

(1967) 02 KAR CK 0006

In the Karnataka High Court

Case No : Criminal Revision Petition No. 54 of 1967

Shivangouda Malliangouda and Others

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 23-02-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 251, 561 A
Penal Code, 1860 (IPC) — Section 147, 148, 307, 326

Citation : AIR 1967 Kar 199 : (1967) CriLJ 1534

Hon'ble Judges : H. Hombe Gowda, C.J.; M. Santhosh, J

Bench : Division Bench

Advocate : G. Shankara Chetty, for the Appellant; Public Prosecutor, for the Respondent

Judgement

H. Hombe Gowda, C.J.—This revision petition is filed under Sections 215 and 561-A of the Code of Criminal Procedure (Section 215 of the Code of Criminal Procedure is obviously a mistake and it is not applicable) for (finishing of the order, dated 10-1-1967, passed by the Additional Sessions Judge, Dharwar, Ex. 6, in Sessions Case No. 63 of 1966 dismissing the application filed by the petitioners (accused) to quash the committal order, dated 18-11-1966, passed by the Judicial Magistrate, First Class. Ranebennur, in C. C. No. 630 of 1966

2. A charge-sheet for offences punishable under Sections 147, 148 and 326 read with Section 149 of the Indian Penal Code was placed against the petitioners accused in the Court of the Judicial Magistrate, First Class, Ranebennur, in C. C. No. 630 of 1966. The learned Magistrate proceeded to deal with the case under Chapter XXI of the Code of Criminal Procedure When the learned Magistrate, was considering the papers filed u/s 173, Cr. P. C. a memo was filed by the Prosecuting Inspector to the effect that the allegations in the charge sheet clearly indicated that the accused were also guilty of an offence punishable u/s 307 of the Indian Penal Code and that the accused should be committed in take their trial in the Court of Sessions for all the offences.

At that stage the accused made an application before the learned Magistrate to examine the witnesses before he made up his mind in this regard. The learned Magistrate framed a charge for offences punishable under Sections 147, 148 and 307 read with Section 149 of the Indian Penal Code and committed the accused to take their trial in the Court of Sessions. He did not adopt the procedure prescribed under Chapter XVIII of the Code of Criminal Procedure. When the case was transferred to the file of the Additional Sessions Judge, Dharwar. The accused filed an application for recommending the case for quashing of the order of committal to this Court on the ground that the procedure adopted by the learned Magistrate is illegal and has resulted in the miscarriage of justice. The learned Judge heard the arguments addressed on behalf of the accused and the prosecution and dismissed the application. After all these the accused have made this application to this Court to invoke our inherent jurisdiction to quash the order of committal.

3. It cannot be disputed that the order passed by the learned Magistrate committing the accused straightway without adopting the procedure prescribed u/s 207(A) of the Code of Criminal Procedure is illegal. The charge-sheet against the accused, as already stated, was for offences punishable under Sections 147, 148 and 326 read with Section 149 of the Indian Penal Code which are all triable by the learned Magistrate himself under Chapter XXI of the Code of Criminal Procedure. As a matter of fact the learned Magistrate proceeded to consider the papers treating them as a case instituted under Chapter XXI and not u/s 207-A of the Code of Criminal Procedure. It is only after the Prosecuting Inspector filed a memo and prayed the learned Magistrate to commit the accused to take their trial before the Court of Sessions, the learned Magistrate thought it fit to commit the accused to take their trial in the Court of Sessions at Dharwar after rejecting the application made on behalf of the accused to examine the witnesses before he decided as to whether it was a fit case to commit the accused to take their trial before the Court of Sessions or not. The learned Magistrate in the circumstances should have conducted a preliminary enquiry under Chapter XVIII of the Code of Criminal Procedure and in accordance with Section 207-A of the Code of Criminal Procedure. Mr. G. Shankara Chetty, the learned State Public Prosecutor, does not dispute this proposition, but he contends that the learned Magistrate who was dealing with the case under Chapter XXI of the Code of Criminal Procedure was entitled at any stage to commit the accused to take their trial u/s 347 of the Code of Criminal Procedure. We are afraid that the provisions of Section 347 of the Code of Criminal Procedure are not at all attracted in this case inasmuch as the proceedings had just then been initiated and had not at all been started immediately after the Prosecuting Inspector brought it to the notice of the learned Magistrate that the allegations made in the charge-sheet indicated that the accused had also committed an offence or offences triable exclusively by a Court of Session, it was his duty to hold an inquiry under Chapter XVII of the Code of Criminal Procedure. There was absolutely no impediment for the learned Magistrate to have done so in the circumstances of the case.

4. It is urged by Mr. Shankara Chetty, the learned State Public Prosecutor, that while he has no objection for the order of committal being quashed and the case remitted back to the learned Magistrate to conduct a preliminary enquiry under Chapter XVIII of the Code of Criminal Procedure, we should not indicate in our order that he should examine all the witnesses for the incident before he makes up his mind to commit or discharge the accused. We are afraid we cannot accept this contention of Mr. Shankara Chetty. It should be noted that the accused had made an application to the learned Magistrate requesting him to summon and examine all the eye witnesses before he passed any final order in the case. At that stage no witnesses had been examined by the Prosecuting Inspector. The learned Magistrate, as already stated, rejected the prayer made by the accused to examine the witnesses. In a case like this one before us, we are of the opinion, that it is necessary that the witnesses for the incident should be examined by the Prosecutor before any order under Sub-section (6) of Section 207-A of the Code of Criminal Procedure is passed. That it is the correct procedure is made clear by their Lordships of the Supreme Court in *Kirpal Singh Vs. State of Uttar Pradesh*, . Their Lordships in paragraph (7) of the judgment have observed as follows:--

"Before parting with the case, we think it necessary to observe that the committing Magistrate in this case erred in committing the accused to the Court of Sessions without recording the evidence of all the witnesses to the actual commission of the offence. Under the Code of Criminal Procedure as amended by Act 26 of 1955, the Magistrate holding committal proceedings is required to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged, and if the Magistrate is of opinion that it is necessary in the interest of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also. Section 207-A(4). The Magistrate has in the inquiries relating to charges for serious offences like murder the power and indeed a duty in the interest of the accused as well as in the larger interest of the public to record the evidence of other witnesses who throw light on the case. Examination of witnesses to the actual commission of the offence should be the normal rule in inquiries for committal on charges for such serious offences. The prosecutor is expected ordinarily to examine in the Court of the committing Magistrate all witnesses to the actual commission of the offence: if without adequate reasons he fails to do so, the Magistrate is justified in inquiries on charges for serious offences if under a duty to call witnesses who would throw light upon the prosecution case. Before the Code was amended by Act 26 of 1955 it was necessary for the Magistrate holding the inquiry to record the evidence of all the important witnesses. With a view to shorten delays in the proceeding preliminary to bringing the accused to trial, the Legislature has by enacting Section 207-A conferred a discretion upon the Magistrate in the matter of examination of witnesses not produced by the prosecutor. Exercise of that discretion must be judicial; it is not to be governed by any set rules or standards,

but must be adjusted in the light of circumstances of the case. The Magistrate is again not to be guided by the attitude of the prosecutor. He must of course consider the representation relating to the examination of witnesses by the prosecutor, but in considering whether it is necessary in the interest of justice to take evidence of any one or more of the other witnesses for the prosecution, he must have due regard to the nature and gravity of the offence, the interest of the accused and the larger interest of the public, and the defence if any disclosed by the accused. A Magistrate failing to examine witnesses to the actual commission of the offence because they are not produced without considering whether it is necessary in the interest of justice to examine such witnesses, in our judgment, fails in the discharge of his duties." The above observations are clear and in unmistakable terms state that it is necessary that the witnesses for the incident should be examined. These observations apply to the facts of this case.

5. It is urged by Mr. Shankara Chetty that their Lordship of the Supreme Court who dealt with the case reported in *Kirpal Singh Vs. State of Uttar Pradesh*, , had not specifically overruled the observations made in *Shriram and Others Vs. The State of Bombay*, . and the observations in *Shriram and Others Vs. The State of Bombay*, , support his contention that it is not obligatory on the part of the Magistrate to examine all such witnesses. We are unable to accept this contention. This contention has been answered by their Lordships of the Supreme Court in AIR 1966 SC 712 in paragraph (8) of the judgment wherein they have observed as follows: -

"There is nothing in the decision of this Court in *Shriram and Others Vs. The State of Bombay*, which may support the view that in the matter of examination of witnesses, especially in the inquiry relating to serious charges like murder and culpable homicide, the Magistrate is to be guided by the prosecutor. It is the duty of the Magistrate to examine all such witnesses as may be produced by the prosecutor as witnesses to the actual commission of the offence alleged, but his duty does not end with such examination. He must apply his mind to the documents referred to in Section 178 and the testimony of witnesses if any produced by the prosecutor and examine and consider whether in the interest of justice it is necessary to record the evidence of other witnesses. In inquiries relating to charges for serious offences like murder, normally the Magistrate should insist upon the examination of the principal witnesses to the actual commission of the offence. Failure to examine the witnesses, may be justified only in exceptional cases. This is so because the Magistrate in committing a person accused of an offence for trial has to perform a judicial function which has a vital importance in the ultimate trial and a slipshod or mechanical dealing with the proceeding must be deprecated." We are clearly of the opinion that the order of committal passed by the learned Magistrate is illegal and cannot be supported and should be set aside. We order accordingly. The records of the cases will now go back to the Judicial Magistrate. First Class. Ranebennur, to be dealt with in accordance with law in the light of the observations made above.

6. Petition allowed.