

REVISIONAL CRIMINAL

Before Gopal Singh, J.

BANTA SINGH,—Petitioner.

versus

KABAL SINGH,—Respondent.

Criminal Revision No. 41- R of 1970.

July 21, 1971.

Code of Criminal Procedure (Act No. V of 1898)—Sections 208 to 212—Proceedings instituted on a private complaint—Accused committed without following procedure under sections 208 to 212—Order of commitment—Whether to be quashed.

Held, that where proceedings are instituted on a private complaint and the order of commitment of the accused is made as a result of proceedings conducted in utter disregard of the statutory provisions of sections 208 to 212 of the Criminal Procedure Code, such an order deserves to be quashed. Under section 208 of the Code the Magistrate has to examine not only the witnesses produced by the complainant in support of the complaint but also has to record evidence as may be produced on behalf of the accused. This provision of law is mandatory and has to be complied with. Where neither all the witnesses of the complainant are examined nor the accused is given opportunity to produce his defence and he is committed, the order of commitment is bad in law and untenable. (Paras 1 and 4)

Case reported under section 438 Cr. P.C. by Shri K. S. Bhalla, Additional Sessions Judge, Amritsar, with his order dated 22nd January, 1970 for provision of the order of Shri R. L. Awand, Judicial Magistrate Ist Class, Patti dated 17th November, 1969 ordering that the order of the Committing Magistrate dated 17th November, 1969 under section 215 Cr. P.C. be quashed and he be directed to hold a preliminary enquiry as required by the Code of Criminal Procedure.

HARINDER SINGH, ADVOCATE, for the petitioner.

S. S. KANG, DEPUTY ADVOCATE-GENERAL, PUNJAB AND RAMAN KUMAR SHARMA, ADVOCATE, for the respondent.

JUDGMENT

GOPAL SINGH, J.—(1) Banta Singh filed a complaint under sections 307, 324 and 325, Indian Penal Code on January 21, 1969 against Kabal Singh in the court of Shri Narinder Singh, Magistrate First Class, Patti. Finding that *prima facie* case had been made out against the accused, notice was issued to him. He was proceeded against for

offences under sections 307, 323 and 325, Indian Penal Code. Offence under section 307, Indian Penal Code being exclusively triable by Court of Session, the Magistrate had to follow the procedure provided in sections 208 to 213 of the Code of Criminal Procedure. As provided in section 208, of the Code, the Magistrate had to examine not only the witnesses produced by the complainant in support of the complaint but also had to record evidence as may have been produced on behalf of the accused. Under section 211 of the Code of Criminal Procedure, the accused was never required to supply list of witnesses to be examined by him and the Magistrate never applied his mind and considered the question of summoning and examination of the witnesses which the accused could produce in defence. He drew up the charge against the accused and committed him for trial only on the basis of the prosecution evidence produced before him.

(2) At the trial, an objection was taken on behalf of the accused under section 208(1) of the Code of Criminal Procedure that commitment proceedings and commitment order resulting therefrom were vitiated inasmuch as the Magistrate had not examined two witnesses of the complainant, namely, Lachhman Singh and the complainant himself particularly when their names find mention in the list of witnesses filed on behalf of the complainant. This objection prevailed with the Additional Sessions Judge.

(3) Reference to the relevant sections of the Criminal Procedure Code admits of no doubt that the view taken by the Additional Sessions Judge is fully called for. Under Section 208(1), the Magistrate had to examine all the evidence for the prosecution and the defence. After the evidence on behalf of the complainant had been recorded, the Magistrate under section 211 was bound to require the accused to supply orally or in writing list of persons, whom he wished to be summoned to give evidence on his behalf. This provision of law mandatory as it is has got to be complied with. The accused was never asked to supply any such list. As required by section 212 of the Code, the Magistrate was to apply his mind to the necessity of summoning and examining the witnesses named by the accused, in the list to be supplied under section 212 of the Code. No list having been called for from the accused under section 211, the Magistrate did not and could not exercise his power under section 212 of the Code.

(4) On the basis of the above provisions of law, it was argued that the order of commitment was vitiated and bad in law and untenable.

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That order can be quashed under section 215 of the Criminal Procedure Code by the High Court only on a question of law. The Additional Sessions Judge has reported the case for reference to the High Court for the commitment order dated November 17, 1969 being quashed. Thus the above order of commitment has been made as a result of proceedings conducted in utter disregard of the statutory provisions of sections 208 to 212 of the Criminal Procedure Code and deserves to be quashed. Under section 208 of the Criminal Procedure Code it was obligatory upon the Magistrate to take evidence that was sought to be produced in support of the complaint on behalf of the complainant. This mandatory provision of law has been ignored to be complied with by the Magistrate in not caring to examine the two material witnesses of the complainant including the complainant himself.

(5) For the reasons recorded above, I accept the reference and quash the commitment order dated November 17, 1969 and direct the Magistrate to record the evidence of the complainant and his witness Lachhman Singh apart from the evidence already recorded by him in support of the complaint and require the accused to file the list of witnesses as enjoined by section 211 of the Code of Criminal Procedure and exercise his discretionary power under section 212 of the Code for the purpose of summoning and examining his witnesses. It is, thereafter that he will make the order under Section 213 of the Code. The evidence already produced on behalf of the complainant in support of the complaint need not be recorded twice over.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

BHAGWAN SINGH,—*Petitioner.*

versus

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

Civil Writ No. 161 of 1971.

July 21, 1971.

Punjab Police Rules (1934)—Rules 12.2(3), 13.15(3) and 13.15 (4)—Interpretation of—Seniority of Inspectors and Sub-Inspectors of