

(1951) 07 KAR CK 0004

In the Karnataka High Court

Case No : Criminal Revision Case No. 8 of 1950-51

Government of Mysore

APPELLANT

Vs

Lakshmmamma and Others

RESPONDENT

Date of Decision : 10-07-1951

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438

Citation : AIR 1951 Kar 115

Hon'ble Judges : Venkata Ramaiya, J;Balakrishnaiya, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; K.R. Gopivallabha Iyengar, for the Respondent

Judgement

Yenkata Ramaiya, J.—This is a reference by the learned District Magistrate, Shimoga, u/s 438, Criminal P. G. seeking orders in R. C. No. 136 of 50-51 on the file of the Special First Class Magistrate, Sagar. The reason for the reference is that the learned Magistrate declined to entertain the charge-sheet presented by the Hosanagar Police alleging commission of offences by the accused on 21-5-1949 in Kote Shirur which at the time formed part of the Madras State but part of Mysore State at the time of the charge-sheet. The case was originally instituted in the Court of the Magistrate, Coondapur, and consequent on the passing of the Provinces and States (Absorption of Enclaves) Order, 1950, an objection was raised by the accused for the case being proceeded with before that Magistrate in South Oanara. The objection was upheld and the proceedings in the case before that Magistrate ceased. Subsequently the Hosanagar Police placed a charge-sheet before the learned Magistrate, Sagar, which he declined to entertain on the view that the proper Court having jurisdiction to proceed with the case was the Court in South Canara and not in Mysore.

2. We are unable to agree with the learned Magistrate either in the reasoning or the view adopted by him on the question of jurisdiction. The cases referred to by him in support of the conclusion are not helpful to decide the point as they only

serve to show that the Magistrate in South Canara is competent to proceed with the case and not that the Court in Mysore has no jurisdiction to deal with it. Instead he would have done well to have examined the provisions of the Enclaves Order which have a direct and material bearing on the question for consideration. Clause 3 states:

"As from the appointed day, every enclave specified in the First Schedule shall cease to form part of the surrendering unit, and shall be included in, and form part of the absorbing unit."

Clause 5 declares:

"As from the appointed day every enclave specified in the Schedule 3 shall be administered in all respects as if it formed part of the absorbing unit."

According to Clause 8 which is important

"All laws in force in an enclave immediately before the appointed day shall, as from that day, cease to be in force in that enclave, and all laws in force in the absorbing unit shall, as from that day, extend to, and be in force in, that enclave: Provided that anything done or any action taken under the laws in force in the enclave before the appointed day shall be deemed to have been done or taken under the corresponding law extended to, and in force in, that enclave as from the appointed day."

It is clear from these that from 25-1-1950 Kote Shirur within which the offence was committed became part of Mysore from that day, that since then in all respects this place has to be administered like any other part of Mysore that the laws in force in Mysore apply to the said area from 25-1-1950 and that anything being done up to or on that day must be deemed to have been done under the laws in force in Mysore. If it were a case pending before the Magistrate in Coondapur and by virtue of the provisions of the Enclave Order it had to be continued in Mysore the law which would govern the case would be the law in Mysore. That is not a question which arises in this case since the charge-sheet is presented afresh by the police in Mysore. It cannot be disputed that the Magistrate having jurisdiction to try persons for offences committed within the limits of Kote Shiroom is the Magistrate in Mysore at present. Reading the 3 Clauses in the Enclave Order referred to, it seems to us that the combined effect of these is to vest the Magistrate with jurisdiction to deal with the cases relating to offences alleged to have been committed even prior to the order. The question whether the act complained of is punishable according to the law in Mysore if the law in Madras on the date of the commission of the offence was different is not a factor determining the Court by which the case can be tried. The only point we are now concerned with is one of jurisdiction and as regards that we have no doubt the Magistrate at Sagar is competent to proceed with the case.

3. We therefore, accept the reference and direct the Magistrate to proceed with the case in accordance with law.