
(1926) 06 BOM CK 0045
In the Bombay High Court

Emperor	Vs	APPELLANT
Kallappa Dundappa Rudrannavar and Another		RESPONDENT

Date of Decision : 23-06-1926

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195, 196, 197

Citation : AIR 1927 Bom 21

Judgement

1. In this case the two accused have been committed to the Sessions Court of Belgaum for trial on charges of offences u/s 4 of the Indian Explosive Substances Act 6 of 1908. The Sessions Judge has referred the case to us on the ground that the sanction of Government for the prosecution of the two accused has not been obtained in accordance with Section 7 of that Act. We are asked to quash the commitment in toto, in order that the prosecution may obtain the necessary sanction and begin proceedings afresh. Section 7 of the Act in question says:

No Court shall proceed to the trial of any person for an offence against the Act except with the consent of the Local Government or the Governor-General in Council.

2. It is to be noted that these words are not as wide as some similar enactments in the Criminal P.C. For instance, Section 132 says : " No prosecution shall be instituted " without the necessary sanction. Sections 195, 196 and 197, Criminal P.C. use the wide language " No Court shall take cognizance of " the offence without the Government sanction. And Section 339 says " No prosecution shall be entertained " without the requisite sanction. In such cases clearly sanction is necessary to the institution or entertainment of the prosecution before a Court can take cognizance of the offence. But Section 7 of Act VI of 1908 only restrains the Court from proceeding to the trial of any person for an offence under the Act except with this consent.

3. The committal proceedings are only an " inquiry " as defined in Clause (k) of Section 4 of the Criminal P.C. and as if shown by the heading to Chapter 18 of the Code. An offence u/s 4 of Act 6 of 1908 is triable exclusively by a Court of

Session : (see Schedule 2 " Offences against other laws," Criminal P.C). In a case exclusively triable by a Court of Session, the trial begins only after the commitment and the framing of the charge : cf. Narayanaswamy Naidu v. Emperor [1909] 32 Mad. 220. Therefore we are of opinion that it is not necessary to quash the committal proceedings ; for the want of the sanction does not invalidate those proceedings any more than the proceedings of the preliminary Police inquiry. As, however, the Sessions Judge cannot proceed with the trial of the accused on that commitment without the requisite sanction, he should arrange to postpone the trial till it is obtained. The proceedings should be returned with these remarks.