APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice.

1952
July 18

KRISHNAJI BABACHARYA MAHULI *v.* THE STATE.*

Criminal Procedure Code (Act V of 1898), s. 215—Order of committal to Sessions Court—Complete absence of evidence against accused—Point of law—Power of High Court to quash order—Duties of committing Magistrate.

The question whether there is no evidence at all in the committing Magistrate's record to sustain the charge framed against the accused is a question of law on which the High Court can interfere under s. 215 of the Criminal Procedure Code, 1898, and quash the committal order.

Duty of committing Magistrate discussed.

Harendra Lal Roy v. *Hari Dasi Debi*,[1] followed.

Emperor v. *Suleman Ibrahim*,[2] not followed.

CRIMINAL REVISION APPLICATION from the committal order passed by P. A. Apte, Esquire, Additional Magistrate, First Class, Belgaum.

One Krishnaji (petitioner) was a godown-keeper of Government godown at Shahapur in taluka Belgaum, district Belgaum. Shidramappa (accused No. 2) was working as an Accountant in the same godown under the supervision of the petitioner. One of the duties of the petitioner was to take delivery of milled rice from the two rice mills at Shahapur, viz. (*i*) Jai Hind Mills and (*ii*) Prakesh Mills, and stock it in the godown.

At Jai Hind Mills one Shidappa (accused No. 3) was the Government Milling clerk who also looked to despatch work assisted by a clerk of the Mill one Laxman (accused No. 4). When the paddy sent to the Mills was turned into rice it was despatched by accused No. 3 to the Government godown in carts along with three counterparts of a despatch note, the fourth one being retained in the record of the Mill. The petitioner on taking delivery of the rice bags from the cartman used to sign the counterparts of the despatch note, return one to the cartman and preserve the remaining two for his record.

On October 3, 1949, 27 bags were received by the Government godown from the Jai Hind Mills. On the same day the godown also received a further quantity of 16 bags of rice

* Criminal Revision Application No. 461 of 1952.

[1] (1914) L. R. 41 I. A. 110. [2] (1911) 13 Bom. L. R. 201.

from the Prakesh Mills. The total quantity of bags received in the course of the day was duly registered by the petitioner, but some days later the petitioner came to know that in all 43 bags had been despatched on October 3, 1949, from the Jai Hind Mills to the Government godown and that the despatch notes of that day had been subsequently tampered with by making the necessary addition to the original figure. He reported the matter to his superior officer and on inquiry it was found that on October 7, 1949, accused No. 3 in conjunction with accused No. 2 had made that alteration in the despatch notes. The petitioner along with the three accused was thereupon charged with having misappropriated 16 bags of rice and also for making alterations in the despatch notes.

The committal proceedings were held by the Additional Magistrate, F. C., Belgaum City, who after recording evidence framed a charge against all the accused for offences under ss. 409, 467 and 477-A read with s. 34 of the Indian Penal Code, and on April 1, 1952, committed them for trial by the Court of Sessions, Belgaum. The only ground given by the learned Magistrate for committing the petitioner was that after the despatch notes had come to the charge of the petitioner and the accused No. 2 it was difficult for any one to add something to their contents except with the consent of either of them.

The petitioner applied in revision to the High Court against the order of committal.

A. A. Mandgi, for the petitioner.

K. S. Daundkar, Assistant Government Pleader, for the State.

CHAGLA C. J. The Additional Magistrate, First Class, Belgaum, committed four accused to stand their trial at the Court of Sessions under ss. 409, 467, and 477-A of the Indian Penal Code read with s. 34 of the Indian Penal Code. Accused No. 1 has come in revision against the order of committal and prays that the order be quashed.

The prosecution case was that accused No. 1 was the godown keeper of a Government godown at Shahapur. Accused No. 2 was working as an accountant under accused No. 1. Accused No. 3 was Government Milling Clerk in the Jai Hind Mills who was looking after the milling of rice, sent to that mill by Government. Accused No. 4 was a clerk of

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the mills. The practice followed by Government with regard to the milling of rice was this. Paddy was sent to the mills and after the paddy had been turned into rice it was sent by the mills to the Government godown in carts and the clerk attending to this work in the mills used to write out a despatch note with three duplicates. The original was kept in the mills and three duplicates used to be given to the cartman who used to carry the rice. The cartman used to take the signature on these despatch notes from the godown keeper or the accountant. He used to keep one of these with himself, and the other two used to be given to the godown keeper and the godown keeper used to keep one for the records of the godown and the other used to be sent to the Civil Supplies Department later on. With regard to the method of keeping accounts, two registers were maintained which have been described as Part II-A and Part II-B. In one register, as soon as the rice was received, a note was made of the receipt, and in the other register, Part II-B, the total received in the course of the day was entered. According to the prosecution the offence took place on October 3, 1949, and this is what happened on that day. Twenty seven bags of rice were sent by the Jai Hind Rice Mills and these bags were given to a cartman who is exhibit 2 to be taken in his cart to the Government godown. The cartman carried these 27 bags in two trips. He carried 16 bags in the first trip and 11 bags in the second trip. As usual he was given three duplicate despatch notes. Accused No. 2 was not at the godown when the 16 bags were brought, but he was there when the other lot of 11 bags were brought, and accused No. 1 signed all the three despatch notes. He gave one of them to the cartman and handed over the other two to accused No. 2 for the record. An entry of these 27 bags was also made in Part II-A. On the same day the godown received a further quantity of 16 bags from Prakash Mills and an entry in Part II-B shows that on that day 43 bags in all were received. The prosecution case is that on October 7, 1949, accused No. 3 in conjunction with accused No. 2 made an alteration in the two receipts which had been given by the cartman to accused No. 1 and these are exhs. 1-D and 1-E, and the alterations are that instead of 27 bags, 43 bags are shown as having been despatched by the Jai Hind Mills. The books of the Jai Hind Mills also showed that 43 bags were despatched from the Jai Hind Mills, but the Government godown only received 27 bags and therefore the accused

were charged with having misappropriated 16 bags and also for making alterations in the two despatch notes exhs. 1-D and 1-E.

Now, the question is whether there is any evidence at all which would justify the Committing Magistrate in holding that there are sufficient grounds for committing the appellant to the Sessions. It is the case of the prosecution itself that when the alterations were made on October 7, 1949, accused No. 1 was not present and that the alterations are in the handwriting of accused No. 3 and they were made with the assistance of accused No. 2. It is further in evidence that accused No. 1 himself made a complaint when he discovered the alterations made in the despatch notes to his superior officer. The learned Magistrate has referred to the case of accused No. 1 only in one sentence and this is what he says:

"Hence, after Exhs. I-D and I-E came to the charge of accused Nos. 1 and 2, it was rather difficult for anyone to add something to the contents of exhs. 1-D and 1-E unless with the consent of accused No. 1 or accused No. 2."

It is difficult to understand how accused No. 1 or accused No. 2 can be alternatively charged with the offence. It is also difficult to understand how the Magistrate comes to the conclusion that there is any evidence suggesting the consent of accused No. 1 to the alteration, especially as, as I just pointed out, the case of the prosecution itself is that the godown keeper accused No. 1 was absent when the alterations in exhs. 1-D and 1-E were made. I have asked the Assistant Government Pleader to point out to me any evidence, even a title of evidence on the record which would go to show that accused No. 1 was privy to the alterations being made in exhs. 1-D and 1-E, and I have not been pointed out any such evidence on the record. All that Mr. Daundkar could do was to fall back upon a decision of this Court in *Emperor* v. *Suleman Ibrahim.*[1] There Mr. Justice Chandavarkar and Mr. Justice Heaton held that an order of committal to the Sessions Court cannot be quashed by the High Court on the ground that there is no evidence in the Committing Magistrate's Court's record to sustain the charge. The committal can be quashed on a point of law only. With very great respect to this division bench, the proposition seems to be

[1](1911) 13 Bom. L. R. 201.

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startling. In the judgment of Mr. Justice Chandavarkar it is pointed out (p. 202):

"...It may be that the prosecution may have evidence to offer in support of the charges in question in the Sessions Court, independently of the evidence recorded by the Committing Magistrate, assuming that the witnesses examined before that Magistrate have said nothing with reference to the offences under those charges. The responsibility is that of the Public Prosecutor; and if the Public Prosecutor thinks that the case ought to be tried and that he ought to have an opportunity of proving those charges, we cannot say that the order of committal ought to be interfered with by this Court at this stage."

Again, with very great respect, the learned Judges seem to have been thinking more of the responsibilities and rights of the Public Prosecutor than of the rights of the accused. The decision goes to this length that it is open to the Public Prosecutor not to lead any evidence against the accused, and if the Magistrate commits a case to the Sessions without any evidence, the High Court cannot interfere because the Public Prosecutor may take his chance against the accused in the Sessions Court. As I said before, again with respect, it is a startling proposition to lay down that an accused can be dragged to the Sessions trial when there is no evidence at all before the Committing Magistrate to commit him to the Sessions.

Now, I think the principle on which a committal order can be made is now well settled by this Court. It is perfectly true that it is not the duty of the Public Prosecutor to lead all evidence before the Committing Magistrate, but he must lead and it is his duty to lead sufficient evidence which would make it possible for the Magistrate under s. 210 to be satisfied that there are sufficient grounds for committing the accused for trial to the Sessions. I fail to understand how any Magistrate can be satisfied that there are sufficient grounds for committing an accused for trial when there is no evidence at all against the accused. If there is evidence, then it is for the Magistrate to weigh that evidence, and even there our Court has gone to this length that it is open to the Magistrate if the evidence is worthless not to waste the time of the Court of Sessions by committing the accused. It is true that the Magistrate should not play the role of the jury. It is not for him to consider whether the conviction is probable. If the conviction is possible at all on the evidence led, it is the duty of the Magistrate to commit the accused to Sessions. But the conviction must be possible, and I cannot understand how

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any jury in the world or any Sessions Court in the world can possibly convict the accused without any evidence. Therefore, in my opinion, the fact that there is no evidence at all against the accused is a question of law on which the High Court can certainly interfere and quash the committal order. If any authority was needed for this proposition, it is to be found in the decision of the Privy Council in *Harendra Lal Roy Chowdhuri* v. *Hari Dasi Debi*,[1] where their Lordships emphasise that according to the well known principles of our law a decision that there is no evidence to support a finding is a decision of law. As I am satisfied in this case that there is no evidence at all against accused No. 1, the order of the learned Magistrate cannot be sustained.

I, would, therefore, quash the order of committal passed by the learned Magistrate against accused No. 1.

Order quashed.

M. W. P.

[1] (1914) L. R. 41 I. A. 110 p. 119.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

MESSRS. KIRLOSKAR BROS. LTD. (APPLICANT) *v.* COMMISSIONER OF INCOME-TAX, BOMBAY MOFUSSIL, BOMBAY (RESPONDENT)*

1951 *Sept.* 17

Indian Income-tax Act (XI of 1922), s. 4 (1) (a)—Non-resident Company—Contract for sale of Machinery to Government of India—Payment by cheques by Government of India—Acceptance of cheques in unconditional payment and discharge of Government's Liability—Cheques despatched by post from Delhi to Aundh—Amounts not received in British India.

The assessee, a non-residant Company, received payment in respect of machinery sold to the Government of India, by cheques sent by post by the Government of India from Delhi to the assessee in Aundh State. It was found as a fact that under an arrangement with the Government of India, the assessee received the cheques in unconditional payment and discharge of the Government's liability. The cheques have been drawn on the Reserve Bank of India in Bombay, the assessee had the cheques cashed (through its bank) by sending the cheques to Bombay.

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*Income-tax Ref. No. 18 of 1949.