

REVISIONAL CRIMINAL

*Before Shamsheer Bahadur, J.*DALIP,—*Petitioner**versus*THE STATE AND OTHERS,—*Respondents*

Criminal Revision No. 93 of 1967

April 20, 1967

Code of Criminal Procedure (Act V of 1898)—Ss. 173 and 207-A—Report of investigating Officer stating that some of the accused had not participated in the crime—Those accused—Whether can be discharged under section 173(3).

Held, that the discharge by a Magistrate under sub-section (3) of section 173 of the Code of Criminal Procedure is separate and distinguishable from that under sub-section (6) of section 207-A. The provisions of section 207-A are to be resorted to when an inquiry has actually to be launched by a Court which has before it the report of the police that the accused persons should be dealt with in accordance with law. If the police itself is of the opinion that there is no case to be tried against an accused or certain accused, there is no scope for an inquiry and the provisions of sub-section (3) of section 173 will at once be attracted. A perusal of the section makes it plain that where the investigating officer has recorded his opinion about the innocence of the accused, such a person has to be released on bail and the Magistrate has merely to discharge him under sub-section (3) of section 173. It is only when the police report under sub-section (1) of section 173, discloses a case against the accused that a Magistrate has to make an inquiry under Chapter XVIII of the Code and it would be for the Magistrate to see whether the evidence does not justify a discharge of the accused.

Petition under section 439 of Cr.P.C. for revision of the order of Shri G. S. Tiwana, Additional Sessions Judge, Ambala, dated 25th January, 1967, affirming that of Shri Dipinder Singh Kapur, J.M.I.C., Ambala, dated 17th October, 1966, discharging the accused.

HAR PARSHAD WITH A. S. ANAND, ADVOCATES, for the Petitioner.

B. S. GUPTA, H. L. SIBAL, AND S. S. KANG, ADVOCATES, for the Respondents.

JUDGMENT.

SHAMSHER BAHADUR, J.—The decision in this petition for revision turns on the question whether impugned order was passed by the Judicial Magistrate, Ambala, under sub-section (3) of section 173 or sub-section (6) of section 207-A of the Code of Criminal Procedure?

A first information report was lodged against four persons, Jai Singh, Jarnail Singh, Kehar Singh and Ajmer Singh, for having caused the murder of Surta Singh on 5th July, 1966. According to the report which was lodged by Dalip, a nephew of Surta Singh, the occurrence was witnessed by him and his father. The case was investigated by the police and in the challan which was put before the Magistrate, Jai Singh and Jarnail Singh out of the four persons named on the first information report were mentioned in column 2 as persons who had been arrested but against whom the challan was not being put in Court. According to the statement of the case, mentioned in the challan, Jai Singh and Jarnail Singh had not participated in the crime and it was mentioned that they should not be proceeded against. It was, however, mentioned that Kehar Singh and Ajmer Singh should be proceeded with under sections 302/34, Indian Penal Code.

The Magistrate, Shri D. S. Kapur, before whom the challan was submitted, passed an order which may be reproduced in full as much of the argument which has been addressed by the learned counsel is based on its purport and meaning:—

“Present Kehar Singh, Ajmer Singh, Jai Singh and Jarnail Singh in custody. The police have sent up challan against Kehar Singh and Ajmer Singh only. I have gone through the report under section 173, Code of Criminal Procedure, and other documents on the file. Since no *prima facie* case is found against Jai Singh and Jarnail Singh accused, they are discharged. They are released immediately, if they are not wanted in any other case. Copies under section 173, Code of Criminal Procedure, have been supplied to the other two accused. Evidence for commitment proceedings on 27th October, 1966.

17th October, 1966.

(Sd.) D. S. KAPUR,

J. M. I. C., Ambala City.

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It has been the case of the complainant, that the Magistrate could not have discharged Jai Singh and Jarnail Singh without evidence having first been recorded and an order passed in accordance with the provisions of section 207-A of the Code of Criminal Procedure. The complainant, accordingly, moved the Sessions Judge, Ambala, for directing the Magistrate to proceed against Jai Singh and Jarnail Singh in accordance with law. The petition having been dismissed by the learned Additional Sessions Judge, Ambala, on 23rd January, 1967, the complainant has against moved this Court in revisional proceedings.

Part V of the Code of Criminal Procedure deals with "Information to the police and their powers to investigate" and sections 154 to 176 are contained in Chapter XIV of this Part. Section 169 is concerned with the situation where an accused person may be released when evidence against him is deficient, and is embodied in these words :—

"If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or to the police officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial."

Though the investigating officer did mention that Jai Singh and Jarnail Singh appeared to be innocent, they were not actually released on bail as required by section 169. Section 173 deals with reports of police officers; while sub-section (1) of this section is concerned with the contents of the police report in a prescribed form setting forth the names of the parties and the nature of information and the names of the persons who appear to be acquainted with the circumstances of this case; and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond * * * *". Sub-section (3) says that :—

"Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit."

Mr. Har Parshad, the learned counsel for the petitioner-complainant, submits that the Judicial Magistrate, to whom the report was made, was not empowered to discharge Jai Singh and Jarnail Singh as they had not actually been released on bail by the investigating officer under section 169. It is not controverted that in the report of the police officer submitted to the Magistrate under sub-section (1), Jai Singh and Jarnail Singh are mentioned as persons against whom there was no evidence and whom the police considered to be innocent. It is again not in doubt that the police officer was under a statutory duty in such a situation to release these persons after they had executed the bonds under section 169. What the Magistrate was required to do under sub-section (3) of section 173 of the Code after the submission of the report to him by the police was to discharge Jai Singh and Jarnail Singh which he has actually done in the impugned order. According to Mr. Har Parshad, the Magistrate could have passed the order of discharge only if Jai Singh and Jarnail Singh had actually been released on bail. The omission of the police officer to release Jai Singh and Jarnail Singh on bail-bonds may provide cause for redress to the accused but not a handle to the complainant to put them to further harassment. It is submitted by the learned counsel that Jai Singh and Jarnail Singh not having been released on bail by the police officer, the Magistrate instead of discharging them under sub-section (3) of section 173 should have proceeded under sub-section (6) of section 207-A. Now, section 207-A is a part of Chapter XVIII, which deals with 'Inquiry into cases triable by the Court of Session or High Court'. Its relevant provisions are these:—

"207-A. (1) When, in any proceeding instituted on a police report, the Magistrate receives the report forwarded under section 173, he shall, for the purpose of holding an inquiry under this section, fix a date.

(2) * * * * *

(3) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused.

(4) The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged.

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- (5) When the evidence referred to in sub-section (4) has been taken and the Magistrate has considered all the documents referred to in section 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly."

In other words, it is the contention of the learned counsel for the complainant that the entire panoply of procedure of inquiry should have been resorted to before Jai Singh and Jarnail Singh were discharged. As would be apparent, the provisions of section 207-A are to be resorted to when an inquiry has actually to be launched by a Court which has before it the report of the police that the accused persons should be dealt with in accordance with law. If the police itself is of the opinion that there is no case to be tried against an accused or certain accused, there is no scope for an inquiry and the provisions of sub-section (3) of section 173 will at once be attracted. A perusal of the sections which have been cited *in extenso* makes it plain to me that where the investigating officer has recorded his opinion about the innocence of the accused, such a person has to be released on bail and the Magistrate has merely to discharge him under sub-section (3) of section 173. It is only when the police report under sub-section (i) of section 173, discloses a case against the accused that a Magistrate has to make an inquiry under Chapter XVIII of the Code and it would be for the Magistrate to see whether the evidence does not justify a discharge of the accused. The discharge of Jai Singh and Jarnail Singh in the present case seems to be covered by the provisions of sub-section (3) of section 173 and not by sub-section (6) of section 207-A. Mr. Har Parshad has cited a Supreme Court decision in *Ajit Kumar Palit v. State of West Bengal and another* (1), for the proposition that when the Court has taken cognizance of an offence, the discharge has to be under sub-section (6) of section 207-A. The word 'cognizance', according to

(1) A.I.R. 1963 S.C. 765.

Mr. Justice Ayyangar, speaking for the Court, "has no esoteric or mystic significance in criminal law or procedure. It merely means, become aware of and when used with reference to a Court or Judge, to take notice of judicially. Taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence. Where the statute prescribes the materials on which alone the judicial mind shall operate before any step is taken, obviously the statutory requirement must be fulfilled". In my opinion, the discharge by a Magistrate under sub-section (3) of section 173 is separate and distinguishable from that under sub-section (6) of section 207-A. Where a police report discloses that there is no case against an accused person the Magistrate has merely to affirm the order of release and discharge the accused. It is only when an inquiry is being held on a police report against the accused person under Chapter XVIII that a Magistrate may be said to take cognizance and to reach a conclusion about the discharge of the accused person after an examination of recorded evidence and the documents submitted under section 173 of the Code of Criminal Procedure.

In my opinion, there is no merit in this revision petition which fails and is dismissed.

R. N. M.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

LACHHMAN AND OTHERS,—*Petitioners*

versus

THE EXECUTIVE ENGINEER, SIRSA, AND OTHERS,—*Respondents.*

Civil Writ No. 2329 of 1963.

April 27, 1967.

Northern India Canal and Drainage Act (VIII of 1873)—Ss. 33, 35 and 69—Northern India Canal and Drainage Rules (1873)—Rule 32—Inquiry for fixing the liability of a person under—Nature of—Such inquiry—Whether mandatory and must be held by the Divisional Canal Officer himself—Matters on which findings to be recorded as a result of inquiry stated.