

ALMOHAN DAS AND ORS.

v.

STATE OF WEST BENGAL

October 25, 1968

[J. C. SHAH AND V. RAMASWAMI, JJ.]

Criminal Procedure Code 1898, ss. 207A and 209—Committal proceedings—If Magistrate should be satisfied as to guilt of accused or only that there is some credible evidence to sustain a conviction before making order of commitment.—Circumstances in which High Court justified in interfering with committal in revision.

On a complaint filed by the Registrar of Companies, and after an investigation by the Police ordered by the Chief Presidency Magistrate, Calcutta, proceedings were instituted against the appellants for conspiring to commit criminal breach of trust in respect of a company's funds. After a large number of witnesses were examined and several documents were tendered in evidence, the Magistrate committed the accused to stand trial for offences under s. 120B read with Sections 409, 477A I.P.C. before the Court of Sessions. A revision application against the order of committal was rejected *in limine* by the High Court. In appeal to this Court it was contended on behalf of the appellants that there was no evidence on which the order of commitment could be made and that under s. 209(1) Cr. P. C., the charge may be framed only if in the view of the committing Magistrate the evidence on record is sufficient to justify conviction of the accused.

HELD : Dismissing the appeal :

On the facts, it could not be said that there was no evidence on which a charge could be framed against the appellants or that the evidence was so totally unworthy of credit that an order recording the conviction against the accused could not be made.

Although in terms s. 209 applies to cases which are instituted otherwise than on a police report, the principle underlying that section also applies to cases which are instituted on a police report. A Magistrate holding an inquiry has to see whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no *prima facie* evidence or the evidence is totally unworthy of credit, it is his duty to discharge the accused : if there is some evidence on which a conviction may reasonably be based, he must commit the case. [525 A—C]

Normally the High Court in a revision application filed against the order of commitment under s. 207A will not enter upon a reappraisal of the evidence on which the order of commitment is made. The High Court would be justified in exercising its revisional jurisdiction where a substantial question of law arises on which the correctness of the order of commitment may be effectively challenged. But in other cases the trial before the Court of Session should be allowed to run its course. [522 G—523 B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 129 of 1966.

Appeal by special leave from the judgment and order dated March 21, 1966 of the Calcutta High Court in Criminal Revision No. 309 of 1966.

A *A. K. Sen, P. K. Chatterjee, M. M. Kshatriya and G. S. Chatterjee*, for the appellants.

B. Sen and P. K. Chakravarti, for the respondent.

The Judgment of the Court was delivered by

B **Shah, J.** Mahendra Lal and Probhat Kumar Sarkar were the promoters, and Almohan Das was the first Chairman of the Board of Directors of the Great Indian Steam Navigation Company Ltd. Messrs. Das Brothers of which Almohan Das was the sole proprietor became the managing agents of the Company in 1945. On July 2, 1951, Das Group Ltd. of which also C Almohan Das was the principal Director took over the managing agency.

D The Registrar of Companies, West Bengal filed a complaint in the Court of the Chief Presidency Magistrate alleging that sometime between March 1, 1945 and December 31, 1947 a sum of Rs. 7,23,031-9-6 was advanced by the Company to the managing agents Messrs Das Brothers; that on July 2, 1951 Messrs Das Brothers resigned from the managing agency and Messrs Das Group Ltd. took over the managing agency; that Almohan Das was at all material times a director of the company and also a director of Messrs Das Group Ltd. and the sole proprietor of Messrs Das Brothers; and that the complainant had reason to believe that Almohan Das with other directors of the company E had committed offences under ss. 86-D and 87-D of the Indian Companies Act, 1913. The complainant requested that a through investigation be made in the matter. The Chief Presidency Magistrate, Calcutta, referred the case to the police for investigation.

F In the course of investigation of the complaint referred to him, Sub-Inspector J. N. Mukherjee filed a First Information against eight persons (including the five appellants in this appeal) charging them with having conspired to commit criminal breach of trust in respect of the company's funds, falsification of accounts and making false returns, balance-sheets and accounts, and in furtherance of the object of the conspiracy with committing offences punishable under ss. 409 and 477A I.P. Code and under G s. 282 of the Indian Companies Act, 1913. After investigation, Sub-Inspector Mukherjee submitted on February 29, 1958, a report under s. 173 of the Code of Criminal Procedure in the Court of the Chief Presidency Magistrate for those offences against seven persons including the five appellants.

H The Presidency Magistrate, 9th Court, to whom the case was transferred for trial, rejected the contention raised by counsel for the defence that to a charge made against a director in relation to

the affairs of the company, the Indian Penal Code can have no application, and the prosecution, if any, may be instituted under the provisions of the Indian Companies Act alone. The Magistrate also held that it was open to the police officer to whom the case was referred for investigation to submit a charge sheet of his own initiative and that the Court had jurisdiction to enquire into the charge so made without the sanction of the High Court. A revision application was filed in the High Court of Calcutta against that order, but the application was rejected.

Proceedings were then resumed by the Magistrate on December 5, 1961, and a large number of witnesses were examined before him and several documents were tendered in evidence. On December 3, 1965, the Presidency Magistrate committed the accused to stand trial for offences under ss. 120B read with 409 & 477A I.P. Code before the Court of Session. He observed :

“..... having regard to the entire evidence on record and facts and circumstances of the case, I am convinced *prima facie* that good grounds exist for framing charge under s. 409 I.P.C. against accused Almohan Das with charge under s. 120B read with s. 409 I.P. Code against (1) Almohan Das, (2) Sisir K. Das, (3) Nara Singha Pal, (4) Mohendra Lal Kundu and (5) Provat Kumar Sarkar, another charge under s. 467 read with s. 34 I.P. Code against (1) Almohan Das, (2) Nara Singha Pal, and (3) Mohendra L. Kundu for forging Ext. 5, and last under s. 477A against (1) Almohan Das, (2) Nara Singha Pal, (3) Mohendra Lal Kundu, (4) Provat Kumar Sarkar and (5) Sisir Kumar Das in respect of falsification of shareholders minute book (Ext. 18) purporting to ratify the action of Almohan Das regarding the funds of the G.I.S.N. & Co. Ltd.”

Against this order, a revision application was filed in the High Court of Calcutta which was rejected *in limine*. Against the order passed by the High Court, this appeal has been filed with special leave.

In the present case the order of commitment was made under s. 207A of the Code of Criminal Procedure. Normally the High Court in a revision application filed against the order of commitment under s. 207A will not enter upon a reappraisal of the evidence on which the order of commitment is made. The High Court would be justified in exercising its revisional jurisdiction where a substantial question of law arises on which the correctness of the order of commitment may be effectively challenged, where there is no evidence on which the order of commitment could be made, where there has been denial of a right to fair

- A trial, where there is reason to think because of failure to comply with the rules of procedure or conditions precedent to initiation of criminal proceedings, where by ignoring the substantive law which constitutes the offence, or misconception of evidence on matters of importance grave injustice has resulted, and on similar other grounds. But in other cases, interference with the order of the Magistrate committing the accused for trial may not be justified and the trial before the Court of Session should be allowed to run its course.
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- Counsel for the appellants submitted that there was no evidence on which the order of commitment could be made. We do not think that there is any ground for so holding. It was the prosecution case that in order to commit criminal breach of trust in respect of an amount exceeding Rs. 5 lakhs by allowing it to remain with Messrs Das Brothers—the previous managing agents of the company of which Almohan Das was the sole proprietor and from whom Messrs Das Group Ltd. took over the managing agency—a conspiracy was entered into between the seven named persons, and the minutes book of the meetings of the Board of Directors and the shareholders' minutes book were fabricated and criminal breach of trust was committed in respect of the funds belonging to the Company. It is true that in the balance sheet Ext. 137 for the year ending December 31, 1952, on the assets side is an item 'Sundry Advances (Unsecured)' inclusive of Rs. 5,78,941-7-0 due by a firm in which a director of the Company was a partner. But this, it is the case of the prosecution, was not supported by any resolution passed by the Board of Directors. By letter dated June 21, 1956, the Additional Registrar of Companies asked the Company to furnish a certified copy of the minutes of the Board of Directors in which the loan had been made to the managing agents of the Company. In reply thereto by letter dated July 12, 1956, the Managing Agents wrote that as the money was held by the managing agents and was *not given or treated as a loan*, there was no resolution of the Board of Directors in that connection. On September 29, 1956, the Additional Registrar of Companies again wrote a letter to the Company enquiring whether the amount of Rs. 5,78,941-7-0 which was lying with the previous managing agents of the Company Messrs Das Brothers had since been realised, and if so, the evidence adjusting the liability, and if not, to intimate with material evidence whether any steps had since been taken by the Company for the realization of the dues and how the matter stood. In the course of the investigation the officer in charge attached a directors' minutes book Ext. 5 which contains the minutes of a resolution authorising Almohan Das to retain the funds of the Company. Therefore, there was some evidence on which the
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charge for fabrication of the Director's Minutes Book may be sustained. A

In dealing with the charge for fabricating the Shareholders' Minutes Book the learned Magistrate has observed that the materials on the record made out a strong *prima facie* case that the Shareholders' Minutes Book Ext. 18 is also a forged document. The circumstances which lent colour to the prosecution, in the view of the learned Magistrate were—(1) that Ext. 18 starts from February 28, 1945, although the Company was incorporated in 1942, (2) in many meetings the signatures of the shareholders were not taken although in some meetings the shareholders signed the minutes book, (3) resolutions of Amaresh Pramanick and Sudhir Kanti Sarkar are not incorporated in the minutes book, (4) some portions in the last page in the agreement (Ext. 20) with the managing agency firm Das Group appear to have been erased out and the agreement was thus tampered with, (5) the minute book Ext. 18 does not incorporate the relevant questions, and there appeared tampering with pagination, (6) the evidence of P.Ws. 6 & 16 regarding their presence or absence, and (7) the testimony of P.Ws. 15 & 24 suggested that most of the persons shown to have attended meetings were at the "back and call of the accused Almohan Das". Whether this evidence may justify a conviction cannot be enquired into at this stage. The evidence was *prima facie* sufficient to frame a charge. The Presidency Magistrate was of the view that a case for framing a charge for committing the case to the Court of Session was made out and the High Court has summarily dismissed the revision application in exercise of its jurisdiction. B C D E

It was contended before us that under s. 209(1) of the Code of Criminal Procedure, a charge may be framed only if in the view of the committing Magistrate the evidence on record is sufficient to justify conviction of the accused. Section 209 of the Code provides : F

"When the evidence referred to in section 208, subsections (1) and (3), has been taken, and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly." G H

- ⇒ A In terms s. 209 applies to cases which are instituted otherwise than on a police report. But the principle underlying that section applies to cases which are instituted on a police report. A Magistrate holding an enquiry is not intended to act merely as a recording machine. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no *prima facie* evidence or the evidence is totally unworthy of credit, it is his duty to discharge the accused : if there is some evidence on which a conviction may reasonably be based, he must commit the case. The Magistrate at that stage has no power to evaluate the evidence for satisfying himself of the guilt of the accused. The question before the Magistrate at that stage is whether there is some credible evidence which would sustain a conviction.
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- D We do not agree with counsel for the appellants that there was no evidence on which a charge could be framed against the appellants or that the evidence was so totally unworthy of credit that an order recording the conviction against the accused could not be made thereon.

The appeal fails and is dismissed. We trust that the case which has been held up for a very long time will be taken up by the Court of Session for trial with the least practicable delay.

R.K.P.S.

Appeal dismissed.