

## REVISIONAL CRIMINAL.

Before Man Mohan Singh Gujral, J.

GANESH DASS,—Petitioner.

versus

KISHAN CHAND AND OTHERS,—Respondents.

Criminal Revision No. 812 of 1968.

January 6, 1970.

*Code of Criminal Procedure (V of 1898)—Section 209—Assessment of the prosecution evidence under—Extent of—Stated—Magistrate finding the prosecution case inherently improbable—Whether can discharge the accused.*

*Held*, that if the prosecution case is found by the enquiring Magistrate to be inherently improbable or where the evidence led is such that no Court can reasonably come to the conclusion on the material produced that the prosecution case has been established, it is open to the enquiring Magistrate to discharge the accused under section 209 of the Criminal Procedure Code. It is, however, not the function of the enquiring Court to appropriate to itself the function of judging whether the prosecution evidence is to be believed in preference to the defence evidence. Where the evidence is of a doubtful nature the Magistrate should leave it to the Court of Session to come to a conclusion whether to accept it or not; but, where on the other hand, the enquiring Magistrate comes to the conclusion that there is no reasonable possibility of conviction of the accused, he may discharge the accused and for this limited purpose he can weigh the evidence. Whether there is possibility that different Courts may take different views of the evidence, the enquiring Court should leave it to the Sessions Court to decide as to which view to take. (Para 3)

*Petition under Section 439 Cr. P. C. for revision of the order of Shri Dev Raj Saini, Additional Sessions Judge, Gurdaspur, dated the 7th June, 1968, affirming that of Shri R. C. Paul, Judicial Magistrate, 1st Class, Batala, dated 27th February, 1967, discharging the accused u/s. 209 Cr. P. C.*

D. S. CHAHL, ADVOCATE, for the petitioner.

M. R. MAHAJAN, ADVOCATE, for the respondents.

## JUDGMENT

GUJRAL, J.—This is a revision petition against the order of the Additional Sessions Judge, Gurdaspur, dated 7th June, 1968, whereby the revision petition of the petitioner against the order of the Judicial Magistrate First Class, Batala, dated 27th February, 1967, discharging the respondents under section 209 of the Criminal Procedure Code, was dismissed.

(2) The facts giving rise to this revision petition are that there was some dispute between Ganesh Dass, the petitioner, and the respondent Kishan Chand regarding the opening of a window in the

intervening wall Kishan Chand, not caring for the views of his neighbour Ganesh Dass petitioner, opened a window in the wall and, in turn, Ganesh Dass, with a view to obstruct this window, constructed a wall in front of that window. This happened some time in October, 1964. On the night between 6th and 7th October, 1964, Amir Devi deceased who was the wife of Ganesh Dass went to sleep near the newly constructed wall in her courtyard and some animals were also tethered near her. In the middle of the night the newly constructed wall fell on Amir Devi with the result that she received some injuries which led to her death the same night at about 4.30 a.m. Ganesh Dass then lodged a report against Kishan Chand, his brother Ram Saran and his two sons Vijay Kumar and Tarsem Kumar alleging that they had demolished the wall with the help of bamboos and had thereby caused the death of Amir Devi. Originally, a case under section 325 of the Indian Penal Code was registered but later on the offence was changed to section 304 of the Indian Penal Code. After investigation the police, finding that no case had been made out against the accused, made a report to the Magistrate for the cancellation of the case, on the basis of which the case was cancelled. Not satisfied with this, Ganesh Dass filed a complaint against Kishan Chand and his two sons which was enquired into by the Judicial Magistrate First Class, Batala. After recording the evidence led by the complainant the learned Magistrate found that no *prima facie* case had been made out against the respondents and discharged them under section 209 of the Criminal Procedure Code. The revision petition filed by Ganesh Dass in the Court of Session also failed and being dissatisfied he has come up to this Court in revision.

(3) On behalf of the petitioner the only argument raised is that it was not open to the Magistrate under section 209 of the Criminal Procedure Code to assess the evidence of the witnesses and as there was evidence in support of the prosecution case, the Judicial Magistrate should have committed the accused to stand their trial. In support of this argument reliance is placed on *K.P. Raghavan and another v. M.H. Abbas and another*, (1), wherein Bhargava, J., delivering judgment on behalf of the Court, observed that no doubt a Magistrate enquiring into a case under section 209 of the Criminal Procedure Code is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session, but in arriving at that conclusion it

(1) A.I.R. 1967 S.C. 740.

is not the function of the enquiring Magistrate to weigh the pros and cons of the prosecution and defence evidence and to discharge the accused merely because in his view the defence version is better than the prosecution evidence. These observations however, do not imply that even if the prosecution case was found by the enquiring Magistrate to be inherently improbable or where the evidence led was such that no Court could reasonably come to the conclusion on the material produced that the prosecution case had been established, it was not open to the enquiring Magistrate to discharge the accused under section 209 of the Criminal Procedure Code. The ratio of the decision in *Raghavan's case* (1), is that where the witnesses, who give the evidence are such that there was no reasonable possibility of their being believed by any Court it was open to the enquiring Magistrate to discharge the accused. It is, however, not the function of the enquiring Court to appropriate to itself the function of judging whether the prosecution evidence was to be believed in preference to the defence evidence. Where the evidence was of a doubtful nature the Magistrate should leave it to the Court of Session to come to a conclusion whether to accept it or not; but, where, on the other hand the enquiring Magistrate comes to the conclusion that there was no reasonable possibility of conviction of the accused, it is open to the enquiring Magistrate to discharge the accused and for this limited purpose he could weigh the evidence. On the other hand, where there was possibility that different Courts might take different views of the evidence the enquiring Court should leave it to the Sessions Court to decide as to which view to take. In *Raghavan's case* (1), (supra), it was observed as follows:—

“It cannot be said that the Magistrate has no discretion to weigh the evidence at all. He must clearly do so to some extent in order to decide whether a *prima facie* case has been made out and whether a conviction is possible. But these are the limits of his discretion and it is not his duty nor is it necessary for this purpose for him to examine the prosecution evidence with meticulous care, balance the evidence of one witness against the evidence of another, consider the probabilities of a conviction, or come to a conclusion on doubtful points.”

Viewing the order of the learned Magistrate in the light of the above observations I find that the order was perfectly justified. In the first information report lodged by Ganesh Dass there was no mention of the fact that anybody had been seen pushing the wall with

the help of bamboo. The Sub-Divisional Officer, P.W.D., who had been examined, had also stated that the wall had fallen as a result of structural defects and not by the use of force. Moreover, in the first information report it was mentioned that the witnesses had only heard the noise of the falling of the wall. It is not disputed that the wall had fallen in the middle of the night and normally there was no likelihood of any body having seen the wall falling. Keeping these circumstances in view the learned enquiring Magistrate was right in coming to the conclusion that there was no reasonable possibility of the evidence being accepted even though at the enquiry two daughters of Ganesh Dass had appeared to state that one of them had peeped through the *jharna* and had seen the accused pushing the wall with bamboos and had told about it to the other sister. The learned Magistrate had himself visited the spot and had seen that it was as not possible to see the wall from the *jharna* from where one of the daughters of Ganesh Dass was alleged to have seen the accused with bamboo in his hand. It was, therefore, open to the Magistrate to find that no *prima facie* case for committing the accused for trial had been made out. Taking this view, I find no merit in this revision petition and dismiss the same.

N. K. S.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and R. S. Narula, J.

ADDITIONAL DIRECTOR (I) CONSOLIDATION OF HOLDINGS,  
PUNJAB, AND ANOTHER,—Appellants.

versus

RAGHWANT SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 370 of 1964.

January 7, 1970.

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)*—Section 42—*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949*—Rule 18—*Constitution of India (1950)*—Articles 226/227—Petition for revision under section 42 entertained by the Director beyond the period of limitation prescribed under rule 18—Objection as to limitation not raised before the Director—Such objection—Whether can be raised for the first time in writ petition under Articles 226 and 227.

Held, that though a decision on a question of limitation relates to the question of jurisdiction of the Court deciding the question, but an order