

Jit Singh
and another
v.
The State of
Punjab
and others

Pandit, J.

which were passed before 13th December, 1962, It appears that by oversight no provisions had been made in the amending Act for the revisions that were pending before the State Government under section 42 of the Act and the learned Additional Advocate-General frankly conceded that there was a lacuna in the Amending Act in this respect.

The result is that this petition succeeds and the order, dated 15th February, 1963 passed by the Additional Director under section 42 of the Act is hereby quashed. In the circumstances of this case, however, I will make no order as to costs in these proceedings.

B.R.T.

REVISIONAL CRIMINAL

Before Gurdev Singh, J.

BAHAL SINGH,—Petitioner.

versus

THE STATE AND ANOTHER,—Respondents.

Criminal Revision No. 958 of 1963.

1964

Jan., 2nd.

Code of Criminal Procedure (V of 1898)—Ss. 207-A, 215 and 439—Powers of the Committing Magistrate—Magistrate discharging the accused, but Sessions Judge directing him to commit the accused to the Court of Sessions—Magistrate committing the accused—Order of the Sessions Judge—Whether revisable by the High Court—S. 215—Petition under—High Court—Whether can go into the merits of the case.

Held, that in an inquiry under section 207-A of the Code of Criminal Procedure, if a *prima facie* case triable by the Court of Sessions is made out, the magistrate must commit the accused to that Court to stand his trial and it is not for the Magistrate to deal with the evidence placed before him as if he were entrusted with the trial of the accused. After

the amendment of the Code in the year 1955, according to the procedure for the commitment of cases instituted on a police report, the entire evidence relating to the case is neither produced nor required to be recorded by the Magistrate and in considering the question whether an accused should or should not be committed to the Court of Sessions, the Magistrate has to take into account not only the evidence actually produced before him, but all the material placed before him by the prosecution including the papers produced with the police report under section 173 of the Code.

Held, that a petition under section 439 of the Code of Criminal Procedure for revising the order of the Sessions Judge directing the Magistrate to commit the accused to the Court of Sessions is not maintainable when subsequent to the order of the Sessions Judge, the accused has been committed by the Magistrate. The commitment can only be quashed under section 215 of the Code.

Held, that in a petition under section 215 of the Code, the High Court cannot go into the merits of the case or deal with the credibility or sufficiency of the evidence. It is only on a point of law that it would interfere to quash the proceedings. The question whether or not the material on record is sufficient to justify commitment is not a question of law.

Petition under Section 439 of the Code of Criminal Procedure for revision of the order of Shri Ishwar Dass Pawar, Additional District and Sessions Judge, Ambala, dated the 8th April, 1963, reversing that of Shri Prabh Dayal, Magistrate 1st Class, Chandigarh, dated the 25th February, 1963, ordering the Magistrate to commit the accused to Sessions to stand his trial under Section 302, Indian Penal Code.

H. L. SIBAL AND S. C. SIBAL, ADVOCATES, for the Petitioner.

M. R. PUNJ, ADVOCATE, for the ADVOCATE-GENERAL.

SURJIT KAUR TAUNQUE AND K. S. THAPAR, ADVOCATES, for the respondents.

JUDGMENT

Gurdev Singh, J. GURDEV SINGH, J.—This order will dispose of Criminal Revision No. 958 of 1963 by Bahal Singh, and the application for cancellation of his bail (Criminal Miscellaneous No. 1167 of 1963), referred by Sarwan Singh.

Bahal Singh petitioner in Criminal Revision No. 958 of 1963 was prosecuted under section 302, Indian Penal Code, for committing the murders of Prem Singh and Ujagar Singh, on the 23rd August, 1962, in Chandigarh by deliberately crushing under his truck the two deceased who were riding on a bicycle. Shri Prabh Dayal, Magistrate First Class, Chandigarh, conducted the enquiry proceedings under Chapter XVIII of the Criminal Procedure Code in accordance with the procedure laid down in section 207-A of that Code. After examining Tara Singh and Jit Ram, alias Jit Singh, who were alleged to have witnessed the occurrence, he recorded the statement of Constable Radha Kishan as a Court-witness and thereafter without taking the statement of the accused discharged him by his order dated the 25th of February, 1963. Taking note of the fact that Tara Singh and Jit Singh had turned hostile and did not support the prosecution story, the learned Magistrate held that there was no evidence on the record to connect the accused with the murders.

Aggrieved by this order, Sarwan Singh, brother of one of the deceased went up in revision to the Court of Sessions contending, *inter alia*, that the material on the record did not justify the discharge of Bahal Singh and the learned Magistrate had exceeded his jurisdiction in dealing with the case as if he was entrusted with the trial of the accused. This contention prevailed with the learned Additional Sessions Judge

Ambala, before whom this petition came up for hearing and acting under section 437, Criminal Procedure Code, order the Magistrate to commit the accused to the Court of Sessions to stand his trial under section 302, Indian Penal Code, for the two murders. Against this order of the Additional Sessions Judge, dated the 25th of June, 1963, Bahal Singh has approached this Court under section 439, Criminal Procedure Code, by means of Criminal Revision No. 958 of 1963, praying that in exercise of revisional powers of this Court the order directing his commitment be quashed as the evidence recorded by the Magistrate did not disclose a *prima facie* case against him and his commitment to the Court of Sessions was not justified under section 207-A, Criminal Procedure Code. During the pendency of the proceedings before the learned Additional Sessions Judge, Bahal Singh continued to be on bail, Sarwan Singh, a brother of one of the deceased, has approached this Court by means of Criminal Miscellaneous No. 1187 of 1963 for cancellation of his bail.

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As has been observed earlier, the enquiry proceedings before the learned Magistrate against Bahal Singh started on a police report and they had to be conducted in accordance with the provisions of section 207-A of the Code of Criminal Procedure. The powers of a Magistrate dealing with such an enquiry were recently considered by their Lordships of the Supreme Court in *Bipat Gope and others v. State of Bihar*, (1) and it was laid down that if a *prima facie* case triable by the Court of Session is made out the Magistrate must commit the accused to that Court to stand his trial and it is not for the Magistrate to deal with the evidence placed before him as if he were entrusted with the trial of the accused.

(1) A.I.R. 1962 S.C. 1195

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Shri H.L. Sibal appearing on behalf of Bahal Singh (accused) has not disputed the factum of the occurrence but has contended that the evidence recorded by the Magistrate did not disclose even a *prima facie* case and accordingly the learned Sessions Judge was wrong in reversing the order of Bahal Singh's discharge and directing his commitment. He further argued that since the State had not moved for setting aside the order of discharge the revision petition by Sarwan Singh, who was a private complainant, could not be entertained. I, however, find that it is neither necessary nor permissible to go into the merits of the case or to examine how far the order of discharge passed by the learned Magistrate was justified on facts, as subsequent to the order of the Sessions Judge directing the Magistrate to commit the case to the Court of Sessions, an order for the commitment of Bahal Singh has been passed by the Magistrate and he now stands charged under section 302, Indian Penal Code, to face his trial before the Court of Sessions. Section 215 of the Code of Criminal Procedure lays down that commitment once made under section 213 by a competent Magistrate can be quashed by the High Court alone and that too only on a point of law. Accordingly, the petition under section 439 of the Criminal Procedure Code for revising the order of the Sessions Judge directing the Magistrate to commit Bahal Singh to the Court of Sessions is no longer maintainable. After he had been committed to the Court of Sessions, the accused could apply only under section 215 of that Code. Even if the present petition for revision is treated as an application under section 215 of the Criminal Procedure Code, no ground for quashing the order of the commitment has been made out. The sole ground on which the order of Commitment has been attacked is that the material placed before the learned Magistrate did not disclose a *prima facie*

case. In a petition under section 215 of the Code of Criminal Procedure, this Court cannot go into the merits of the case or deal with the credibility or sufficiency of the evidence. It is only on a point of law that it would interfere to quash the proceedings. No legal error in the order directing the commitment has been made out. The question whether or not the material on record is sufficient to justify a commitment is not a question of law. It is not a case of total absence of evidence. Even if the direct evidence may not disclose a *prima facie* case against an accused, the Magistrate entrusted with an enquiry under section 207-A, Criminal Procedure Code, has to take into account the circumstantial evidence. It may be pointed out that after the amendment of the Code of Criminal Procedure in the year 1955 according to the procedure for the commitment of cases instituted on a police report the entire evidence relating to the case is neither produced nor required to be recorded by the Magistrate and in considering the question whether an accused should or should not be committed to the Court of Sessions, the Magistrate has to take into account not only the evidence actually produced before him but all the material placed before him by the prosecution including the papers produced with the police report under section 173, Criminal Procedure Code. In such circumstances when the entire evidence is not examined by the Magistrate, it will be extremely unsafe and unwise for a Court of revision or this court to reverse an order of commitment merely on the basis of incomplete record of evidence, and that is why the Legislature had enacted section 215 which empowers only the High Court to quash a commitment and that too on a point of law. Under this provision of law no valid ground for interference has been made out. I find no force in this petition (Criminal Revision No. 958 of 1963) and dismiss the same. The record shall be returned to the

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Court of Sessions. It shall proceed with the trial at the earliest opportunity.

Since the eye-witnesses have not supported the case and Bahal Singh had been on bail throughout after his discharge, I do not consider it necessary to commit him to jail at this stage. Apart from the fact that he has been committed for trial on a capital offence, there is nothing to justify the cancellation of his bail. I accordingly dismiss Criminal Miscellaneous No. 1187 of 1963. If, however, an attempt is made to interfere with prosecution witnesses or to prolong the case, it shall be open to the learned Sessions Judge to consider the question of cancellation of Bahal Singh's bail.

K.S.K.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

SURJIT KAUR,—Appellant.

versus

PARAGAT SINGH,—Respondent.

First Appeal From Order 88/M of 1962.

1964

Jan. 3rd.

Hindu Marriage Act (XXV of 1955)—S. 25—Wife whose marriage with her guilty spouse dissolved and remaining unmarried—Whether entitled to grant of permanent alimony as a matter of right.

Held, that a plain construction of the three sub-sections of section 25 of the Hindu Marriage Act, 1955, leads to the conclusion that the court is bound in the first instance to make an order for permanent alimony to a wife who has been granted a divorce against her guilty spouse, so long as she remains unmarried. The right to this alimony under sub-section (1) seems absolute as it is stated that the court