
(1976) 11 KAR CK 0001
In the Karnataka High Court

Shivarajveerappa Purad and Another	APPELLANT
Vs	
State of Karnataka and Another	RESPONDENT

Date of Decision : 29-11-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29 (2), 323, 325 (3)
Penal Code, 1860 (IPC) — Section 34, 420, 477 A

Citation : (1977) CriLJ 1113

Hon'ble Judges : K. Jagannatha Shetty, J;C. Honniah, J

Bench : Division Bench

Judgement

K. Jagannatha Shetty, J.—These petitions raise a common question relating to be the validity of the order made by the Principal Munsiff and Judicial Magistrate First Class, Haveri, u/s 323 of the Code of Criminal Procedure.

2. The matter arises in this way:

The accused were charge-sheeted under Sections 477-A and 420 read with Section 34 of the Indian P.C. The learned Magistrate before whom the charge-sheet was filed, committed the accused to the Court of Session to take their trial in view of the gravity of the offences and the maximum punishment that is provided thereunder.

3. In our opinion, the learned Magistrate was wholly in error in making the impugned order. Section 323 has no application to the facts of the case. It provides for the committal of a case which ought to be tried by the Court of Session. This is a case which is not exclusively triable by the Court of Session. The maximum punishment provided for each of the offences is 7 years. Section 29(1) of the Code of Criminal Procedure provides:

The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years." In view of the above provisions, the Chief Judicial Magistrate is competent to try the case in question. But then, it cannot be said

that the Magistrate of the First Class is incompetent to try the case. He could also try such cases, but he cannot pass a sentence of imprisonment for more than 3 years or of fine not exceeding five thousand rupees, in view of the limitation imposed u/s 29(2) of the Code of Criminal Procedure, which reads:

The Court of a Magistrate of the First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both.

4. But, if the Magistrate feels that the accused in a case tried by him deserves more severe punishment than what he is empowered to give, he could take recourse to Section 325 of the Code of Criminal Procedure. It provides that if the Magistrate is of opinion that the accused ought to receive a punishment different in kind from, or more severe than that which he is empowered to inflict, at that stage he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate. u/s 325(3), the Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and shall pass such judgment, sentence or order in the case as he thinks fit. and as is according to law.

5. We, therefore, allow these petitions and quash the committal order and direct the learned Magistrate to try the case. If the learned Magistrate ultimately comes to the conclusion that severe punishment is needed then what he is empowered to inflict, he may then take recourse to Section 325 of the Code of Criminal Procedure.