
(2000) 03 AP CK 0014

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition No's. 4961, 4962 and 4963 of 1999

In Re: Referring Officer, Addl. District and Sessions Judge

Date of Decision : 31-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 209, 226, 227, 228
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 14, 3, 3(1)

Citation : (2000) 1 ALD(Cri) 654 : (2000) 1 ALT(Cri) 388 : (2000) CriLJ 3422

Hon'ble Judges : Ramesh Madhav Bapat, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy, P.P, for the Appellant;

Judgement

Ramesh Madhav Bapat, J.—The Division Bench of this Court consisting of both of us had an occasion to deliver judgment in Cri. R.C.No. 905 of 1996 dated 23-4-1999 in Referring Officer Vs. Shekar Nair @ Guru and Others, . In the said Cri. R.C. the question was decided by this Court as to what procedure is to be followed in cases wherein the accused are charged of an offence punishable under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act").

2. This reference was answered by this Court and while answering the reference, various judgments of different High Courts and also the judgments of the Full Bench of Kerala High Court were taken into consideration. We dissented from the view taken by Kerala High Court and we observed that the charge-sheets are liable to be returned for filing the same before the Court of concerned Magistrate of First Class for securing the committal of the accused to the Court of Session constituted as Special Court under the Act. One more aspect clarified was that the atrocities punishable u/s 3 of the Act as well as the offences under I.P.C committed in the course of the same transaction can be tried by the Special Court in the same trial subject to the committal by the Magistrate. It may be mentioned that the said decision was approved by the Supreme Court recently in Gangula Ashok and Another Vs. State of A.P., .

3. After the said decision, the Sessions Judges have entertained doubts and sought for clarifications/instructions of the High Court on the points mentioned by them. On the orders of the learned Chief Justice, they were treated as Reference Cases u/s 395(2), Cr.P.C. That is how the cases are placed before us again.

Cri M.P. No.4161 of 1999 :

4. This reference is at the instance of Addl. District and Sessions Judge, Sriakulam. We are now answering the questions referred to this Court u/s 395(2), Cr.P.C. in seriatim.

(1) Whether the Judicial Magistrate of First Class may assign Calendar Case number to a charge-sheet or a complaint if cognizance is taken of an offence punishable under the S.C. and S.T. (PA) Act, 1989 and triable in accordance with the warrant procedure prescribed in the Criminal Procedure Code, 1973 or he has to assign preliminary register case number even though any of the offences is not punishable with more than seven years" imprisonment as stated in Part-II of the Scheduled-I to the Criminal Procedure Code, 1973.

d 5. Our answer to this question is as under :

It is evident from S.C. and S.T. (PA) Act, 1989 that the offence involved under the said Act has to be dealt with by the Sessions Court, which is empowered u/s 14 of the Act with the powers under S. C.and S. T. (PA) Act, 1989. When the charge-sheet is filed in the Court of the Judicial Magistrate of First Class having territorial jurisdiction, the Magistrate has to number the case as P.R.C. because of the fact that Magistrate has no jurisdiction to try the case. He has to commit such case to the Special Court and other offences arising under IPC as a part of the same incident. The S.C. and S.T. (PA) Act does not make any difference as to what sentence is provided for different acts committed by the accused under the said Act. All the offences are to be tried by the Special Court and, therefore, such case has to be numbered as P.R.C. Case. As a matter of fact, the nomenclature - the Calendar case and P.R.C. Case are given under the provisions of Criminal Rules of Practice just to identify the cases which are triable by the Magistrate and which cases are to be committed for trial. Therefore, there is no reason to attach much importance to such nomenclature.

6. The second question is as under :

(2) If a case is registered as a calendar case, whether such case can be committed u/s 209(a) Cr.P.C. to the Special Sessions Court for following the procedure prescribed for preliminary register cases?

7. As we have already pointed out that no offence punishable under S.C. and S.T. (PA) Act is triable by the Magistrate. Therefore, even if the case is wrongly registered as calendar case, it has to be committed to a Special Court. In order to avoid confusion, it will be better that such a case if already registered as a calendar case, it has to be registered afresh as P.R.C. case for the sake of

convenience and to identify the cases triable by the Special Court.

8. The third question is as under :

(3) Whether after committal of a case to the Special Sessions Court, every case has to be registered as a Sessions Case or whether cases of offences u/s 3(1) of the SC and ST (PA) Act exclusively or combined with I.P.C. sections triable in accordance with warrant procedure as per Criminal Procedure Code have to be tried as calendar cases by the Special Sessions Court?

9. The latter part of question is not quite clear. However, we shall express our view to the extent we could understand it. As already pointed out by us in the ruling reported in Referring Officer's case (supra) the offences falling under S.C. and S.T. (PA) Act has to be tried by the Special Court and such powers are conferred on Sessions Court or Additional Sessions Court as the case may be and, therefore, the Sessions Court has to register the said case as Sessions Case and try according to the procedure laid down in Cr.P.C. for trying the offences by the Sessions Court under Sections 226 - 237, Cr.P.C. The Sessions Court is empowered specially under this Act cannot try the cases committed to it as per the warrant procedure though some offences under IPC are otherwise triable according to warrant procedure. They have to follow the procedure prescribed for trying the sessions cases, though there is no substantial difference either way.

Thus, the reference is answered accordingly.

Cri. M.P.No. 4962 of 1999 :

10. This reference is at the instance of the learned First Additional District and Sessions Judge, Nalgonda. The grounds of reference are dealt with hereunder :

1. Whether the Special Courts, which has taken cognizance of the offences under SC and ST (PA) Act, 1989 and made some progress in the cases (like framing of charge/ charges examining one or two witnesses etc., but could not complete the trial for some reasons like non-production of witnesses, absence of accused etc.) can proceed further in the direction of completing the trial and what is the effect of the decision rendered in the light of the observations of the Hon'ble Judges, at the top of page 46 of the judgment after referring to the decision of the Supreme Court in Mohammad Safi Vs. The State of West Bengal, : "Whether the proceedings would become null and void in cases where cognizance of the offences was taken contrary to the prohibition in Section 193, Cr.P.C. is a debatable question and need not be dealt with in this case.

11. While delivering the aforesaid judgment, we had kept, that issue open because of the fact, after the commencement of the Code of Criminal Procedure (Act 2 of 1974), the Magistrate has to simply transmit the case to the Court of Session by passing the committal order. In the old Code the Magistrate was required to record the entire evidence, documentary and oral, and also was required and then decide whether any prima facie case was made out against the accused for making them to face the trial before the Court of Session. Under the

old Code, the Magistrate had jurisdiction to discharge such accused against whom no prima facie case is made out which is triable by Court of Session but that position does not exist now and, therefore, we felt a doubt as to whether trial of case without committal is a curable irregularity. In the same judgment we have observed that a Special Court is necessarily a Court of Session. Therefore, the Sessions Court is not the Court of original criminal jurisdiction. The Sessions Court gets jurisdiction only after the committal order is passed by the Magistrate u/s 193, Cr.P.C. and, therefore, at whatever stage the case falling under SC and ST (PA) Act is pending before the Special Court which has taken cognizance without committal order, becomes a case without jurisdiction. The question of jurisdiction goes to the root of the matter and, therefore, at whatever stage the case is reached, the proceedings before the Special Court will be null and void. Under these circumstances, the Special Court has to return the papers to the Magistrate having territorial jurisdiction and he can try the cases afresh only after the order of committal is passed by the Magistrate Court.

12. We may refer to the recent decision of the Supreme Court in *Gangula Ashok and Another Vs. State of A.P.*, . Their Lordships clarified the legal position thus (at page 822 of Cri LJ) :

Hence, we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straightway be laid before the Special Court under the Act.

Referring to Section 193 of the Cr.P.C, their Lordships observed (at page 821 of Cri LJ) :

The Section imposes an interdict on all Courts of Session against taking cognizance of any offence as a Court of original jurisdiction.

Again in para 11, it was observed :

Neither in the Code nor in the Act there is any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straightway be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal Courts that the Court of Session is given a superior and special status.

13. The following observations made by us in *Shekar Nair's* case 1999 Cri LJ 4173 (Andh Pra) (supra) are quite relevant while answering this question (at page 4188 of Cri LJ):

Before concluding, we may add that Section 193 is enacted in the Chapter with the heading "Conditions requisite for initiation of proceedings". In *Mohammad*

Safi Vs. The State of West Bengal, , the Supreme Court while dealing with the competence of Court under the Code of Criminal Procedure observed as follows : The competence of a Court, however, depends not merely on the circumstance that under some law it is entitled to try a case falling in the particular category in which the offence alleged against the accused falls. In addition to this, taking cognizance of the offence is also material in this regard. Under the Code of Criminal Procedure, a Court can conditions requisite for initiation of proceedings before it as set out in part B of Chapter XV are fulfilled. If they are not fulfilled, the Court does not obtain jurisdiction to try the offence.

The above observations of the Supreme Court seem to suggest that if the Special Court takes cognizance of the offence or offences under the Act as well as IPC contrary to Section 193, Cr.P.C. it affects thejurisdic-tion of the Special Court because it would amount to ignoring the pre-conditions for initiation of proceedings.

Having so observed, we left open the question whether the proceedings become null and void. Having regard to the dicta laid down in Mohammad Safi Vs. The State of West Bengal, , and the latest decision of the Supreme Court , we reaffirm the observations extracted above and the question which has been left open is now answered by holding that the Special Court cannot proceed with the trial of the case without having jurisdiction to directly take cognizance of the offence and without the case being committed to it. None of the provisions of the Cr.P.C. viz., Sections 460, 462 and 464 can be invoked to save the situation. We may mention that D.S.R. Varma, J. in a recent case in P. Venkata Reddy v. State of A.P. 1999 (2) ALD 840, has also taken the view that the trial by the Special Court without committal vitiates the entire proceedings and must be deemed to be null and void.

14. The second question is :

2. What are the steps to be taken or what is the procedure to be adopted in cases where cognizance has been taken by this Special Court but did not make any progress and trial has not been commenced?

The course of action in such a case has already been indicated in our order in the reference case 1993 (3) ALT 533 : 1999 Cri LJ 4173.

15. The third question is :

3. Whether the cases falling under the above two categories or anyone of the above can be returned at this stage irrespective of the fact that cognizance has been taken?

The answer is in the affirmative in view of the conclusion recorded in 1993 (3) ALT 533 : 1999 Cri LJ 4173, and the answer to the 1st question supra.

Thus, the reference is answered accordingly.

Cri. M.P. No. 4963 of 1999 :

16. This reference is at the instance of the Special Sessions Judge-cum-IV Additional District Judge, Tirupathi.

The learned Judge has given the list of cases. In some of the cases trial has commenced and some of the cases are pending for framing charges. The clarification sought for is as to what should be done in such cases in which cognizance was already taken by this Court and trial was also commenced after framing charges.

We had already pointed out that the Special Court does not get jurisdiction unless the case is committed to the Court of Sessions u/s 193, Cr.P.C. All the cases falling under SC and ST Act have to be tried by the Special Court only on the order of committal passed by the Magistrate having territorial jurisdiction. At whatever stages, these cases are pending, it has to be sent back to the concerned Magistrate. On receipt of the cases, the Magistrate has to number the case as P.R.C. and if he finds that these cases are triable by the Special Court, then he has to pass the order u/s 193, Cr.P.C. Whatever progress is made in the above cases is without jurisdiction and therefore, the whole exercise done by the Sessions Judge presiding over the Spl. Court is null and void.

Thus, this reference is answered accordingly.

We record our appreciation for the assistance rendered by the learned Senior Counsel Sri C. Padmanabha Reddy in answering the references.