

Sumesh Chand etc. v. State of Haryana (Tewatia, J.)

which are necessary to the public at large. The phrase would not include within its ambit something so general as the mere development of land for residential purposes wherein the provision of some essential amenities may or may not be provided as an ancillary measure.

(19) I am clearly of the view that section 58(4) is not attracted to the present case and the stay order granted earlier by the Court is not affected thereby. The application is consequently allowed and the respondent State is restrained from interfering with the possession of the petitioner till the decision of the writ petition. There will be no order as to costs.

K. T. S.

CRIMINAL MISCELLANEOUS

Before D. S. Tewatia, J.

SUMESH CHAND ETC.,—*Petitioners*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Misc. No. 2990-M of 1977

August 23, 1977.

Code of Criminal Procedure (2 of 1974)—Sections 209, 227, 397 (2) and 482—Committing Magistrate—Whether required to determine the existence of a prima facie case—Order of commitment under section 209—Petition for quashing such order under section 482—Whether maintainable.

Held, that under the old Code of Criminal Procedure the committing Magistrate was required to commit the case for trial to the Court of Session on charges framed by him, but under the new Code of Criminal Procedure 1973 he merely commits the case to the Court of Session and the question as to whether the person so committed is to be tried or not is to be decided by the Court of Session after applying its mind in the manner envisaged under section 227 of the new Code, with the result that under the old Code the accused was placed on trial by the order of the committing Court under section 207-A, while under the new Code the accused is not placed on trial but only the case is committed to the Court of Sessions which itself places the accused on trial, if a *prima facie* case is made out from the record and the documents submitted to it by the committing Court.

An order under section 209 of the new Code is in the nature of an interlocutory order against which the revisional jurisdiction of the High Court is expressly barred by sub-section (2) of section 397 of the new Code and where the new Code bars the revisional jurisdiction it would be mere abuse of the process of the Court if a party is permitted to invoke its inherent jurisdiction more particularly when the said party can get the desired relief under section 227 of the new Code from the Sessions Court itself. (Paras 3 and 4).

Petition under Section 482 Cr.P.C. praying that the order of the Court of Shri A. S. Garg, Chief Judicial Magistrate, Hissar dated 31st March, 1977 be quashed and the learned Chief Judicial Magistrate, Hissar be directed to proceed with the trial of the case under sections 306, 307, 343, 323, 354, 109 and 120-B I.P.C. registered at Police Station City Hissar vide F.I.R. No. 587 dated 24th August, 1976.

V. M. Jain, Advocate, for the Petitioners.

H. S. Gill, D.A. Haryana. for the Respondents.

ORDER

D. S. Tewatia, J.—(Oral).

(1) This is a petition under section 482, Criminal Procedure Code, wherein the petitioners seek the quashing of the commitment order dated 31st March, 1977, whereby the Chief Judicial Magistrate, Hissar, had committed the case to the Court of Session, Hissar, under sections 306, 307, 343, 323, 354, 109 and 120-B, I.P.C.

(2) Mr. Gill appearing for the respondent State has raised a preliminary objection to the maintainability of the petition. It has been urged by him that this Court should refrain from exercising its inherent power under section 482 of the Criminal Procedure Code when the relief sought by the petitioners could be granted by the Court of Session under section 227 of the Code of Criminal Procedure (also referred hereafter as the new Code).

(3) I think that there is considerable merit in the preliminary objection raised on behalf of the State. Provisions of section 227 of the 1973 Code are in the following terms :

“227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this

Sumesh Chand etc. v. State of Haryana (Tewatia, J.)

behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

This provision is a new addition to the Criminal Procedure Code. In my way of looking at this provision, this provision invests the Sessions Court with a power which earlier in substance used to be exercised by the committing Court under the old Code. Under the new Code of 1973, the committing Court while exercising power under section 209 has no power whatsoever to go into the question as to whether any *prima facie* case is made out or not, which it used to do under the old Code under section 207-A. What the Magistrate under section 209 of the new Code has to see is as to whether the offence mentioned in the police report or otherwise is triable by the Sessions' Court and if it is so triable, then to submit the papers to the Sessions' Court along with the documents placed before it by the police. It is absolutely unnecessary for the committing Court to pass any detailed order or to go into the question as to whether a *prima facie* case is made out or not. That the committing Court has not to apply its mind to find out as to whether a *prima facie* case is made out is borne out from the different phraseology used in section 207-A, sub-section (7) of the old Code and section 209, sub-section (a) of the new Code. While under the old Code the committing Magistrate was required to commit the case for trial to the Court of Session on charges framed by him, but under the new Code he merely commits the case to the Court of Session and the question as to whether the person so committed is to be tried or not is to be decided by the Court of Session after applying its mind in the manner envisaged under section 227 of the new Code, with the result that under the old Code the accused was placed on trial by the order of the committing Court under section 207-A, while under the new Code the accused is not placed on trial but only the case is committed to the Court of Session which itself places the accused on trial if a *prima facie* case is made out from the record and the documents submitted to it by the committing Court.

(4) In the light of the above, I am of the considered view that the order under section 209 of the new Code is in the nature of an Interlocutory order against which the revisional jurisdiction of this Court is expressly barred by sub-section (2) of section 397 of the new Code and where the new Code bars the revisional jurisdiction, it would be mere abuse of the process of the Court if a party is permitted to invoke its inherent jurisdiction, more particularly when

the said party can get the desired relief nearer home under section 227 of the new Code from the Sessions' Court itself.

(5) For the reasons stated, this petition stands dismissed.

K.T.S.

MISCELLANEOUS CIVIL

Before Ajit Singh Bains and S. P. Goyal, JJ.*

NARAIN SINGH,—*Petitioner.*

versus

N. S. CHEEMA, P.C.S. ETC.,—*Respondents.*

Civil Writ No. 4629 of 1974

August 24, 1974

Punjab Gram Panchayat Act (IV of 1953)—Sections 5(5) (b), 13 and 13-O—Punjab Excise Act (1 of 1914)—Conviction under section 61(1) (a) for possession of illicit liquor—Whether involves moral turpitude—Such conviction—Whether a disqualification from seeking election as Sarpanch—Entries in an electoral roll—Sub-Divisional Magistrate—Whether could go behind such entries and hold enquiry into the age of a candidate.

Held, that a person in possession of illicit liquor and convicted under section 61(1) (a) of the Punjab Excise Act, 1914 cannot be said to be guilty of an offence involving moral turpitude. So far there is no prohibition imposed under any law against taking liquor, it may be an offence against the Revenue, but no morals are involved in such a conviction. It cannot be said that such a conviction could shock the moral conscience of society in general. It also cannot be said that motive for possession of illicit liquor is a base one. The word 'base' means "morally low ; low minded ; dishonourable ; disgraceful ; vile". The motive to keep in possession illicit liquor can at the most be to drink or to entertain the guests. Such a motive cannot be classified as a base one. Again, the person in possession of illicit liquor could not be considered to be of a depraved character or a person who was to be looked down upon by the society. Such a conviction, therefore, does not involve moral turpitude and is not a disqualification for seeking election as Sarpanch under section 5(5) (b) of the Punjab Gram Panchayat Act, 1952.

(Paras 3, 4, 5 and 6).