

# The Indian Law Reports

CRIMINAL MISCELLANEOUS

*Before P. S. Pattar, J.*

GARIB DASS,—*Petitioner.*

*versus*

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Criminal Misc. No. 1970-M of 1975

October 6, 1975.

*Code of Criminal Procedure (2 of 1974)—Sections 169, 173, 190 and 204—Investigating Officer finding an accused innocent and not sending him up for trial—Such accused—Whether can be summoned by the Magistrate to face trial.*

*Held*, that section 169 of the Code of Criminal Procedure lays down that if after the investigation it appears to the officer in charge of the Police Station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, then such officer may release that person from custody on his executing a bond with or without surety with a direction to appear, if and when required, before a Magistrate empowered to take cognizance of the offence. Section 173(4) of the Code lays down that when 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. Under this section the Magistrate is not bound to accept the opinion of the police that there is no sufficient evidence or reasonable ground for suspicion against any particular accused whose name is entered in column No. 2 of the report under section 173 of the Code. The Magistrate after perusing the allegations made against such an accused in the first information report and also in the statements of the witnesses recorded under section 161 of the Code, may summon him as an accused even though the Police has not challaned him. The Magistrate is not bound to accept the opinion of the police officer that a particular accused was found innocent during investigation. Thus an accused who has been found innocent by the Investigating Officer can be summoned by the Magistrate to face trial.

(Para 6).

*Petition under section 482 Criminal Procedure Code praying that the proceedings initiated by Additional Judicial Magistrate 1st Class Rajpura under section 326/325/34 I.P.C. against the petitioner vide his order dated 22nd February, 1975, be quashed, and further praying*

*that during the pendency of the petition further proceedings before the trial Court may be stayed.*

S. S. Sharma, Advocate for the petitioner.

R. S. Palta, Advocate, for the State of Punjab, none is present, for respondent 2 and also for respondents Nos. 3 to 5.

#### JUDGMENT

P. S. Pattar, J.—(1) This is a petition made under section 482 of the Code of Criminal Procedure by Garib Dass son of Kapur Chand, resident of Ber Majra, Tehsil Rajpura, district Patiala, to quash the order dated February 22, 1975, of the Additional Judicial Magistrate, 1st Class, Rajpura, whereby he summoned him to face trial along with other accused under sections 326/34 and 325/34, Indian Penal Code.

(2) The facts of this case are that on May 8, 1974, at 10.15 p.m., a case F.I.R. No. 13 under section 324/34, Indian Penal Code, was registered at Police Station Lalru, Tehsil Rajpura, District Patiala, at the instance of Gurdev Singh, Respondent No. 2, against Gian Singh son of Mangal Singh, Surjit Kaur wife of Mangal Singh and Dyal Kaur daughter of Mangal Singh, residents of Ber Majra, Respondents Nos. 3 to 5. The petitioner was not in village Ber Majra on May 8, 1974, and he was present at Patiala in connection with a case pending in the Court of the Senior Sub-Judge, Patiala. It is alleged that his name was falsely mentioned in the first information report by Gurdev Singh respondent at the instance of Bakhtawar Singh, Sarpanch of the village, who is the main eye-witness in the case on account of political rivalry with a view to harass and humiliate him. An election petition pertaining to the election to the village Panchayat has been filed by the petitioner against Bakhtawar Singh and the same is pending before the Sub-Divisional Officer, Rajpura. Bakhtawar Singh was the Cashier of this society previously and he had misappropriated certain amounts and both Bakhtawar Singh and Gurdev Singh Respondent No. 2 were arrested at the instance of the petitioner for not paying the loan amount due to the society. The Investigating Officer found the petitioner to be innocent and did not arrest him. The investigation was verified by the Deputy Superintendent of Police and he also found him innocent. The report under section 173 of the Code of Criminal Procedure was submitted by the Station House Officer,

Garib Dass v. The State of Punjab, etc. (Pattar, J.)

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Police Station Lalru, on June 18, 1974, in the Court of the Judicial Magistrate wherein the petitioner was shown in Column No. 2, while Respondents Nos. 3 to 5 were challaned under sections 324/34, 326/34 and 452/34 Indian Penal Code. The Additional Judicial Magistrate 1st Class, Rajpura, framed the charges against Respondents Nos. 3 to 5 on October 28, 1974, under sections 326/34, 324/34 and 323/34, Indian Penal Code. The case was then adjourned for the prosecution evidence to 9th of December, 1974 and Smti. Dial Kaur was not present on that day. The evidence of the prosecution witnesses was not recorded on December 9, 1974, and the case was then adjourned to December 21, 1974. Dial Kaur appeared on the latter date and then the case was adjourned for the prosecution evidence to February 17, 1975. On February 17, 1975, Gurdev Singh made an application that Garib Dass petitioner had also caused injuries to him on the day of the occurrence along with the other accused and he should also be summoned and tried along with the other co-accused. The Magistrate adjourned this case for consideration of this application to February 22, 1975, and on that day after hearing the counsel for the parties he passed the following order:—

“This order will dispose of the application moved by complainant Gurdev Singh through counsel Shri Man Singh Advocate stating that Garib Das has been named in the first information report and all the P.Ws. in their statements recorded under section 161, Criminal Procedure Code have named him and have attributed injuries on the person of Gurdev Singh.

I have perused the F.I.R. and also the statements of eye-witnesses recorded under section 161, Criminal Procedure Code. According to F.I.R. Garib Dass has caused a sword blow on the person of Gurdev Singh complainant. This has been corroborated by the eye-witnesses. Hence I am satisfied that there is a *prima-facie* case against the accused Garib Dass under section 326/325/34, Indian Penal Code and accordingly he be summoned to face trial along with other co-accused. Garib Dass accused be summoned for 18th March, 1975”.

Feeling aggrieved, Garib Dass filed this petition to quash this order on the allegation that the order is without jurisdiction and is illegal, that the Magistrate could summon an accused person under section

204, Criminal Procedure Code, if here is a complaint made by a private person, that there is no provision in the Code of Criminal Procedure to summon the accused before recording any evidence by the Magistrate and the impugned order is illegal and it may be set aside. Notice of this petition was issued to the respondents who contested the same.

(3) I have heard the counsel for the parties and the counsel for the State of Punjab. The counsel for Gurdev Singh, Respondent No. 2, and the counsel for Respondents Nos. 3 to 5 are absent today.

(4) Section 482 of the Code of Criminal Procedure lays down that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The inherent power of the High Court under this section can be exercised to quash proceedings of a case or quash the order passed without jurisdiction by a Court to prevent the abuse of the process of the Court.

(5) Mr. S. S. Sharma, the learned counsel for the petitioner contended that the only provisions empowering the criminal Court to summon a person accused of an offence are contained in section 204, section 169, sub-sections (4) and (5) of section 173, sections 239 and 240 and section 319, Criminal Procedure Code; and that none of these provisions is applicable to the present case and the impugned order of the Magistrate summoning the petitioner as an accused in the case is without jurisdiction and is liable to be quashed.

Section 204, Criminal Procedure Code, runs as under:—

“(i) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be,

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate

Garib Dass v. The State of Punjab, etc. (Pattar, J.)

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or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) \* \* \* \*

This section 204 (1) Criminal Procedure Code, obviously does not support the contention of the petitioner's counsel.

(6) Section 169 of the Code of Criminal Procedure lays down that if after the investigation it appears to the officer in charge of the Police Station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, then such officer may release that person from custody on his executing a bond with or without surety with a direction to appear, if and when required, before a Magistrate empowered to take cognizance of the offence. Section 173(4), Criminal Procedure Code, lays down that when 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. Under this section the Magistrate is not bound to accept the opinion of the police that there is no sufficient evidence or reasonable ground for suspicion against any particular accused whose name is entered in column No. 2 of the report under section 173, Criminal Procedure Code. The Magistrate after perusing the allegations made against such an accused in the first information report and also in the statements of the witnesses recorded under section 161, Criminal Procedure Code, may summon him as an accused even though the police has not challaned him. The Magistrate is not bound to accept the opinion of the police officer that a particular accused was found innocent during investigation. Consequently, the Magistrate could summon the petitioner as an accused when the report under section 173, Criminal Procedure Code, was submitted to him, without recording any evidence. It appears that the Magistrate did not *suo-motu* pass orders for the summoning of the petitioner as an accused for being tried together with the other accused for the offences with which they were charged. After the framing of the charge it was brought to the notice of the Magistrate that the petitioner Garib Dass was also guilty of the offence with which the other accused had been charged. After perusing the first information report and the statements of the witnesses recorded under section 161, Criminal Procedure Code, the Magistrate came to the conclusion that the petitioner had caused a sword blow on the

person of Gurdev Singh complainant and there was a *prima-facie* case against him under section 326/34 and section 325/34, Indian Penal Code and, therefore, he summoned him to face trial alongwith the other accused. This order could validly be passed by him either when the report under section 173, Criminal Procedure Code, was received by him or at the time of framing of the charges or even thereafter when this omission was brought to his notice. Therefore, the order of the Magistrate summoning the petitioner is perfectly valid and legal and the contention of the counsel for the petitioner is devoid of force.

(7) Section 190(1) of the Code of Criminal Procedure lays down that subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts; and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(8) If the Police submits a report under section 169, Criminal Procedure Code, that no case is made out for forwarding of the accused for trial then the Magistrate may or may not accept that report and take suitable action according to law. However, there is no power expressly or impliedly conferred under the Code on a Magistrate to call upon the police to submit a charge-sheet when they have sent a report under section 169 of the Code that there is no case made out for sending up of the accused for trial. The functions of the Magistracy and the police are entirely different. The Magistrate may or may not accept the report and take suitable action according to law. He cannot impinge upon the jurisdiction of the police by compelling them to change their opinion and to submit a charge-sheet against the accused. The investigation under the Code takes in several aspects and stages, ending ultimately with the formation of an opinion by the police as to whether on the material collected by them a case is made out against the accused to place before the Magistrate for trial. The formation of this opinion by the police is the final step in the investigation, and that final step is to be taken only by the police and by no other authority. If the Magistrate disagrees with the opinion of the police expressed in their report under section 169 of the Code of Criminal Procedure

Garib Dass v. The State of Punjab, etc. (Pattar, J.)

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that no case is made out against any particular accused, then he can take suitable action according to law and can take cognizance of the offence against the accused under section 190(1)(c) or may order further investigation by the police under section 156(3), Criminal Procedure Code, vide *Abhinandan Jha and others v. Dinesh Mishra*, (1), and *Emperor v. Khwaja Nazir Ahmad*, (2). In the instant case, as mentioned above, the Magistrate did not agree with the opinion of the police as mentioned in their report under section 173, Criminal Procedure Code, that no case was made out for sending up Garib Dass, petitioner, for trial. He could take and he took cognizance against him under section 190(1)(c), Criminal Procedure Code, and the impugned order is perfectly valid and legal.

(9) Sections 239 and 240 of the Code of Criminal Procedure referred to by the counsel for the petitioner are not relevant. According to section 239 if, upon considering the police report and the documents sent with it under section 173, the Magistrate is of the opinion that the charge against the accused is groundless then he shall discharge him and if he is of the opinion that there is a ground for presuming that he has committed the offence with which he is charged then he shall frame charges in writing against him. Both the sections do not help the petitioner at all.

(10) Lastly reliance was placed on section 319, Criminal Procedure Code. This section corresponds to section 351 of the Criminal Procedure Code (old). Sub-section (1) of section 319, Criminal Procedure Code, says that if in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, then the Court may proceed against such person for the offence which he appears to have committed. This section deals with cases of persons whose names are not mentioned either in the first information report or in the statements made by eye-witnesses under section 161, Criminal Procedure Code. It does not deal with the cases of accused persons whom the police officers found to be not guilty of the offence for which they are charged, and their cases are dealt with under sections 169 and 173, Criminal Procedure Code, as mentioned above. In the instant case, there is an averment in the first information report

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(1) A.I.R. 1968 S.C. 117.

(2) A.I.R. 1945 P.C 18:

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that Garib Dass, petitioner, caused a sword blow on the person of Gurdev Singh complainant and also there are the statements made against him by the eye-witnesses under section 161, Criminal Procedure Code. The impugned order of the learned Magistrate is perfectly legal and valid.

(11) As a result, it is held that there is no substance in this petition and the same is dismissed.

October 6, 1975.

N. K. S.

APPELLATE CIVIL

THE STATE OF PUNJAB,—*Appellant.*

*versus*

PRITAM SINGH ETC,—*Respondents.*

Regular First Appeal No. 193 of 1965 with Cross Objection  
No. 24-C of 1965.

October 6, 1975.

*Land Acquisition Act (1 of 1894)—Sections 9 and 25—Claim to compensation for land—Whether must be made in writing.*

*Held*, that from the general scheme and the provisions of the land Acquisition Act, 1894 as a whole it becomes manifest that the mode and manner of the payment of compensation for the acquired land is an integral part if not the very core of this statute. Compensation has obviously to be paid on the basis of the claims made therefor either by the owners or any other class of persons having some legal title or interest in the acquired land. The four clauses of section 9 which repeatedly refer to various classes of persons who may be interested in the compensation for land do not provide anywhere in terms that the claim for compensation should be made in writing. No form or particular mode of making the claim for compensation has been provided in sub-clause (1) of section 9 of the Act. The public notice envisaged under the provision merely says that claims for all interests in the land have to be made to the Collector. On the other hand the provisions of sub-clause (2) of section 9 show that a claim for compensation may well be an oral one before the Collector. The very opening part of sub-clause (2) of section 9 requires that the public notice should specify that all persons interested in the land should