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BHIMAPPA BASSAPPA BHU SANNAVAR

v.

LAXMAN SHIVARAYAPPA SAMAGOUDA AND OTHERS

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March 11, 1970

[M. HIDAYATULLAH, C.J., A. N. RAY, AND I. D. DUA, JJ.]

Code of Criminal Procedure 1898, s. 417(3)—Police filing charge-sheet against two accused—Appellant filing complaint against third accused—Acquittal of all accused by Sessions Court—Whether appellant entitled to file petition for special leave under s. 417(3) in the case against the third accused.

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The appellant's house was set on fire and burnt down. As a result of a report filed by his son the police arrested Respondents 1 and 2 and submitted a charge-sheet against them. The appellant was dissatisfied that the police had not prosecuted Respondent No. 3 also and he filed a complaint against him in the same Court. The Magistrate inquired into the two cases together and committed separately the first two respondents and the third respondent separately to the Court of Sessions. After the Sessions Judge had held all the three respondents not guilty and acquitted them, the appellant applied under s. 417(3) Cr. P.C. for special leave to appeal against the acquittal of the three respondents; but this petition was dismissed by the High Court on the ground that the petitioner had no *locus standi* to prefer an appeal when the State had prosecuted the respondents in the Sessions Court. A revision application filed by the appellant was also rejected. On appeal to this Court.

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HELD: The appellant was entitled to have a hearing of his petition for special leave under s. 417(3) and the case must therefore be remitted to the High Court for this purpose. The answer to the question whether the appellant had a right to move the High Court for special leave under s. 417(3) depended upon whether there was a case instituted by him upon a complaint in which an acquittal was recorded, for this is the requirement of the special section and also the condition precedent to the right. [4 B]

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On the facts, there could be no doubt that one of the cases was instituted on the report of a police officer and the other on the complaint of the complainant. There could be no question of merger because the identity of the two cases was maintained right upto the end of the Sessions Trial. The case of the appellant proceeded on its own number and although evidence was led in both cases together, the acquittal was recorded separately in each of the two cases. The appellant was therefore entitled to move the High Court for special leave in his own case. [6 G]

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The fact that the appellant had also applied for revision which was rejected and had applied for special leave against that order which was refused by this Court, did not mean that that must conclude the matter. The appellant's statutory right to move the High Court could not be lost by reason of the revision and the result of the revision, had no bearing upon the matter. [7 B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 166 of 1967.

Appeal by special leave from the judgment and order dated November 28, 1966 of the Mysore High Court in Criminal Petition No. 610 of 1966.

V. K. Sanghi and M. S. Narasimhan, for the appellant.

S. S. Javali and M. Veerappa, for respondents Nos. 1 and 2.

R. Gopalakrishnan, for respondent No. 3.

S. P. Nayar, for respondent No. 4.

The Judgment of the Court was delivered by

Hidayatullah, C.J.—This is an appeal by special leave against the judgment and order of the High Court of Mysore dated November 28, 1966 in Misc. Criminal Petition No. 610 of 1966. By that order the High Court held that the present appellant Bhimappa had no *locus-standi* to invoke s. 417(3) of the Code of Criminal Procedure and to ask for special leave to file an appeal against the acquittal of the respondent. The appellant questions the correctness of the order.

Bhimappa (appellant) had a house at Athni, Taluka Belgaum District. It stood in the name of his eldest son and his two other sons lived in one part of the house and the other part was let out to the first respondent Laxman who ran a boarding house and also lived there with his wife and children and his mistress Champevva, the second respondent. No rent was fixed but the sons of Bhimappa used to have their meals with respondents Nos. 1 and 2. Bhimappa asked his tenant to vacate the house as he wanted to reside in it himself and his son Yamanappa (P.W. 14) wanted space for a godown for 400 bags of groundnut purchased by him. The first respondent was asked to vacate a portion of the house but was reluctant.

It is not necessary to give the details of what happened further. Suffice it to say that the house was set on fire to cause loss to Bhimappa. All efforts to save the house failed and it was burnt down. Yamanappa then filed a report in the police station. The police arrested respondents Nos. 1 and 2 and submitted a charge sheet against them in the court of Junior Magistrate, Athni.

Bhimappa was dissatisfied that the police had not prosecuted Mallappa, respondent No. 3 also and he filed a complaint against him in the same court. The magistrate inquired into the two cases together and finding a *prima facie* case established committed the first two respondents and the third respondent separately to the Court of Sessions. The three respondents asked that the two cases be consolidated and a combined charge be framed in the case.

- A The two sessions cases were numbered as Sessions Trials Nos. 79-80 of 1965. They were tried together and the Sessions Judge, Belgaum by his judgment, July 13, 1966 held the respondents not guilty and acquitted them.

- B The appellant then applied to the High Court of Mysore under s. 417(3) of the Code of Criminal Procedure for special leave to appeal against the acquittal of the three respondents. With the petition he filed a memorandum of appeal. The High Court held on November 28, 1966 as follows :

- C "The petitioner has no *locus standi* to prefer an appeal when the State had prosecuted the respondent in the Sessions Court. This petition is dismissed.

Sd/- H. Hombe Gowda,
Chief Justice,
Sd/- M. Santhosh,"

- D Bhimappa filed also a revision application, which was dismissed on December 5, 1966 by C. Honniah J. Bhimappa's request for a certificate was also rejected. He now appeals to this Court. His contention is that he had a right to move the High Court under s. 417(3) of the Code of Criminal Procedure for special leave as the order of acquittal was passed in a case instituted upon his complaint. The High Court could not, therefore, hold that he had no standing to move the High Court under s. 417(3) of the Code of Criminal Procedure.

- F Sub-section 3 of s. 417 as an amendment was introduced by Act XXVI of 1955. Previously the right of appeal against acquittal belonged only to the State Government. By the amendment this right is also conferred on a complainant if the order of acquittal is passed in any case instituted upon complaint. The sub-section may be read here :

- G "3. If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court."

- H Under sub-section 4 the application has to be made within 60 days from the date of the order of acquittal while under sub-section 5 if the application under sub-section 3 for the grant of special leave to appeal from the order of acquittal is refused, no appeal from that order of acquittal shall lie at the instance of the State Government.

The short question in this case is whether the sessions case started on the complaint of Bhimappa entitles him to move the High Court for special leave (a) against all the three respondents or (b) at least against respondent No. 3.

The answer to this question depends upon whether we can say that there was a case instituted upon a complaint by Bhimappa in which an acquittal was recorded, for these are the words of the sub-section and also the condition precedent to the right. The word 'case' is not defined by the Code but its meaning is well-understood in legal circles. In criminal jurisdiction means ordinarily a proceeding for the prosecution of a person alleged to have committed an offence. In other contexts the word may represent other kinds of proceedings but in the context of the sub-section it must mean a proceeding which at the end results either in discharge, conviction, or acquittal of an accused person

What is meant by 'instituted' may next be explained. There are three different ways in which cognizance is taken by Magistrates of offences. This is stated in s. 190 of the Code. They are :

- (a) upon receiving a complaint of the facts which constitute an offence;
- (b) upon a report in writing of such facts made by any police officer; and
- (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed."

The third sub-section, therefore, obviously refers to a case in which cognizance is taken upon a complaint of facts constituting an offence. The word 'complaint' has been defined in s. 4(1)(h) and means an allegation made orally or in writing to a Magistrate, with a view to his taking action, under the Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police-officer.

The word 'complaint' has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which the complaint must take. It may only be said that there must be an allegation which *prima facie* discloses the commission of an offence with the necessary facts for the Magistrate to take action. Section 190(1)(a) makes it necessary that the alleged facts must disclose the commission of an offence.

The Code then proceeds to provide different procedures for different cases arising under s. 190 and also in relation to the

- A** seriousness of the offence. Chapter XVI deals with proceedings instituted upon a complaint, Chapter XVIII with inquiries into cases triable by the Court of Session or the High Court, Chapter XX with the trial of Summons cases by Magistrates, Chapter XXI with the trial of Warrant cases by Magistrates, Chapter XXII with summary trials and Chapter XXIII with trial before High Courts and Courts of Sessions.

The offence here was mischief by fire with intent to destroy a house etc. punishable under s. 436 I.P.C. This offence is triable exclusively by the Court of Session. Section 207 of the Code of Criminal Procedure provides :

- C** "Procedure in inquiries preparatory to commitment—

In every inquiry before a Magistrate where the case is triable exclusively by a Court of Session or High Court, or in the opinion of the Magistrate, ought to be tried by such Court, the Magistrate shall—

- D** (a) in any proceeding instituted on a police report, follow the procedure specified in section 207A; and
(b) in any other proceeding, follow the procedure specified in the other provisions of this Chapter."

- E** Under s. 206 the Magistrate is required to commit an accused to the Court of Session for trial. In cases triable by the Magistrate himself he has to follow the procedure for trial of cases according to the other procedures mentioned earlier by us. As this was a case for the application of sections other than s. 207-A it fell under section 208. That section provides for cases of complaint and the complainant has to be heard when the accused appears or is brought before the Magistrate who has to take such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called by the Magistrate. Then under s. 209 the accused may be discharged unless the Magistrate considers it necessary that the person should be tried before himself or some other Magistrate in which case he shall proceed accordingly. If he considers that there are reasons to commit the accused, he shall frame a charge, explain it to the accused, obtain from the accused a list of his defence witnesses. The Magistrate may in his discretion examine any of these witnesses and then commit the accused to stand his trial before the Court of Session or if satisfied that there are no grounds for committing the accused, he may cancel the charge and discharge the accused.

It will be noticed that in a case involving an offence triable exclusively by the Court of Session the procedure under ss. 206-220

has to be followed if the complaint is filed initially. There are other sections in the Chapter and other Supplementary provisions which are not relevant to the discussion and, therefore, reference to them is omitted here.

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The position regarding other cases triable by the Magistrate himself or by another magistrate are laid down in Chapter XVI. There the magistrate shall examine the complainant and the witnesses present, if any. The Magistrate may even send the case to the police for investigation under s. 156(3) if he is empowered to act under s. 190. This procedure of course does not arise in cases in which the trial is of an offence triable by the Court of Session. As we are not concerned with the problems arising under Chapter XVI we refrain from expressing an opinion on the various aspects of the problem arising under that Chapter. For that reason we do not refer to cases which were mainly concerned with trials before Magistrate.

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In the present case the police had put up a chargesheet against two respondents only. Bhimappa filed a complaint in which he charged these two respondents and respondent No. 3 with the same offence of mischief by fire but with the aid of s. 34 I.P.C. As he had charged the three respondents with having entered into a Criminal Conspiracy a charge under s. 120-B I.P.C. was also framed while committing the accused to the Court of Session. Mallappa was also charged under s. 436 read with s. 109 I.P.C. for abetment of the offence by the other accused. The two cases in the Magistrate's Court were registered under their own numbers but were tried together and were committed separately. In the Court of Session they were also registered separately and bore numbers Sessions Cases Nos. 79 and 80 of 1965. Both the cases ended in acquittal.

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Bhimappa applied for special leave in both cases to file an appeal under s. 417(3). His right to ask for special leave was not accepted in the High Court.

Now there can be no manner of doubt that one of the cases was instituted on the report of a police officer and the other on the complaint of the complainant. There can be no question of merger because the identity of the two cases is maintained right up to the end of the Sessions trial. The case of Bhimappa proceeded on its own number and although evidence was led in both the cases together, the acquittal was recorded in each of the two cases. The police did not present a charge-sheet against Mallappa and the trial of Mallappa can be said to be in the other case and not in the case filed by the police. In this view of the matter it is quite plain that Bhimappa was entitled to move the High

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- A** Court for special leave in his own case. The order saying that he had no standing cannot, therefore, be sustained.

B Bhimappa had also applied for revision and his application was rejected. He applied for special leave against that order but leave was refused by this Court. It was argued that that must conclude the matter. We do not agree. Bhimappa's statutory right to move the High Court could not be lost by reason of the revision. The result of the revision, therefore, had no bearing upon the matter.

C Bhimappa was thus entitled to have a hearing of his petition for special leave under s. 417(3) of the Code. Whether he could ask for leave against Malappa alone or against the other two because the charge under s. 120-B I.P.C. was framed against all the three respondents on his complaint is a point which we do not decide because it will be for the High Court to consider the matter when his petition is considered and only if it is allowed.

D We accordingly set aside the order of the High Court and remit the case for consideration of the petition under s. 417(3) filed by Bhimappa.

R.K.P.S.

Appeal allowed.