

(1975) 09 AP CK 0007
In the Andhra Pradesh High Court

Budaraju Seshagiri Rao and Others

APPELLANT

Vs

T.V. Sarma and Another

RESPONDENT

Date of Decision : 16-09-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 200, 202, 203, 204
Penal Code, 1860 (IPC) — Section 120B, 148, 201, 324

Citation : (1976) CriLJ 902

Hon'ble Judges : Chinnappa Reddy, J

Bench : Single Bench

Judgement

Chinnappa Reddy, J.—On 2-1-1975 Dr. Krishna Rao of Hyderabad married Kamala Devi at Swarana, the place of Kamala Devi's parents. They came to Hyderabad on 3-1-1975 and went back to Swarana on 5-1-1975 for celebration of the "nuptial" ceremony. On the morning of 6-1-1975 the body of Dr. Krishna Rao was found in the Kommapur canal- It was suspected that Dr. Krishna Rao had been murdered by poisoning as he discovered that his bride was already pregnant by some one. There was investigation by the Crime Branch of the Criminal Investigation Department and a charge sheet was laid against 13 persons on 30-6-1975 before the Judicial Second Class Magistrate Chirala. The chargesheet was in respect of the offences of murder, conspiracy to commit murder, causing disappearance of evidence and fabrication of false evidence and conspiracy to cause disappearance of evidence and to fabricate false evidence. It is worth mentioning here that apart from Kamala Devi, her parents and relatives, two police officers were also named as accused in the chargesheet filed by the Crime Branch of the CID. Late Dr. Krishna Rao's father, Sri T. V. Sarma, an advocate was dissatisfied with the police charge-sheet. Therefore, he filed a complaint before the Additional Munsif Magistrate of Chirala against 34 persons including the 13 against whom the police had filed a charge-sheet before the Judicial Second Class Magistrate. The Additional Munsif-Magistrate, examined the complainant on oath. He also examined some other witnesses produced by the complainant. Finally he took cognizance of the case against the 13 persons

mentioned in the Police charge-sheet and against the persons shown as A-5 to A-8, A-11 A-12, A-13 A-23 A-24 and A-25 in the complaint. He dismissed the complaint against A-9, A-14, A-26 A-27 and A-32 to A-34 u/s 203 Criminal P.C. He refused to take cognizance of the case against A-28 to A-31 on the ground that the sanction of the Government had not been obtained. A-11, A-12, A-13, A-23, and A-24 have filed Cri. R. C. No- 646 of 1975 and A-5 to A-8 have filed Cri. R. C. No 655 of 1975 against the order of the learned Additional Munsif Magistrate taking cognizance of the case against them.

2. Sri E. Ayyapureddy, learned Counsel for the petitioners argued that the Judicial Second Class Magistrate of Chirala, having already taken cognizance of the case, the Additional Munsif-Magistrate had no jurisdiction to take cognizance of the same case. He also argued that the complainant did not produce all his witnesses before the Magistrate and examine them on oath as required by the proviso to Section 202(2) and therefore, the proceeding before the Magistrate was vitiated. He further argued that no case was made out against the petitioners and, therefore, the Magistrate should not have issued process to them. Sri T. V. Sarma, the complainant, appeared in person and raised a preliminary objection that the provisions of Section 397(2) were a bar to the exercise of any revisional powers and that, in the face of the express bar u/s 397(2), the inherent powers of the High Court could not also be invoked.

3. There appears to be considerable force in the preliminary objection of Sri T. V. Sarma. Section 397(2), bars exercise of revisional powers in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceeding. The object of Section 397(2), is to prevent interference by revisional Courts with the smooth and even progress of enquiries, trials and other proceedings before inferior Courts. Under the Criminal Procedure Code of 1898, not only was there be such limitation on the powers of the revisional Courts, Sections 435 and 438, expressly provided for the suspension of the orders of inferior courts by the revisional courts pending the examination of the record by the revisional Courts- The new Code has made a clear departure from the old Code and has prohibited interference by revisional courts with proceedings in inferior courts at interlocutory stages. Realizing this position the petitioners invoked the jurisdiction of the High Court u/s 482 Criminal P.C. Section 482 Criminal P.C. merely preserves the inherent powers of the High Court. It is well established that the inherent powers of the High Court cannot be invoked so as to do an act which would conflict with an express provision of law or other general principles of Criminal Jurisprudence. Therefore, the bar u/s 397(2) cannot be got over by the invocation of the inherent powers of the High Court u/s 482 Criminal P.C.

4. I must also say that even if it was permissible for me to interfere with the order of the learned Munsif-Magistrate, I would hesitate to do so in a case like the present where, on the committal of the accused to the Court of Session, it would be open to that concerned accused to move the Sessions judge to discharge them u/s 227 of the Code of Criminal Procedure.

5. I will now examine the arguments advanced on behalf of the petitioners. As already mentioned the first submission was that the learned Munsif-Magistrate had no jurisdiction to take cognizance of a case of which cognizance had already been taken by another Magistrate. The learned Counsel relied on *Golapdy Sheikh v. Queen Empress* ILR 1900 Cal 979; *Bhujanga Bhusan v. State* AIR 1957 Cal 370 : 1957 Cri LJ 710, and *Essakutty Hajee v. Raaaaa* 1974 M LJ (Cri) 675 . In the first of the cases, after cognizance had been taken of a case by a certain Magistrate, another Magistrate purported to issue warrants for the arrest of the accused. The learned Judges pointed out that the latter Magistrate was not competent to issue the warrants as the case was pending before another Magistrate. The question whether a Magistrate having simultaneous jurisdiction could take cognizance of a case of which another Magistrate had already taken cognizance did not arise for consideration. In the second case a Criminal case was pending against number of persons for the offences under Sections 148 and 324 I. P. C-before a certain Magistrate. Repeated applications were filed before that Magistrate for the issue of process to one Bhujanga Bhusan, who was also thought to be involved in the crime. Those applications were rejected. Later, a separate complaint was filed against Bhujanga Bhusan before another Magistrate. The question arose whether the latter Magistrate could take cognizance of the complaint. Debabrata Mookerjee, J. held that the second Magistrate would have no jurisdiction to entertain the complaint. He observed that cognizance was taken of offences, but not of offenders, and it would always be open to a Court to issue process against persons not originally named as accused in the police chargesheet. But, he observed, there could be no piecemeal cognizance of offences. The proper course for the complainant was to move the original Magistrate once again to Issue process against Bhujanga Bhusan and not file a separate complaint in another Court. If the learned Judge was treating it as a question of propriety one might agree with him, but if he was treating it as a question of jurisdiction, it would not be possible to agree with him. There is no bar, express or implied, in the Code against more than one Court taking cognizance of an offence. When that happens, the question would be one of propriety and not one of jurisdiction. It would always be open to an aggrieved party to move a superior Court for transfer so that both the cases may be tried together. In the third case the Kerala High Court declined to interfere in exercise of its revisional powers with an order of a Magistrate declining to take cognizance of a case on a private complaint when in respect of the same case cognizance had already been taken on a police report. The learned Judges held that piecemeal cognizance of a single offence or series of offences committed in the course of the same transaction was not warranted by the provisions of the Code- I do not think that it is necessary to repeat what I have said with reference to the case of *Bhujanga Bhusan v. State*.

6. Sri T. V. Sarma, relied on *Haji Mohammudin and Company Vs. The Eastern Japan Trading Company*, ; and *Haji Mohammudin and Company Vs. The Eastern Japan Trading Company*, In the first case, a case was pending before Deputy

Magistrate on three separate police reports. Later a formal complaint was laid before the District Magistrate by the police. The District Magistrate took cognizance of the offence and committed the case to the Court of Session. It was held that there was nothing illegal on the part of the District Magistrate in taking cognizance of the case. In the second case the question whether Courts of concurrent jurisdiction could proceed to try the same offence was considered by Dalip Singh J- who observed as follows:

The second contention of the learned Counsel is that granting there is concurrent jurisdiction and one Court has taken up the case the jurisdiction of the other court is ousted by the first court, taking session of the case. I know of no law or principles of law leading to this result. It may happen even under the Criminal Procedure Code in the case of what is known as continuing offences that two courts may have jurisdiction to try the case. Both Courts might proceed to try the case in ignorance of the proceedings of the other Court. A special procedure is provided in the Criminal Procedure Code for such cases to prevent the continuance of two trials regarding the same offence, but apart from the special procedure I know of no principle by which courts of concurrent jurisdiction could not proceed to try the same offence. Of course where one court had arrived at a conclusion and delivered a judgment it would be open to the accused to plead *autrefois* convict or *autrefois* acquit but that is a different question altogether from holding that the proceedings in one or other of the Courts are *coram non-judica*. I therefore repeal this contention also and hold that the Special Magistrate had jurisdiction to try this case.

7. I am of the view that in the absence of an express statutory prohibition it cannot be said that a Court has no jurisdiction to take cognizance of an offence of which cognizance has already been taken by another court. The question, as I said earlier is one of propriety and not jurisdiction. In fact Section 210 Criminal P.C. clearly envisages cognizance being taken of an offence both on a police report and a complaint, and provides for the procedure to be followed in such cases. It is therefore not correct to say that the scheme of" the Code rules out a situation where cognizance may be taken of the same offence by different courts.

8. On the question of the propriety of the Munsif Magistrate taking cognizance of the offences of which the Judicial Second class Magistrate has already taken cognizance, I only wish to say that it is a matter within the discretion of the learned Magistrate and I should not interfere with that discretion in the exercise of my revisional powers.

9. The next submission of Sri Ayyapu Reddy was that the order of the learned Magistrate taking cognizance of the case and issuing process against the petitioners was illegal as there was a contravention of the provisions of Section 202(2) Criminal P.C. I do not agree with this submission of Sri Ayyapa Reddy. Section 200 requires a Magistrate taking cognizance of an offence on complaint to examine upon oath the complainant and the witnesses present. Section 204 empowers a Magistrate to issue process to secure the attendance of the accused,

if in his opinion there is sufficient ground for proceeding. Section 202(1), however enables a Magistrate to postpone the issue of process and to enquire into the case himself or direct an investigation by a police officer or other person, for the purpose of deciding whether or not there is sufficient ground for proceeding. Where a Magistrate proceeds to make such an enquiry he is required by the proviso to Section 202(2) if the offence complained of is triable exclusively by the Court of Session, to call upon the complainant to produce all his witnesses and examine them on oath. The proviso appears to be intended to provide against a Magistrate refusing to take cognizance and issue process without calling upon the complainant to produce all his witnesses and examining them on oath. In cases where the offences complained of are triable exclusively by the Court of Session, it is not intended to give a lever to the accused to complain that the Magistrate should not have taken cognizance of the case without examining all the complainant's witnesses. A complainant may complain against the refusal of a Magistrate to take cognizance of the case without examining all his witnesses. But, an accused cannot complain against a Magistrate taking cognizance of a case without examining all the witnesses. Sri Ayyappu Reddy urged that the proviso to Section 202(2) was intended to provide the accused with an opportunity to know the case against him and the witnesses who were going to depose against him, I do not think, that is the object of the proviso. The accused does not enter the picture at all at that stage. The enquiry by the Magistrate u/s 202 is only for the purpose of enabling him to decide whether or not there is sufficient ground for proceeding. In deciding that question the Magistrate is required to call upon the complainant to produce all his witnesses and examine them on oath in the case of offence exclusively triable by a Court of Session. The provision is clearly not meant to furnish any fodder to the accused.

10. The learned Counsel finally urged that there was no material at all against A-13, A-23 and A-24 on the basis of which the learned Magistrate could have taken cognizance against them. The learned Magistrate has referred to A-13 in paragraph 12 of his order. At this stage I am not inclined to discuss the material against him. The learned Magistrate has, no doubt, not given any reasons for taking cognizance of the case against A-23 and A-24 for the offences u/s 120B and Section 120B read with Section 201 I. P.C. But, I am not prepared to interfere on that ground since Sri T. V. Sarma has brought to my notice the relevant material against them, including a statement recorded u/s 164, from one Komattala Raghava Reddy, a Police constable. I am carefully refraining from saying anything about the merits as I do not want to prejudice the case of either party. In the result, both the Criminal Revision Cases are dismissed.