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July 15,
2022
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C.R.R.1287 of 1999

In Re: An application under Sections 397/ 401 of the Code of Criminal Procedure, 1973;

Subash Thakuri
Versus
Gita alias Geetu Tamang and another

Mr. Abhijit Basu,
Mr. Argha Kamal Das.
...for the petitioner.

The revisional application has been preferred challenging the order dated 7.4.1999 passed by the learned Sessions Judge, Darjeeling in Sessions Case No.5 of 1999 arising out of C.R. Case No.95 of 1998. The allegations in the complaint were under Sections 415/417/376 of the Indian Penal Code and it has been pointed out by Mr. Abhijit Basu, learned advocate appearing for the petitioner that, on receipt of the petition of complaint, the learned Magistrate by order dated 30.11.1998 was pleased to take cognizance of the offence.

Learned advocate submits that it is settled proposition of law that once a cognizance has been taken by the learned Magistrate the post committal cognizance being taken by the learned Sessions Judge, Darjeeling on 7.4.1999 is not tenable in the eye of law. To that effect, reliance has been placed by the learned advocate for the petitioner in the case of **Dharam Pal and others Vs. State of Haryana and another** reported in **(2014) 3 SCC 306**. Attention of the Court has been drawn to paragraphs 39 and 40 which are set out as follows:

“39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.

40. In that view of the matter, we have no hesitation in agreeing with the views expressed in *Kishun Singh* case that the Sessions Court has jurisdiction on committal of a

case to it, to take cognizance of the offences of persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.”

It has been contended that since the orders so recorded by the learned Sessions Judge in respect of the cognizance so taken is bad in law, the same is liable to be set aside.

I find that although the complaint was filed under Sections 412/417/493/500 of the Indian Penal Code, yet after recording of the initial evidence, the then learned SDJM, Darjeeling was pleased to observe that offence under Section 376 of the Indian Penal Code has been made out and, as such, after forming an opinion for alleged commission of offence under Sections 415/417/376 of the Indian Penal Code, committed the case to the Court of Sessions.

Records of the case reflect that after the order dated 7.4.1999 was passed, the learned Sessions Court fixed 12.04.1999 for appearance of the accused person. However, as the accused was not present on the date so fixed and an adjournment petition was filed, the learned court granted adjournment, fixed 3.5.1999 for appearance, in default observed warrant of arrest would be issued.

I have considered the submissions advanced by the learned advocate appearing for the petitioner and observations

made by the Hon'ble Supreme Court in the reported decision referred to and having regard to the settled proposition of law, I am of the opinion that the cognizance taken on 7.4.1999 was redundant as in respect of the offence in the petition of complaint judicial notice was already taken by the learned Magistrate. Accordingly, the part of the impugned order referred to "cognizance is taken" is set aside. The interim order was passed at a stage when it was fixed for appearance.

Accordingly, I direct the petitioner to appear before the learned Sessions Judge on 31st August, 2022. The learned Sessions Judge will proceed with the case in accordance with law.

Thus, CRR 1287 of 1999 is partly allowed.

Pending application, if any, is consequently disposed of.

Department is directed to send back the lower court records within a week from date.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)