

Before Pritpal Singh, J.

DEV BALBIR SINGH SANDHU,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Criminal Revision No. 640 of 1984.

October 31, 1984.

Code of Criminal Procedure (II of 1974)—Sections 202, 204 & 231—Case exclusively triable by a Court of Sessions—Complainant filing list of witnesses before Magistrate in commitment proceedings—All witnesses in list not examined—Examination of all such witnesses—Whether obligatory—Such non-examination—Whether vitiates the commitment proceedings—Witnesses mentioned in list but not examined before the Magistrate—Complainant—Whether precluded from examining such witnesses at the time of trial—Section 231 of the Code—Whether can be deemed to subservient to the provisions of sub-section (2) of Section 202.

Held, that the proviso to sub-section 2 of section 202 of the Code of Criminal procedure, 1973 enjoins upon the Magistrate to call upon the complainant to produce all his witnesses and examine them on oath. This provision is mandatory and the Magistrate is bound to record the evidence of all the witnesses relied upon by the complainant in the commitment proceedings. However, the complainant is not bound to examine all the witnesses in the list and he has every right to give up some of them in the commitment proceedings and it is not obligatory for the complainant to examine all the witnesses mentioned in the list. The non-examination of the given up witnesses does not vitiate the commitment proceedings.

(Para 3)

Held, that the proviso to sub-section (2) of section 202 of the Code lays down that in a case triable exclusively by the Court of Session, the Magistrate has to allow the complainant to produce all his witnesses and examine them on oath. However, the right of the complainant to give up some of the witnesses mentioned in the list of witnesses has not been curtailed. It is nowhere provided in section 202 that the prosecution will not be entitled to produce those witnesses at the trial who were not examined in commitment proceedings. Further section 231 of the Code then provides that on the date fixed for examination of the witnesses the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. In this section also it is not mentioned that the trial Court will examine only those witnesses who have been produced during the inquiry under Section 202 of

the Code. If the intention of the Legislature was that at trial before the Court of Session only those witnesses could be examined who had already been produced in the inquiry under section 202 of the Code then it would have been so provided in section 202. The inevitable conclusion, therefore, is that the evidence which the prosecution is entitled to produce in support of its case under section 231 is not limited by proviso to section 202(2) of the Code and as such the trial Court has to examine all such witnesses as included in the list of witnesses to be filed under section 204 of the Code. These are two independent sections and by no stretch of imagination section 231 of the code can be deemed to be subservient to the provision of section 202 of the Code.

(Para 5).

Petition under Section 401 Cr.P.C. for revision of the order of the Court of Shri R. S. Sharma, M.A.L.L.B., Addl. Sessions Judge, Rupnagar, dated 21st April, 1984 debarring the prosecution from examining those witnesses in his court which were not examined by the complainant in the court of committing Magistrate.

Ujagar Singh, Senior Advocate, with G. S. Punia & K. S. Cheema, Advocates, for the Petitioner.

D. S. Kœer, Advocate, for the State.

Ajmer Singh, Senior Advocate, with S. S. Tej, Advocate for Nos. 2 to 5.

JUDGMENT

Pritpal Singh, J.

(1) The question which has arisen for determination in this revision petition is whether the provisions of section 231 of the Code of Criminal Procedure (hereinafter called 'the Code') are limited by the provisions of proviso to sub-section (2) of section 202 of the Code. In other words whether the complainant of a complaint triable exclusively by the Court of Session is precluded from producing those witnesses in evidence at trial before a Court of Session who though were mentioned in the list of prosecution witnesses, required to be filed under section 204 of the Code, but were not examined by him before the Magistrate in commitment proceedings.

2. The facts giving rise to the posing of this question are that the petitioner Dev Dalbir Singh Sandhu filed a complaint in the

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Court of the Chief Judicial Magistrate, Rupnagar, against the respondents Narinder Pal Singh Inspector-Police, Sohan Singh Head Constable, Harpal Singh Constable and Rashid Mohammad, which was exclusively triable by the Court of Session. The complaint was not dealt with under section 200 of the Code. Proceedings were taken by the Magistrate under section 202 of the Code. Although the complainant filed a list of 16 witnesses but he examined only nine of them before the Magistrate and closed his evidence. Considering this evidence sufficient to proceed against the accused, the Magistrate issued process against them invoking section 204 of the Code. On their appearance before him the Magistrate committed the case for trial before the Court of Session under section 209 of the Code. During the trial, conducted by the Additional Sessions Judge, Rupnagar, the prosecution was permitted to examine only those witnesses who had been produced in commitment proceedings. The prayer of the prosecution to examine the remaining witnesses mentioned in the list of witnesses was declined by an order dated April 21, 1984. It is against this order that the instant revision petition has been filed by the complainant.

3. In this case the Magistrate on receipt of the complaint post-poned the issue of process against the accused and, therefore, took proceedings under section 202 of the Code. Proviso to subsection (2) of section 202 of the Code provides that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. This provision is mandatory and the Magistrate is bound to record the evidence of all the witnesses relied upon by the complainant in the commitment proceedings. It is for the complainant to choose and to file a list of witnesses and his right with regard to the witnesses mentioned in the list cannot be interfered with by the Magistrate. The complainant is not bound to produce all the witnesses mentioned in the list and he had every right to give up some of them in commitment proceedings. The proviso to section 202(2) of the Code obliges the Magistrate to call upon the complaint to produce all his witnesses but it is open to the complainant to give up some of them. The non-examination of the given up witnesses does not vitiate the commitment proceedings. This view was taken by this Court in *Vijay Kumar v. The State of Haryana and another*, (1).

4. The first contention of the petitioner's counsel is that the Magistrate having failed to examine all his witnesses in the proceedings under section 202 of the Code, the commitment proceedings are liable to be quashed. I find no merit in this contention. The petitioner had given a list of 16 witnesses but was content to examine only nine of them in the commitment proceedings. No doubt, a duty has been cast upon the Magistrate under proviso to section 202(2) of the Code to call upon the petitioner to produce all his witnesses but the petitioner could not be forced by the Magistrate to examine all the sixteen witnesses. After examining nine witnesses the petitioner had closed the evidence. There is no indication that the petitioner wanted to produce the remaining witnesses mentioned in the list and he was prevented from doing so by the Magistrate. In these circumstances it can be fairly concluded that the petitioner felt satisfied by examining only nine witnesses. The petitioner having himself given up the remaining witnesses cannot be heard to say that the Magistrate had violated the proviso to section 202(2) of the Code. I, therefore, find the contention of the petitioner untenable and in my opinion there is no ground for quashing the commitment proceedings.

5. The next grievance of the petitioner is that the Additional Sessions Judge, Ropar, was not justified to prevent him from examining his witnesses who were mentioned in the list of prosecution witnesses but were not examined before the Magistrate in commitment proceedings. It is submitted that a wrong view has been taken by the trial Court that the recording of the prosecution evidence under section 231 of the Code is limited by the provisions of proviso to sub-section (2) of section 202 of the Code. The contention is that there is no provision in the Code debarring the prosecution from examining the witnesses mentioned in the list of witnesses even though they were not produced in the commitment proceedings. In order to appreciate this contention the true import of the provisions of the proviso to sub-section (2) of section 202 and section 231 of the Code is required to be understood. As mentioned earlier, proviso to subsection (2) of the section 202 of the Code lays down that in a case triable exclusively by the Court of Session, the Magistrate has to allow the complainant to produce all his witnesses and examine them on oath. This provision evidently places obligation upon the Magistrate to examine all witnesses produced by the complainant and he cannot refuse to examine some of them. However, the right of the complainant to give up some of the witnesses mentioned in the list of witnesses has not been curtailed. It is nowhere provided in section 202 that the

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prosecution will not be entitled to produce those witness at trial who were not examined in commitment proceedings. Section 231 of the Code then provides that on the date fixed for examining of witnesses the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. In this section also it is not mentioned that the trial Court will examine only those witnesses who have been produced during the inquiry under section 202 of the Code. There is thus no express or implied indication in these sections to prohibit the prosecution from examining the witnesses at trial who have not been examined in commitment proceedings. A note be also taken of the fact that it is not required under section 202 of the Code that the complainant must file a list of witnesses before an inquiry is made under the proviso to sub-section (2). All that is expressed in the proviso is that the Magistrate will call upon the complainant to produce all his witnesses. Section 203 of the Code then lays down that if, after considering the result of the inquiry or investigation under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint. Under section 204 of the Code, the Magistrate is required to issue process against the accused if in his opinion there is sufficient ground for proceeding. It is at that stage that under sub-section (2) the Magistrate has to require the prosecution to furnish a list of witnesses which are to be examined at the trial. If the intension of the Legislature was that at trial before the Court of Session only those witnesses could be examined which had been already produced in the inquiry under section 202 of the Code then not only it would have been expressly so provided in section 202, but also there was no need of introducing the provision in section 204 that at the stage of issuing process to the accused the Magistrate has to ensure that the list of prosecution witnesses has been filed. This provision would become surplus if a limit is put upon the prosecution only to examine those witnesses at trial which had been produced in commitment proceedings under section 202 of the Code. It is well-known that no redundant provision is incorporated by the Legislature in any Statute. The intention of the Legislature is, therefore, clear that the complainant is entitled to examine all those witnesses upon whom he wants to rely during commitment proceedings, and thereafter at the stage of summoning the accused he is required to file a list of witnesses whom he wants to examine at the trial. The inevitable conclusion, therefore, is that the evidence which the prosecution is entitled to produce in support

of its case under section 231 is not limited by proviso to section 202(2) of the Code. Section 202 pertains to the commitment proceedings before the Magistrate, whereas section 231 applies to the trial before the Court of Session. These are two independent sections and by no stretch of imagination section 231 of the Code can be deemed to be subservient to the provisions of section 202 of the Code. My conclusion, therefore, is that under section 231 of the Code, the trial Court has to examine all such witnesses as may be included in the list of witnesses to be filed under section 204 of the Code. It may, however, be kept in mind that manifestly the effect of section 204(2) is not to preclude the examination of any witness in inquiry or trial merely because the name of such witness was not included in the list. The question of examination of such witness would be within the discretion of the Court. The Court while exercising the discretion would consider whether he is a material witness i.e. he is a witness essential to the unfolding of the narrative on which the prosecution is based.

6. The view taken by the trial Court is that if the prosecution is permitted to examine the witnesses who were not earlier produced in the commitment proceedings it will cause prejudice to the accused in view of the provisions of section 208 of the Code which imposes a duty upon the Magistrate to furnish copies of statements of all the witnesses examined by him to the accused free of cost. The reasoning given is that unless the witnesses are examined in commitment proceedings under section 202 of the Code, the accused will not be in a position to point out any contradiction when they are subsequently examined at trial. This view in my opinion is erroneous. The purpose of section 208 of the Code is only to furnish to the accused free of cost copies of the statements recorded of all the persons examined by the Magistrate. As held by the Andhra Pradesh High Court in *Mesara Narayana Reddy and others v. Knanakanti Mal Reddy, and another*, (2), this section does not provide for a situation as to what happens when some of the witnesses were not examined. Thus, it cannot be inferred that the purpose of section 208 of the Code is to limit the prosecution evidence at trial to the witnesses already produced before the Magistrate. If the view of the learned trial Court is accepted, it will lead to chaotic results. Under section 200 of the

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Code where the Magistrate chooses to proceed without postponing the issue of process after examining the complainant and some of the witnesses, and to issue the process against the accused, there is no question of any obligation being placed on the Magistrate to examine all the witnesses on which the complainant relies upon and in such a case there is no question of the accused being deprived of the right of cross-examining those witnesses who were not examined. The acceptance of the aforesaid view of trial Court would mean that in such cases wherein the accused has been furnished copies of the statements only of the complainant and some of his witnesses under section 200 of the Code the production of the remaining witnesses at trial would cause prejudice to the accused. If the view of the trial Court is taken to the logical conclusion, section 231 of the Code will be limited by section 200 and only those witnesses who were examined by the Magistrate under section 200 could be examined at the trial under section 231 of the Code. This certainly is not the intention of the Legislature.

7. For the reasons given above, I am unable to agree with the finding of the trial Court that under section 231 of the Code only those witnesses can be examined at trial who had been produced in commitment proceedings under section 202 of the Code. The true legal position seems to be that under section 231 of the Code the trial Court has to examine all the witnesses mentioned in the list, envisaged by section 204 of the Code, of course subject to the condition that the evidence of the witnesses is relevant to the facts of the case within the ramifications of the Indian Evidence Act. Consequently, this revision is allowed, the impugned order of the trial Court is set aside, and the trial Court is directed to examine all the witnesses which are named in the list of prosecution witnesses subject to the condition that their testimony is relevant to the trial of the case. The parties are directed to appear before the trial Court for further proceedings on November 19, 1984.

H. S. B.