applicant, whom he has discharged, it is open to him to frame a charge against him. In this case, he merely issued a process. The Criminal Procedure Code does not require a

written order in the case of discharge or for framing a charge or for not framing a charge, and in the case of discharging a person no reasons need be given and no order need be passed. There is no question of changing the order, because there is no need to pass any order. Reasons have to be given in cases falling under Section 253 of the Criminal Procedure Code, but no orders need be passed under sub-section (2) of Section 251A, Criminal Procedure Code. In the case of acquittal, an order of acquittal must be recorded vide Section 258 Criminal Procedure Code. If a Magistrate, after discharging a person under sub-section (2) of Section 251A, Criminal Procedure Code, finds subsequently on inquiry that there are grounds for believing that the person has committed an offence, it is open to the Magistrate, even if that person is not before the Court, to issue a notice to that person. So, I feel that there is nothing improper in issuing a notice by the learned Magistrate. The learned counsel for the petitioner relies on *State v. Ganga Ram Kalita*<sup>1</sup>, I do not agree with this, because there is no question of passing a valid discharge order in the present case. It has been observed in that case that the Magistrate becomes functus officio, so far as the case is concerned after passing a valid discharge order. I do not agree with this because the learned Magistrate does not become functus officio when he continues the cognizance of offence and has not terminated his cognizance by punishing all the persons found to be guilty and acquitting all persons found to be not guilty.

4. No orders are, therefore, passed in this revision application.

Petition disallowed.

<sup>1</sup> AIR 1965 Ass 9