

cannot, therefore, be held to be suspicious or unreliable simply because no independent witness was opted to join the raiding party. At best, it would be a suspicious circumstance which would require the Court to scrutinise the prosecution evidence with more caution and care but in no case by itself it can warrant the discredit of the prosecution case. We are, therefore, of the considered view that *Dalip Singh's case* (supra) was not correctly decided and the dictum laid down therein that the failure to join an independent witness on the part of the police official would attach a taint to his evidence, has to be disapproved.

(7) On facts, however, we are not satisfied that it is a fit case to order retrial. Admittedly, the police along with the Excise Inspector had formed a raiding party to make a raid at village Kanganwal on the basis of some secret information. It is surprising that the raiding party remained content with the recovery of this small quantity of opium and, therefore, returned to the police station. No explanation was given as to why the raiding party did not proceed to village Kanganwal to make the intended raid. Moreover, Head Constable Amar Singh did not even state that he got his person searched before searching the person of the respondent.

(8) Keeping in view the common place story and the other circumstances discussed above, we feel that the case against the accused is not free from reasonable doubt and dismiss the appeal accordingly.

S. S. Sandhawalia, J.— I agree.

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K. T. S.

CRIMINAL MISCELLANEOUS

Before S. C. Mital, J.

SURINDER KUMAR ETC.,—Petitioners

.. . . . versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 1488-M of 1977

May 18, 1977.

*Criminal Procedure Code (II of 1974)—Sections 170(1), 173(5) and 209—Persons not sent up for trial by the police—Magistrate—Whether can commit them for such purpose.*

Surinder Kumar etc. v. The State of Punjab (S. S. Mital, J.)

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*Held*, that in the scheme set out in sections 170(1), 173 and 209 of the Code of Criminal Procedure 1973, the Magistrate is required to commit those accused persons who have been forwarded by the police to him for that purpose. In the case of persons who are not charge sheeted by the police for committing the crime alleged against them and their names exist in column No. 2 of the report submitted by the Police, the question of their commitment to the court of Sessions cannot arise. A Magistrate, therefore, has no jurisdiction to commit to the court of Sessions for trial persons who have not been sent up by the police for that purpose.

(Paras 3 and 6).

*Petition under Section 482 Cr.P.C. read with Article 227(c) of the Constitution of India praying that by accepting this petition the petitioner be discharged from all the charges and further praying that the further proceedings be stayed during the pendency of this case.*

D. S. Bali, Advocate, for the Petitioners.

V. P. Prashar, A.A.G. (Pb.), for the Respondent.

#### JUDGMENT

S. C. Mital, J.—(1) A case under section 306 (abetment of suicide) read with section 34, Indian Penal Code, was registered at Police Station, Sangrur. After completing the investigation, the police, in their report (charge-sheet) under section 173 of the Code of Criminal Procedure, accused Rajinder Kumar, Smt. Parkash, Smt. Laj Gupta and Smt. Gauran of committing the crime. Column No. 2 of the report prescribed by the Punjab Police Rules, Volume III, reads:—

“Names and addresses of accused persons not sent up for trial, whether arrested or not arrested, including absconders (show absconders in red ink).”

Surinder Kumar, Ram Lal and Smt. Daya Devi, the petitioners, were mentioned in column No. 2 of the report. The police request for their discharge was rejected by the Chief Judicial Magistrate, Sangrur. In the impugned order the Magistrate expressed the view that the offence under section 306, Indian Penal Code, being triable exclusively by the Court of Session, he, under section 209 of the Code of Criminal Procedure, had no option but to commit the petitioners.

In this petition under section 482 of the Code of Criminal Procedure, the authority of the Magistrate to commit the petitioners to the Court of Session has been challenged.

(2) Sub-section (1) of section 170 of the Code of Criminal Procedure provides that if upon an investigation, it appears to the officer incharge of the police station that there is sufficient evidence or reasonable ground to justify the forwarding of an accused to a Magistrate, empowered to take cognisance of the offence, such officer shall do so and the Magistrate will try the accused or commit him for trial. Sub-section (2) of section 173 of the Code provides that in the report, the abovesaid officer shall *inter alia* state the names of the persons who appear to be acquainted with the circumstances of the case and the particulars of the persons, who appear to have committed the offence. Sub-section (5) of section 173 of the Code lays down :—

“(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- (b) the statement recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.”

The relevant part of section 209 of the Code of Criminal Procedure reads:—

“When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

- (a) commit the case to the Court of Session.”

(3) In the scheme set out above, the Magistrate is required to commit those accused persons who have been forwarded by the police to him for that purpose. As already pointed out, the petitioners are

Surinder Kumar etc. v. The State of Punjab (S. S. Mital, J.)

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not the persons charge-sheeted by the police for committing the crime alleged against them. Existence of their names in column No. 2 of the report above said and the request of the police for their discharge make it abundantly clear that the petitioners were not forwarded to the Magistrate for committing them for trial. In this situation, how can the question of their commitment to the Court of Session arise.

(4) All the same learned Assistant Advocate-General urged that the Magistrate is not bound by the report of the police submitted under section 173 of the Code of Criminal Procedure. Reliance was placed on *Ajit Singh and another v. The State* (1), laying down that if on the evidence actually recorded by the Court the guilt of an accused person is substantiated, the Court cannot be called upon to acquit the accused, merely because an investigating officer has for certain reasons considered the accused to be innocent. At the present stage of the case in hand this ruling is distinguishable. After the amendment of the commitment proceedings, the Magistrate, now acting under section 209 of the Code, is not required to record evidence. On the other hand, once the offence is found triable exclusively by the Court of Session, the Magistrate has to commit an accused person.

(5) Whether the Court of Session, in the absence of commitment, would be in a position to proceed against the petitioners is a question which needs no decision at present. However, it may be mentioned that, in all fairness, learned counsel for the petitioners invited my attention to a decision of the Andhra Pradesh High Court in *Patananchala China Lingaiah v. The State and another* (2), answering the question in the affirmative. For me, it being premature to express an opinion on this matter, I leave it open.

(6) In the result, I find that the Chief Judicial Magistrate has no jurisdiction to commit the petitioners—Surinder Kumar, Ram Lal and Smt. Daya Devi to the Court of Session for trial. I accordingly allow the petition and quash the impugned order.

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K.T.S.

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(1) 1961 P.L.R. 571.

(2) 1977 Cur. L.J. 415.