

Diwan Hari Kishan v. Bharat Nidhi, Ltd. and others
Bishan Narain, &

had been frozen by the Pakistan Government. It was then half-heartedly suggested on the basis of the statement of Sohan Lal that he had brought a draft of Rs. 17,000 from the Hafizabad Branch and had handed over this draft to the Manager at Amritsar Branch of the Bank. There is no corroboration of this statement and in any case the witness does not know if the Accountant of the Amritsar Branch was able to cash the draft. In any case this amount represented cash that was lying with the Hafizabad Branch and it was never earmarked as money belonging to the partnership. In these circumstances even if this amount was transferred to India I fail to see its effect on the present dispute. For all these reasons I am of the opinion that the Bank is under no obligation now to pay this amount to the applicants in India in the circumstances of the case and the condition imposed by the Tribunal goes as far as it could go to assist these creditors of the Bank.

In view of this matter it is not necessary to discuss the other points argued before me.

The result is that the appeal as well as the revisions fail. I accordingly dismiss them with costs.

REVISIONAL CRIMINAL

Before Mehar Singh, J.

JOGESHAR SINGH,—*Petitioner*

v.

BACHAN SINGH, 2. KULWANT SINGH,—*Respondents*

Criminal Revision No. 759 of 1956.

Code of Criminal Procedure (Act V of 1898)—Sections 173, 251 and 251-A—Report of offence made against six persons to the police—Police sent up only four persons for trial

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and did not arrest the other two—Their names also not mentioned in the report under section 173 sent to the Magistrate—During trial Magistrate ordering prosecution of these two persons as well—Case transferred to another Magistrate for trial—Second Magistrate proceeding under section 251-A and ordering discharge of these two persons—Procedure, whether legal—One Magistrate ordering prosecution—Second Magistrate, whether can discharge.

Held, that it is clear from the wording of clause (a) of section 251 of the Code of Criminal Procedure that for the application of the procedure under section 251-A all that is to be seen is that the case is instituted on a police report and it is not to be seen against whom the case is instituted. A police report is made to a Magistrate under section 173 of the Code, subsection (1) of which concerns persons who are forwarded to a Magistrate for trial and subsection (3) refers to persons who are not so forwarded. The Magistrate to whom the report is forwarded is competent to order prosecution of a person under subsection (3) of that section even if the police has not chosen to arrest such a person and the question of his release on executing a bond under section 169 of the Code has not arisen. Such a prosecution will be considered to be a case instituted on a police report within clause (a) of section 251 of the Code and procedure followed under section 251-A of the Code is perfectly legal.

Held, that the order of prosecution by the first Magistrate cannot possibly either take away or fetter the powers of the second Magistrate to discharge the persons prosecuted under subsection (2) of section 251-A of the Code.

Hkia Ally v. Emperor (1), relied upon.

Petition under section 439 of Criminal Procedure Code for revision of the order of Shri H. S. Bhandari, Additional Sessions Judge, Ambala, dated the 28th June, 1956, affirming that of Shri Roshan Lal, Magistrate, 2nd Class, Kharar, dated the 2nd May, 1956, acquitting the respondents.

H. S. DOABIA, Advocate, for the Petitioner.

H. S. GUJRAL, Advocate, for the Respondents.

JUDGMENT

Mehar Singh, J. MEHAR SINGH, J.—A report was made by Jogeshar Singh applicant in police station Kharar against six persons, namely, Gurdev Singh, Jasmer Singh, Harchand Singh, Naib Singh, Kulwant Singh and *lambardar* Bachan Singh that they had committed an offence under section 325, read with section 34, Indian Penal Code, in causing grievous hurt to Jogeshar Singh applicant and one Raghbir Singh. After investigation the police sent up for trial the first four persons named above, but in the report under section 173 of the Code of Criminal Procedure it was stated that Kulwant Singh and *lambardar* Bachan Singh were not arrested, and in fact these two persons were not sent up for trial.

The case came up for trial before a Magistrate of the First Class at Chandigarh, who, after taking statements of two witnesses, came to the conclusion that Kulwant Singh and *lambardar* Bachan Singh should also be prosecuted. It appears that he issued bailable warrants against these two persons. At the same time he forwarded the case to the Additional District Magistrate of Ambala for transfer of the case to some other Court of competent jurisdiction. The case was transferred to the Court of the Magistrate of the Second Class at Kharar.

When the case came up for trial before the latter Magistrate, he appears to have proceeded according to section 251 A of the Code of Criminal Procedure in so far as Kulwant Singh and *lambardar* Bachan Singh were concerned. He examined the police diary and the police file and after hearing the parties came to the conclusion that these two persons had no hand in the fight.

He, therefore, discharged them by his order of May 2, 1956. It appears that the order discharging these two persons is under subsection (2) of section 251-A of the Code of Criminal Procedure.

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There was a revision application by Jogeshar Singh, applicant, which was heard by the Additional Sessions Judge of Ambala, and he agreed with the trial Magistrate that there was no case against these two persons, and particularly on the ground that two witnesses, namely, Chhajja Singh and Ram Kishan, cited in the calendar of witnesses, had, in their police statements, said that these persons were not present in the fight. The revision application was, thus dismissed on June 28, 1956. This is a revision application by Jogeshar Singh, applicant, against the orders of the Courts below.

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The learned counsel for the applicant argues that the trial Magistrate has acted illegally in discharging Kulwant Singh and *lambardar* Bachan Singh under subsection (2) of section 251-A of the Code of Criminal Procedure because section 251-A does not apply to the case as against these two persons, the case had not been instituted on a police report, but that they were being prosecuted under the orders of the Magistrate, 1st Class, of Chandigarh and so the case against them falls within the ambit of clause (b) of section 251 of the Code of Criminal Procedure. In a case falling under that clause the procedure to be followed is that provided in other provisions of chapter XXI of the Code leaving out section 251-A. Under that procedure it was the duty of the Magistrate to take evidence for the prosecution under section 252 and it was only after that that these two persons could, if at all, be discharged under section 253. The reply on the side of the

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respondents, namely, Kulwant Singh and *lambardar* Bachan Singh, is that under clause (b) of section 251 of the Code of Criminal Procedure what is to be seen is that the case is instituted on a police report and not necessarily that it should be instituted against a particular person. Once it is so instituted, all persons who are tried in such a case are to be tried according to section 251-A of that Code.

Section 251 says—

“251. In the trial of warrant cases by Magistrate, the Magistrate shall— •

(a) in any case instituted on a police report follow the procedure specified in section 251-A; and

(b) in any other case, follow the procedure specified in the other provisions of this chapter.”

It is at once clear from the wording of clause (a) of section 251 that for the application of the procedure under section 251-A, all that is to be seen is that the case is instituted on a police report and it is not to be seen against whom the case is instituted. A police report is made to a Magistrate under section 173 of the Code of Criminal Procedure. Subsection (1) of that section concerns persons who are forwarded to a Magistrate for trial and subsection (3) of that section refers to persons who are not so forwarded. The latter subsection reads—

“173(3). 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”.

The words 'or otherwise as he thinks fit' give power to the Magistrate to order prosecution of such a person, and once he orders prosecution of such a person under that power, I cannot see why such a prosecution is not forwarded by the police for trial to the Magistrate, his trial or the institution of the case against him will still be on a police report and the procedure applying will be under section 251A of the Code. Now, the question is whether, when on a report having been made against a person under section 154 of the Code, the police does not even arrest him and therefore, the question of his being released on executing a bond under section 169 of the Code does not arise, and in the report under section 173 of the Code he is not mentioned as an accused person, while others are, such a person can be prosecuted by the order of a Magistrate under subsection (3) of section 173 of the Code: if the answer is in the affirmative, then it is obvious that the case is instituted against such a person on a police report, but if the answer is in the negative, then the case is not instituted against him on a police report. In my opinion the answer to the question is in the affirmative because when considering a report under section 173 of the Code, a Magistrate is not deterred from ordering prosecution of a person under subsection (3) of that section, simply because the police has not chosen to arrest such a person and the question of his release on executing a bond under section 169 of the Code has not arisen. Similar view has been expressed in *Hkia Ally v. Emperor* (1), in which the learned Judge observed—

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“When an accused person has been released on his bond the Magistrate shall make such order for the discharge of

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the bond, or otherwise, as he thinks fit. It is clear from the words "or otherwise" that the Magistrate can on such a report order the prosecution of the person who has been released. And it appears to me to be quite clear that the power of the Magistrate to order a prosecution does not depend on the question whether the police have arrested the person who, in the Magistrate's opinion, ought to be put on his trial. The Magistrate's powers in this respect are quite as wide under section 173 as under section 159."

In the present case what has happened is that the first Magistrate who was seized of the trial of the case at Chandigarh did not proceed under subsection (3) of section 173 of the Code but proceeded with the trial of the four accused before him and it was during the course of the trial that he came to the conclusion that the two respondents should also be prosecuted in the case. I do not consider that that makes any difference, for in such a case—the case having in fact been instituted on a police report—when under the orders of a Magistrate some other persons are also prosecuted in the same case, it cannot be said that it is a case coming under clause (b) of section 251 of the Code. The consequence is that the trial Magistrate of Kharar rightly proceeded against the respondents under section 251-A of the Code and there is no defect in the procedure followed by him.

When the accused appeared before the trial Magistrate at Kharar he could proceed under subsection (2) of section 251-A of the Code and discharge all or any of them. This is exactly what he has done in regard to the two respondents.

The learned counsel for the applicant then contends that one Magistrate had ordered prosecution of the respondents and it was not open to the second Magistrate to discharge the respondents as he has done, but obviously this argument has no force because the order for prosecution by the first Magistrate could not possibly either take away or fetter the powers of the second Magistrate to discharge the respondents under subsection (2) of section 251-A of the Code.

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On merits, it appears that the witnesses named in the report are not cited in the calendar of witnesses, that the two witnesses examined by the first Magistrate made inconsistent statements with regard to the two respondents, and that the two witnesses cited in the calendar of witnesses as eye-witnesses in their police statements have stated that the respondents were not present at the time of the fight. Upon this material both the learned trial Magistrate and the learned Additional Sessions Judge were justified in the orders that they have passed. I see no ground at all for interference with their orders.

The revision application fails and is dismissed.

CRIMINAL REVISIONAL

Before Passey, J.

THE STATE,—*Petitioner*

v.

BANWARI AND OTHERS,—*Respondents*

Criminal Revision No. 843 of 1956.

*Code of Criminal Procedure (V of 1898)—Section 435—
Gram Panchayat Act (IV of 1953)—Sections 51, 66(1) and
72(2)—Applicability of the provisions of the Code to the
Criminal proceedings before a Panchayat—Order passed by*

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