Rai Bahadur Sewak Ram Trust Society v. Mohkam Chand

Capoor, J.

this Court. That was a case under the Rent Control Act applicable to Delhi. The powers of the High Court under section 15(5) of the East Punjab Urban Rent Restriction Act have been explained by the Supreme Court in *Neta Ram and others* v. *Jiwan Lal and another* (5), at page 698 of the report and it has been held that if the Rent Controller and the appellate authority had examined the acts after instructing themselves correctly about the law, a Court of revision should be slow to interfere with the decision thus reached, unless it demonstrates by its own decision, the impropriety of the order, which it seeks to revise. In the instant case, while accepting the facts as given by the Courts below, the conclusion on the authorities already cited would be that constructions made by the Trust in the year 1956 amount to new constructions for the purpose of the notification issued by the Governor of the Punjab under section 3 of the Act.

On this view, no other question arises for decision and accepting the revision petition and setting aside the orders of the Courts below, I dismiss the tenant's application under section 4 of the Act with costs throughout. Counsel's fee Rs. 50.

*B.R.T.*

REVISIONAL CRIMINAL

*Before Inder Dev Dua and Hans Raj Khanna, JJ.*

FATTA AND OTHERS,—*Petitioners.*

*Versus*

THE STATE,—*Respondent.*

**Criminal Revision No. 1392 of 1962.**

1964

Feb., 4th.

*Code of Criminal Procedure (V of 1898)—S. 190—Trial Magistrate—Whether can summon persons other than those*

(5) (1962) 64 P.L.R. 694.

*challaned by police as accused—"Takes cognizance of an offence"—Meaning of.*

*Held*, that when a magistrate acts under any of the clauses of sub-section (1) of section 190 of the Code of Criminal Procedure, 1898, he takes cognizance of an offence. The expression "takes cognizance of an offence" cannot be equated with "take cognizance of an offender" and the normal rule is that when a Magistrate takes cognizance of an offence he takes cognizance of the case as a whole. As such he gets seized of the whole case and in the circumstances there appears to be no bar to his issuing process against all persons who appear to be involved in the offence. The contention that when a Magistrate takes cognizance under clause (b) of the above sub-section upon a report made by a police-officer he is restricted to issuing process only to the persons challaned by the police is not warranted by the language of the sub-section.

*Case referred by Hon'ble Mr. Justice H. R. Khanna, on 18th March, 1963 to a larger bench for decision of an important question of law involved in the case and the case was finally decided by a Division Bench, consisting of Hon'ble Mr. Justice Inder Dev Dua and Hon'ble Mr. Justice H. R. Khanna on 4th February, 1964.*

*Petition under Sections 435 and 439 Cr. P. C. for revision of the order of Shri Munni Lal, Additional Sessions Judge, Karnal, dated the 11th October, 1962, affirming that of Shri G. S. Aggarwal, Magistrate, Ist Class, Karnal, dated the 25th June, 1962, convicting the petitioners.*

MANI SABRAT JAIN, ADVOCATE, for the Petitioners.

M. R. CHHIBBER, ADVOCATE, for the Advocate-General. for the Respondent.

Y. P. GANDHI, ADVOCATE, for the Complainant.

## JUDGMENT

Khanna, J.

KHANNA, J.—This case was referred to a larger Bench in pursuance of my order, dated March 18, 1963 and the question which arises for determination is whether the trial Magistrate could pass an order for summoning the petitioners as accused

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persons even though the police challaned some other persons and not the petitioners.

The facts of the case are given in my referring order and are briefly as follows:—

Harbhaj made a report at police-station Butana on December 10, 1961, that he and his son Dila Ram had been attacked by six persons, Fatta, Babu, Mulla, Hardeva, Risala and Ran Singh, while Harbhaj and his son were on the way to the police-station as a result of which they received a number of injuries some of which were grievous. The police after investigation challaned Hardeva, Risala and Ran Singh under sections 325 and 324 read with section 34 of the Indian Penal Code. Fatta, Babu and Mulla, who are all brothers, were not challaned and their names were mentioned in column No. 2 of the *challan*. The Magistrate Ist Class, Karnal, in whose Court the *challan* had been filed, recorded the statements of Harbhaj (P.W. 1) and his son Dila Ram (P.W. 2) and they both supported the allegation that they had been attacked and given injuries by the six assailants including Fatta, Babu and Mulla petitioners. Daulat Ram (P.W. 3) and Jaimal Singh (P.W. 4). were also examined as eye-witnesses and they corroborated the evidence of Harbhaj and Dila Ram. Dr. Madan Lal Malhotra (P.W. 5) deposed with regard to the presence of eight injuries on the person of Harbhaj and one injury on the person of Dila Ram when he examined them on December 9, 1961. An application was then filed by Harbhaj before the learned Magistrate that Fatta, Babu and Mulla had also joined in the assault and they too should be proceeded against along with Hardeva, Risala and Ran Singh. The learned Magistrate, after hearing the counsel for the parties, passed an order on June 25, 1962 to the effect that Fatta, Babu and Mulla be summoned as

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accused persons to stand trial along with other three accused for causing injuries to Harbhaj and Dila Ram. Revision petition against the aforesaid order was dismissed by learned Additional Sessions Judge, Karnal. Fatta, Babu and Mulla thereupon came up in revision to this Court.

When the case came up for hearing before me on March 18, 1963 it was pointed out that there was some conflict of view. To ensure an authoritative pronouncement on the subject I then directed that the papers might be laid before my Lord, the Chief Justice, for decision of the point by a larger Bench.

We have heard Mr. Jain on behalf of the petitioners, Mr. Chhiber on behalf of the State and Mr. Gandhi on behalf of the complainant, and are of the view that the trial Magistrate could pass the impugned order and the same is not vitiated by any illegality. Sub-section (1) of section 190 of the Code of Criminal Procedure reads as under:—

> "190. (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—
>
> (a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a report in writing of such facts made by any police-officer;
>
> (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed."

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Perusal of the above sub-section goes to show that when a Magistrate acts under any of the clauses of the above sub-section he takes cognizance of an offence. The expression "takes cognizance of an offence" cannot be equated to take cognizance of an offender and the normal rule is that when a Magistrate takes cognizance of an offence he takes cognizance of the case as a whole. As such he gets seized of the whole case and in the circumstances there appears to be no bar on his issuing process against all persons who appear to be involved in the offence. The contention that when a Magistrate takes cognizance under clause (b) of the above sub-section upon a report made by a police-officer he is restricted to issuing process only to the persons challaned by the police is not warranted by the language of the sub-section. The matter has been dealt with on page 915 of Sohoni's Code of Criminal Procedure, 15th Edition, and the passage, which is based upon a number of authorities, reads as under:—

> "Generally when a Magistrate has taken cognizance of an offence and proceeds with the trial of the case, it is his duty to proceed to deal with the evidence brought before him and to see that justice is done in regard to any person who might be proved by the evidence to be concerned in that offence. He is entitled to proceed against persons other than those against whom the complaint was filed if they appear to be involved in the offence. The ordinary rule is that when a Magistrate takes cognizance of an offence he takes cognizance of the case as a whole, and is empowered to summon all persons against whom there appears to be any reason

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> for their prosecution, even though their names are not mentioned for this purpose in the petition of complaint. But when he takes proceedings against other persons or in respect of offences not mentioned in the report if he is to be deemed as taking cognizance under clause (c), then he must comply with the provisions of section 191, and failure to do so would invalidate the conviction. It is to be noted that the expression "cognizance of an offence" in this section is not equivalent of the cognizance of an offender, for the definition of complaint includes a complaint that some person unknown has committed an offence."

In a Full Bench case *Mehrab and another* v. *The Crown* reported in (1) a question similar to the one involved in the present case arose and it was observed by Raymond, A.J.C., as under:—

> "Now it is important to observe that under section 190 Criminal Procedure Code, a Magistrate takes cognizance of an offence and not of the offender and though the expression "to take cognizance" is not defined in the Code, it is, as interpreted in the case of *Emperor* v. *Sourindra Mohan* (2), as soon as a Magistrate applies his mind to the suspected commission of an offence". When therefore, the police report in the present case under section 173, Criminal Procedure, Code, was sent up to the Magistrate he took cognizance of the offence of theft of six buffaloes under

(1) A.I.R. 1924 Sind 71.
(2) (1910) I.L.R. 37 Cal. 412.

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section 190, clause (b), and when he proceeded to deal with the evidence brought before him, it was certainly his duty to see that justice was done with regard to any other person that may be suspected of being concerned in the offence. The initiative was taken on the police report of the offence of theft and though the police may choose to place before the Magistrate for trial only one of the suspects, yet as the Magistrate was seized of te whole case as soon as he takes cognizance of it, he would be perfectly justified in issuing process against any other persons who, he has reasons to believe, are implicated in the offence which he has taken cognizance of and his action against them would fall under section 190, clause (b) and not under clause (c).

The fact that the police in a report submitted under section 173 have not mentioned all the parties concerned in an offence which has been sent up for inquiry does not debar a Magistrate from taking action against persons other than those mentioned in the police report and he would fail in the discharge of one of the principal functions of his office were he to abstain from doing so."

The above dictum was followed by a Division Bench of Calcutta High Court in *Saifar and others* v. *State of West Bengal,* reported in (3).

(3) A.I.R. 1962 Cal. 133.

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Mr. Jain has relied upon an unreported case *Gajjan Singh,* v. *The State,* Criminal Revision No. 962 of 1961 decided by Bedi, J., on September 11, 1961. In that case a report was lodged with the police against four persons. The police after investigation challaned two of them and reported that no case had been proved against the other two. When the challan was presented in Court the trial Magistrate ordered that the two persons who had not been challaned should be summoned as accused in the case. Those two persons then came up in revision and it was held that the proceedings against the two persons who had not been challaned by the police were liable to be quashed. Perusal of the facts of that case goes to show that it was conceded that the trial Magistrate, who was a Magistrate of the First Class, did not enjoy special powers as envisaged in sub-section (1) of section 190 of the Code of Criminal Procedure. This concession was not well-founded because reference to Sohoni's Code of Criminal Procedure, 15th Edition, page 920, goes to show that, according to Punjab Gazette notification of 1883, all Magistrates in the Punjab of the first and second class are invested with power to take cognizance of offences upon complaint and upon information, but not on their own knowledge or suspicion. Mention too is made of Punjab Gazette notification of 1878, according to which Magistrates of the first class have also power, subject to the control of the District Magistrate, to entertain cases without complaint. There is also refernce to the above notification of 1883 in *Piyare Lall and others* v. *The Emperor of India* (4), and *Hira Lal* v. *The Crown* (5). It would thus appear that the case *Gajjan Singh* v. *The State* (Criminal Revision No. 962 of 1961) was decided upon a wrong assump-

(4) 20 P.R. 1901 (Cr.)
(5) 7 P.R. 1918 (Cr.)

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tion of facts. Reference in that case was also made to two cases, *Harbir Singh* v. *The State* (6), and *Mst. Indo* v. *Gainda Singh* (7), and Mr. Jain too has placed reliance upon those cases. Both those were cases in which the police had made recommendation under section 173 of the Code of Criminal Procedure for cancellation of the cases. It was held that it was open to the Magistrate to accept the police recommendation or not. If he accepted the recommendation he was to cancel the case, but but if he did not, all that he could do was to make a note that he did not agree with the police and did not accept their recommendation. It was also observed that it was open to the aggrieved party, if it so chose, to put in a complaint in Court. In none of the above two Pepsu cases, in the circumstances, could it be said that the Magistrate had taken cognizance of the offence; while in the present case, as stated above, the trial Magistrate did take cognizance of the offence. The present is also not a case in which the police had made a recommendation under section 173 of the Code for the cancellation of the case. The above-mentioned two Pepsu cases are consequently clearly distinguishable and the petitioners, in our opinion, can derive no benefit from those cases.

As a result of the above we hold that there was no legal impediment in the way of the trial Magistrate passing order for summoning the petitioner's as accused persons even though the police had challaned some other persons and not the petitioners. The order has also not been shown to be incorrect or improper on merits. The

(6) A.I.R. 1952 Pepsu 29.
(7) A.I.R. 1952 Pepsu 38.

revision-petition, accordingly, fails and is dismissed.

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I. D. DUA, J.—I agree.
*B.R.T.*

APPELLATE CIVIL

*Before Daya Krishan Mahajan, J.*

RAM SARUP,—*Appellant.*

*Versus*

CHANAN SINGH AND OTHERS,—*Respondents.*

**Regular Second Appeal No. 325 of 1963.**

1964

Feb., 6th.

*Landlord and Tenant—Joint land partitioned by decree —Tenant brought on a part of the land by one of the co-owners without the consent of others—Whether can be evicted by the co-sharer to whose share that land falls in execution of the decree—Co-sharer—Whether bound by permanent lease granted by one co-sharer when the land was joint.*

*Held*, that a tenant settled on the joint land by one of the co-sharers does not become the tenant of the other co-sharers unless they consented to his tenancy. In order to bring about relationship of landlord and tenant there has to be a contract between the parties. It is open to the joint owners either to authorise one of the joint owners to settle a tenant on the joint land or to adopt a tenant settled by one of the joint owners as their tenant. The partition decree binds the co-owners and their tenants and a decree-holder, in execution of the partition decree, can evict the tenant who had been brought on the joint land by one of the co-sharers against whom the partition decree is passed and he is not to bring a separate suit for his eviction.

*Held*, that a person to whom a parcel of land has been allotted by a decree for partition of a Civil Court does not take it subject to a permanent lease granted by his former