

Parshootam Dass Jain v. Inder Sain (S. S. Dewan, J.)

of the Gram Panchayat is maintainable even in the face of the provisions of section 23-A of the Act. Hence, I am most reluctant to adjudicate upon that controversial question. Of course, if the aggrieved party feels any necessity, it can, if so advised, get the matter decided by the High Court by filing a writ petition under Article 227 of the Constitution read with section 482, Code of Criminal Procedure.

(5) In the result, I accept this petition on the short ground that the learned Sessions Judge had no jurisdiction to entertain the revision petition and, as such, set aside the impugned order dated 22nd February, 1980 (Annexure P-2), passed by him. The order dated 11th April, 1980, insofar as it directed that operation of orders Annexures P. 1 and P. 2 is stayed, stands vacated.

S.C.K.

Before S. S. Dewan, J.

PARSHOOTAM DASS JAIN,—Petitioner.

versus

INDER SAIN,—Respondent.

Criminal Revision No. 446 of 1977

August 6, 1980.

Code of Criminal Procedure (II of 1974)—Sections 244(1) and 245(2)—Power of Magistrate to discharge an accused—Provisions of section 244(1)—Whether bar the exercise of jurisdiction under section 245(2).

Held, that the Magistrate under section 245(2) of the Code of Criminal Procedure, 1973 has full discretion to discharge an accused at any time if he is of opinion that the complaint is groundless and is not bound to take any further evidence on behalf of the complainant. The Magistrate's order that all evidence on behalf of the complainant must be taken before discharging the petitioner under section 245(2) is not quite correct. Section 245(2) makes this perfectly clear. The Magistrate has ample jurisdiction to make an order of discharge if upon the materials then before him, he is satisfied that no case could possibly be sustained against the accused. Under the circumstances, section 244(1) will not operate as a bar to the exercise of jurisdiction by the Magistrate under section 245(2) of the Code.

(Para 1).

Petition under Section 397/401 of Cr.P.C., 1973 for the revision of the order of Tek Chand Gupta, Judicial Magistrate 1st Class, Jagadhari dismissing the application.

M. P. Maleri, Advocate, for the Petitioner.

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

JUDGMENT

S. S. Dewan, J.

(1) In this case, the respondent brought a complaint against the petitioner under section 406 Indian Penal Code. After reading the complaint and examining the complainant on oath, the Magistrate took cognizance of the case, issued process for the attendance of the accused and of the complainant's witnesses. On 10th May, 1976, the accused-petitioner appeared in the Court. Four witnesses on behalf of the respondent were examined on 22nd July, 1976. On 28th February, 1977 the accused-petitioner put in a petition to the effect that no criminal offence was disclosed and praying for his discharge under Section 245 (2) of Criminal Procedure Code. The respondent filed reply opposing that application. The learned Magistrate considered that application and heard the arguments of the counsel for both the sides. He thereupon recorded the following order:—

“I have heard both the learned counsel on this application today and have also gone through the contents of the application and the documents on the record of the file. Learned counsel for the accused has drawn my attention to Section 245 (2) of Cr. P.C. 1973, according to which a Magistrate is competent to discharge the accused at any stage of the case if for reasons to be recorded, the Magistrate considers the charge to be groundless. His contention is that even after the accused has been summoned and even at the stage when he is being tried according to law, it is within the competence of the Magistrate to consider whether a prima-facie case is made out or not and further that a Magistrate can discharge an accused even at this stage.

Parshootam Dass Jain v. Inder Sain (S. S. Dewan, J.)

I do not agree with this contention of the learned counsel for the accused as Section 244(1) of the Cr. P.C. clearly prescribes that when in any warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate "shall" proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. This leaves no discretion with the Magistrate except to hear the prosecution and take all evidence after the accused has been summoned and has come present to the Court. Sub-clause (2) of section 245 Cr.P.C. cannot be taken to mean to override the explicit provision in Section 244(1) Cr. P.C. As such, without going into the merits of this application, I am of the view that at this stage, this application is not maintainable and I am not competent to go into the details of the merits of this application at this stage. The application is, therefore, dismissed."

The present petition is a petition to have that order set aside on the ground that it is wrong in law. I have been referred by the learned counsel for the petitioner to *Cricket Association of Bengal and others v. The State of West Bengal and others* (1), in support of the proposition that the Magistrate under section 245(2) has full discretion to discharge the accused at any time if he is of opinion that the complaint is groundless and is not bound to take any further evidence on behalf of the complainant. The Magistrate's order that all the evidence on behalf of the complainant must be taken before discharging the petitioner under section 245(2) is not quite correct. Section 245(2) makes this perfectly clear. The Magistrate has ample jurisdiction to make an order of discharge if upon the materials then before him, he is satisfied that no case could possibly be sustained against the accused. Under the circumstances, section 244(1) will not operate as a bar to the exercise of jurisdiction by the Magistrate under section 245(2).

(2) In the result, the revision petition is allowed. The order of the trial Magistrate dated May 10, 1977 is set aside and the magistrate is directed to redecide the petitioner's application in accordance with law. Parties through counsel are directed to appear in the trial court on 27th August, 1980.

S.C.K.

(1) A.I.R. 1971 S.C. 1925.