REVISIONAL CRIMINAL

Before Mr. Justice Rachhpal Singh

EMPEROR *v.* MIHI LAL AND OTHERS*

1940
April, 12

Criminal Procedure Code, section 215—Quashing of commitment order—Only on point of law—Where a prima facie *case has been made out the question of credibility of the evidence cannot be gone into.*

Under section 215 of the Criminal Procedure Code a commitment can be quashed by the High Court only on a point of law.

There may be cases in which there is no evidence to warrant a commitment, or in which a commitment is made on no legal evidence at all. In such cases action may be taken as on a point of law under section 215. The High Court, however, will not quash a commitment when there is a *prima facie* case against the person committed for trial. The question of the credibility or sufficiency of the evidence for the purpose of establishing the charge does not arise at all at the stage of considering whether the commitment should be quashed under section 215.

The parties were not represented.

RACHHPAL SINGH, J.:—This is a reference by the learned Sessions Judge of Kumaun recommending that the commitment made by a Magistrate under which Mihi Lal, Pyare Lal, Kunj Behari Lal and Bishan Giri have been committed to sessions to take their trial under sections 366 and 120B of the Indian Penal Code be quashed.

Section 215 of the Criminal Procedure Code ordains that "A commitment once made under section 213 by a competent Magistrate . . . can be quashed by the High Court only, and only on a point of law." Now there may be cases in which there is no evidence to warrant a commitment; then there may be another class of cases in which commitment is made on no legal evidence at all. In such cases action may be taken under section 215 of the Criminal Procedure Code. This Court, however, will not quash a commitment when there is a

*Criminal Reference No. 177 of 1940.

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prima facie case against the persons who have been committed to take their trial in a court of session. In such cases no legal question arises and so the Court has no power to quash the commitment. It appears to me that this aspect of the case was not brought to the notice of the learned Sessions Judge by the public prosecutor or by counsel for the defence. I may in connection with this matter refer to the opinion of HARINGTON, J., expressed in the case of *Sheobux Ram* v. *The Emperor* (1), where he made the following observations: "The proper test to be applied to decide the question whether a commitment ought or ought not to be made on the facts is this: assuming that the whole of the evidence telling against the accused is true, is there a case which a Judge at a trial can leave to a jury? If the evidence is such that a Judge would have been bound to rule that there was no evidence on which a jury could convict, then a committal ought not to be made. If there was any evidence which called for an answer, however great the preponderance in favour of the prisoner might be,—then the committal was proper." This view was accepted by the Rangoon High Court in *Mahomed Moidin* v. *King-Emperor* (2). The learned Judge who decided that case remarked that "The High Court has no concern with the question of the credibility of the evidence, when there is in fact, some evidence on the committal record which would justify the Sessions Judge in leaving the question of guilt or innocence to the jury.". The Judicial Commissioner's court of Nagpur in *Ismail* v. *Emperor* (3) held that "A commitment can be quashed on a point of law only. It cannot be quashed on the ground that there is no evidence on the committing Magistrate's record to sustain the charges." The view of the Bombay High Court on the point is expressed in a Bench decision of that Court in *Emperor* v. *Suleman Ibrahim Nakhuda* (4). It was held that "An order of committal to the sessions court cannot be quashed by the High Court on the ground that there is no evidence in the committing Magistrate's record to sustain the

(1) (1905) 9 C.W.N. 829(839).
(2) (1923) I.L.R. 1 Rang. 526(530).
(3) A.I.R. 1925 Nag. 409.
(4) (1911) 13 Bom. L.R. 201.

charges. The committal can be quashed on a point of law only."

Thus we see that the legal position is quite clear and that the High Court will not quash a commitment unless it is shown that the commitment was bad on a point of law. In the present case I find that the accused have been sent up for trial on two charges. So far as the conspiracy charge is concerned, there is absolutely nothing in the order of the learned Sessions Judge to show that in his opinion the evidence produced in the case does not go to establish that charge. So the recommendation that the commitment should be quashed is not competent. As regards the charge under section 366 of the Indian Penal Code the learned Sessions Judge seems to think that the evidence produced was not sufficient to prove the charge against the accused persons. I may, however, repeat that the stage for expressing an opinion on this point has not arrived as yet. It is not open to a court of session to express a view on this point before hearing the evidence produced in the case. At one place the learned Sessions Judge makes a reference to the provisions of section 366 and then he takes it for granted that no deception was practised on the girl Parbati according to her evidence. We have, however, to take into consideration the fact that the learned committing Magistrate found that there was a *prima facie* case under section 366 against the accused persons. In these circumstances it is not open to the learned Sessions Judge to hold at this stage that deception was not practised upon the girl and that force was not used. That will be prejudging the whole matter. The prosecution case is that an offence under section 366 was committed and that force and deception both played a prominent part in the whole matter. Now it is possible that when this story is tested it may be found that, as a matter of fact, the prosecution has failed to prove the charge against the accused persons, but at present we find that the committing Magistrate held that there was a *prima facie* case against the accused persons and in these cir-

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cumstances the learned Sessions Judge had no option but to proceed with the trial. In passing I may mention that the learned Sessions Judge's view is not quite correct when he assumes that the girl left the village of her own accord and at the request of her brothers and mother. What the girl says is that she as well as her brothers and mother were deceived and owing to that deception they all left their village near Haldwani. Again I have to say that that statement may or may not be true, but it has got to be tested before an opinion can be expressed. It further appears from the evidence that after the girl, her relations and the accused persons had gone to Muttra one of the brothers of the girl took her back to her village near Haldwani from Muttra and thereupon the accused or some of them lodged a complaint against the girl and her relations under criminal breach of trust and warrants were actually issued for their apprehension. The statement of Mst. Parbati is that the accused or some of them came to their village and insisted that she should go to Muttra with a view to compromise the matter because her name had been mentioned in the complaint. If this allegation is true, then there cannot be any doubt that deception was practised upon the girl. If her statement is to be believed then deception was practised so that she might leave her village and go to Muttra. The girl has further stated that while she was in Muttra she was removed from the custody of her brothers and mother and taken to the house of a woman by the accused persons. Further there is evidence on the record that the accused persons made attempts to sell the girl to the highest bidder. If all this evidence is true and is believed, there cannot be any doubt that at least a *prima facie* case has been made out. Another question which we have to take into consideration is this that it often happens that there may be other evidence available while a case is being tried in the court of session. There may be witnesses whom the learned Sessions Judge might wish to summon under the provisions of section 540 of the Criminal Procedure Code.

I have pointed out the above statement of the prosecution case but it is to be clearly understood that I do not wish to express any opinion on the question of credibility of the evidence of the prosecution witnesses. That stage, I have already said, has not arrived and this Court can only go into the question of the credibility of the evidence after a decision has been given one way or the other by the court of session. For the reasons given above I am clearly of opinion that the court of session is not entitled to express any opinion on the question of credibility before hearing the evidence nor is it entitled to go into the question as to whether or not the evidence produced in the case, if believed, would or would not prove the charge or charges against the accused persons. It is enough to say that in the present case there is evidence which makes out a *prima facie* case against the accused. The commitment of the accused, therefore, cannot be quashed because of the possibility of the Sessions Judge's holding in favour of the accused and against the prosecution after he has heard the evidence. It is not a case in which, on the evidence as it stands, no case has been made out by the prosecution.

It may be pointed out that under the law a very valuable right has been given to the parties to have their cases under certain sections decided by a court of session with the aid of assessors or jury and when the accused persons have been committed to the court of session by the committing court then that commitment cannot possibly be quashed because the court of session is of opinion that eventually the prosecution case may not be proved.

The learned Sessions Judge in his order of reference has made a mention of the revision application which had been made to this Court on behalf of the accused. That was summarily rejected and the reason was that under the law no revision is competent unless it is shown that there was a law point involved in the case; see on this point the case of *Rashbehari Lal Mandal v. The Emperor* (1), where a Bench of two learned

(1) (1907) 6 C.L.J. 760.

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Judges of the Calcutta High Court held that "Session 215 of the Criminal Procedure Code bars the revision by the High Court of an order of commitment made under section 213 . . . except on a point of law."

The result, therefore, is that I hold that in view of the fact that the committing Magistrate had held that there was a *prima facie* case the learned Sessions Judge was not justified in making a recommendation that the commitment be quashed. The commitment could have been quashed only on a question of law and there is no law point in the present case. The result, therefore, is that the reference made by the learned Sessions Judge is rejected and I direct that the records be returned to the court of the learned Sessions Judge who made the reference.

APPELLATE CIVIL

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

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April, 19

PARTAB BAHADUR SAHI (JUDGMENT-DEBTOR) *v.* HARI RAM MARWARI (DECREE-HOLDER)*

Civil Procedure Code, section 48(1)(*b*)—"*Subsequent order*"—*Compromise in execution proceedings—Agreement that the decretal amount was to be paid in specified annual instalments—Limitation of twelve years to be calculated from date of each instalment.*

A compromise was entered into between the decree-holder and the judgment-debtor in execution proceedings, by which the decretal money was to be paid in eight yearly instalments. Default being made in payment of the fifth instalment, the decree-holder made an application for execution, the date of the application being more than twelve years after the date of the decree but within twelve years of the date fixed for payment of the fifth instalment: *Held* that the case fell under clause (*b*) of section 48(1) of the Civil Procedure Code and the application for execution was not barred by limitation under that section.

The view that a "subsequent order" directing payment of the decretal amount by instalments can be passed by the

*First Appeal No. 366 of 1939, from a decree of Bijai Pal Singh, Civil Judge of Gorakhpur, dated the 11th of September, 1939.