
(1952) 06 AP CK 0001
In the Andhra Pradesh High Court

State of Hyderabad

APPELLANT

Vs

Murahari Rao and Others

RESPONDENT

Date of Decision : 06-06-1952

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 190, 193, 254, 351, 437

Citation : (1953) CriLJ 116

Hon'ble Judges : Jaganmohan Reddy, J;Deshpande, J

Bench : Division Bench

Judgement

Jaganmohan Reddy, J.

1. Murahari Rao, Danda Krishnamurthy, Goundla Mada Narasimha, Goundla Mada Yellayya and Ambati Narasimha, 5 accused were charged before the Special Tribunal "A" with offences of murder under Sections 243, 30, 124 and 125 of the Hyderabad Penal Code, alleged to have been committed on 14.10.1948 and were convicted and sentenced to death and various terms of imprisonments. On appeal to the High Court, there was a difference of opinion between Siadat Ali J. and Srinivaschari J. and the case was referred to Manohar Pershad J. who agreeing with Siadat Ali J. quashed the conviction and sentence of the persons accused on the ground that they were not afforded an opportunity to engage, a lawyer to defend themselves and ordered as follows on 22.8.50:

Appeal allowed. Case remanded to the trial court for fresh trial. As the accused are charged for murder, they will remain in Jail during trial. This judgment shall govern the other connecting appeals.

2. By the time this order of remand was made the Special Tribunals were abolished and Special Judges were appointed under the Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation X of 1359-F and although there was no specific direction in the order of the High Court to remand the case to a Special Judge appointed under the aforesaid Regulation, the file was sent by the office of the High Court with letter No. 1965, dated

25.8.50 to the Special Judge for Medak and Nalgonda holding his Court in the city of Hyderabad. While the case was pending on the file of the Special Judge, Medak and Nalgonda, it appears that the Chief Minister purporting to act under Sub-Section (2) of Section 5 of the said Regulation, transferred it to the Sessions Judge, Medak for "trial in accordance with law" who in turn transferred the case for disposal to the Additional Sessions Judge, Medak.

After the case was transferred to the Additional Sessions Judge, Medak the accused put - in a petition challenging the jurisdiction of that Court on the ground "inter alia" that being a Sessions Court it cannot take cognizance of the case without an order of commitment by a Magistrate duly empowered in that behalf. The Additional Sessions Judge by his order dated 1.3.51 rejected the petition for, the reason that once cognizance was taken by a competent court there was no question of further taking cognizance of the same offence.

3. After the application of the Indian Penal Code and Indian Criminal Procedure Code to all Part-B States and the re-allocation of territorial jurisdiction, the file was transferred to the Sessions Judge, Nalgonda. Even before the Sessions Judge, Nalgonda who incidentally happened to be the Addl. Sessions Judge of Medak who passed the order dated 1.3.51, a similar petition challenging the jurisdiction of the Sessions Court to take cognizance of the case was presented on 24.12.51, on which the Sessions Judge passed the following order dated 26.12.51:

All the legal points raised in this application have been amply dealt with by me on 1.3.51 disposing of a similar application by the accused. The said order though passed under the Asafia Criminal Procedure Code stands good under the Indian Criminal Procedure Code. The application is rejected.

4. Thereafter the trial proceeded. Murahari Rao and Ambati Narasimha were convicted and sentenced to death for the offence of murder u/s 243 of the Hyderabad Penal Code and their file sent to the High Court for confirmation. Danda Krishnamurthy, Goundla Mada Narasimha and Goundla Mada Yelliah were all acquitted. Both the accused who were convicted have filed appeals separately which are not only time-barred but the judgments convicting them were not attached with the v memorandum of appeal. At the very outset the learned pleader for the accused has raised a preliminary objection challenging the jurisdiction of the Sessions Court at taking cognizance of the case without a committal order as provided for u/s 198 of the Hyderabad Cr.P.C. corresponding to Section 193 of the Indian Cr.P.C.; as such he contends that the trial being without jurisdiction the proceedings leading to the conviction and sentence of the persons accused are vitiated and should be quashed.

5. Before denying with this objection, it will be necessary to examine the relevant provisions of the Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation X of 1359-F., Sub-Section (2) of Section 3 whereof provides that on the 10th day of December, 1949 every Special Tribunal, except

the fourth Special Tribunal shall be deemed to have been dissolved. By Section 5 of the said Regulation, it is laid down as follows:

(1) Every Special Judge shall try-

(a) such offences of which the trial was immediately before the 15th December, 1949, pending before a Special Tribunal deemed under Sub-Section (2) of Section 3 to have been dissolved on that date as are made over to him for trial by the Chief Minister or by a person authorised by the Chief Minister in this behalf.

(b) such offences as are after the commencement of this Regulation made over to him for trial by the Chief Minister or by a person authorised by the Chief Minister in this behalf.

(2) The Chief Minister or a person authorised by him in this behalf may transfer any case from one Special Judge to another Special Judge or from a Special Judge to a court constituted under the code or from such court to a Special Judge.

6. Under the aforesaid provisions of the Regulation, a Special Judge can take cognizance of cases mentioned in Clauses (a) and (b) of Sub-Section (1) of Section 5 as are made over to him for trial by the Chief Minister or by a person authorised by him in this behalf. It is clear that the judgment of the High Court setting aside the conviction, and sentence of the persons accused and remanding the case for a re-trial by the trial Court was subsequent to the 15th of December 1949. Accordingly before cognizance of the case could be taken by any Special Judge, it is essential that the Chief Minister or a person authorised by the Chief Minister in this behalf should have directed its trial by the Special Judge as required by Clause (b) of Sub-Section (1) of Section 5 of the said Regulation. No such order was produced or could be produced at any stage for the obvious reason that it was not so made. Even the High Court is not empowered under any of the provisions of the Special Judges' Regulation or under the Criminal Procedure Code to direct a remand of this case for re-trial by a Special Judge. If the Special Judge under the Special Judges' Regulation could not take cognizance of this case in the circumstances stated above the transfer of such a case by the Chief Minister to the Sessions Judge of Medak was ineffective if not otiose. The order of the High Court though it might have proceeded on the assumption either that the Special Tribunals were in existence or that the case could be remanded to the Special Judge would in effect be deemed to be an order for a re-trial according to law by a court constituted under the Hyderabad Criminal Procedure Code. It however matters very little for resolving the preliminary objection that the Special Judge could not properly be cognisant of the case, because even on the assumption that there was a valid order of the Chief Minister directing the trial of this case by the Special Judge under Clause (b) of Sub-Section (1) of Section 5, the subsequent transfer by the Chief Minister of the case to the Sessions Judge of Medak would involve the determination of

the very same question viz., whether the Sessions Judge of Medak could take cognizance of a case transferred to his Court without a valid order of committal. In short, the objection of the pleader for the accused could be applicable to both the cases, with which I shall now deal.

6a Sub-section (1) of Section 198 of the Hyderabad Criminal Procedure Code relevant for the purposes of this case is as follows:

Except as otherwise expressly provided by this code or by any other law for the time being in force no court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

From the plain language of the Section an order of committal by a Magistrate duly empowered in this behalf is a "sine qua non" of the Court of Session taking cognizance of any offence as a court of original jurisdiction, subject, however, to any provisions otherwise of the Code or any other law for the time being in force. There are certain other provisions in the Code pertaining to the Court of Session taking cognizance of offences. The Court of Session can under provisions analogous to those in Section 478 of the Indian Cr.P.C. take cognizance of an offence also on an order of committal made by Civil or Revenue Courts which for the purposes of that Section are under Sub-Section (2) of the said Section invested with the powers of a Magistrate. Again under Sections 460 and 485 of the said Code, any court including the Court of Session can take cognizance of any contempt or refusal to produce documents without any sufficient cause and punish the offender. It is further provided by Section 437 of the said Code that where it appears to a Sessions Judge or a District Magistrate on examining a record called u/s 435 that the Magistrate has in a case exclusively triable by a Court of Session has improperly discharged all the accused or any of them, as the case may be, cause the accused to be arrested and instead of directing a fresh enquiry order him to be committed subject to the conditions laid down in the said section.

It will therefore be seen that except under Sections 480 and 485 of the Cr.P.C. which provide for the maintenance of the decorum of the courts and for compelling witnesses to obey orders, a Court of Session can only take cognizance of an offence for trial on its original side on an order of commitment. There is in my view no force in the argument of the Government Advocate that Section 437 provides an exception to the above rule inasmuch as both the Sessions Judge as well as the District Magistrate have revisional powers to direct an order of commitment and only after an order of commitment can the Sessions Judge take cognizance of the case for trial on the original side. The object of Section 198 of the Hyderabad Cr.P.C. (193 of the Indian Cr.P.C.) in prescribing an ordinary enquiry is to afford the accused person an opportunity of knowing the facts and circumstances of the offences with which he is charged in order to facilitate his defence as also to save the time of the Court of Session and avoid exposing the accused to the anxiety of a Sessions trial in the event of there being no "prima

facie¹ evidence to support a charge. This provision however, is subject to anything expressly provided otherwise by any law for the time being in force as is done by the Special Judges' Regulation, Section 6 whereof provides that

a Special Judge may take cognizance of an offence without the case being committed to him for trial and in the trial of every offence of which he so takes cognizance shall follow the procedure prescribed in the Code for the trial of warrant cases by Magistrates.

There is, therefore, a clear distinction between a trial by a Sessions Court under the Code and a trial by a Special Judge under the Special Judges' Regulation; in the one case the Court, at Sessions cannot take cognizance without an order of committal by a Magistrate and in which the trial has to be conducted in accordance with the procedure prescribed for Sessions trials; in the other case a Special Judge can take cognizance of a case not by an order of committal but by an order of the Chief Minister or by a person authorised by him in this behalf and the trial is to be conducted according to the procedure laid down for trial of warrant cases by Magistrates.

Under Section 5 of the Regulation, the Chief Minister has been empowered either to direct the Special Judge to try any offence or where the case is already pending before the Special Judge, to transfer the same for trial to the ordinary court constituted under the Code. The learned Advocate for the Government submits that once a case has been taken cognizance of by the Special Judge, no order of committal is required for a court of Session to take cognizance of the case on its being transferred to it under Sub-Section (2) of Section 5 of the said Regulation. We authority has been cited, in support of his contention nor has any express provision of law been referred to by him which over-rides the mandatory provisions of Section 198 of the Hyderabad Criminal Procedure Code.

7. In - Queen Empress v. Rama Teven 15 Mad. 352 and - Queen Empress v. Jagat Chandra Mali. 22 Cal 50 where approvers to whom pardon was given were, after their evidence before the Court of Sessions, then and there treated as accused and placed on trial with the other accused, it was held that their convictions were bad and the Court of Session had no jurisdiction to try them as they were never committed to that Court by any competent Magistrate.

In - Mir Fathe Khan v. Emperor AIR 1942 Sind 161, the facts were that during the course of trial of four accused persona duly committed by an order of Magistrate to the first Additional Sessions Judge, Hyderabad who purporting to act u/s 351 of the Cr.P.C. directed that one Mir Fathe Khan who was present in Court but against whom no proceedings had hitherto been taken should be joined in the trial as a co-accused on the same charges, Davis C.J. and Weston J. hold that the learned Judge had no power to join Fathe Khan as co-accused without an order of commitment made after due enquiry by a Magistrate.

Weston, J. who delivered the judgment of the Bench observed at page 162 as follows:

The reasoning of the learned Judge by which he justifies his action shortly is that the words "a Criminal Court" in this section are wide and "should according to all canons of interpretation include a Sessions Court," that Section 351 refers expressly not only to inquiry but also to trial, and that although the powers of a Court of Session to take cognizance of an offence are provided generally by Section 193 of the Code, Section 351 must be considered to be independent of Section 193 in the same manner, as he says, Section 351 is independent of Section 190. It is true that Courts of Session are among the classes of Criminal Courts in British India set out in Section 6 of the Code, But if, by reason of other provisions of the Code, a Court of Session has not power to try any person, save in certain exceptional circumstances such as when contempt is committed before it, unless an order of commitment has been made in respect of such person, then, the generality of the expression "a Criminal Court" in Section 351 must be held to be limited by those provisions. It is also true that Section 351 refers generally to inquiries and trials, but here again there is no difficulty in limiting the meaning of the word "trial" if other provisions of the Code so require...." "It would indeed be a surprising result that the accident of a person's presence in Court should operate to deprive him of the safeguard of inquiry by a magistrate into serious charges sought to be "brought against him before he can be required to stand his trial in a Court of Session. We do not think such a result is required by Section 351 of the Code, which we think, must be read subject to Section 193.

8. The question had also arisen in the case of - Basdeo and Others Vs. Emperor, when considering the effect of a trial by a Sessions Judge of a case committed to him by a Magistrate who was bound u/s 254 of the Code to try himself, the Allahabad High Court held that the proceedings were only vitiated by an irregularity curable u/s 537 and that the Court of Session cannot be said to have no jurisdiction to try the case on such commitment and the conviction of the Sessions Court in such circumstances cannot be impeached as being one without jurisdiction. A distinction was however drawn in that case between the power to take cognizance of a case and jurisdiction over the case. Braund J. held that once a case was committed by the Magistrate to the Sessions Court in accordance with the procedure of the Code, then the Court of Session was placed in a position of taking cognizance of it. He however observed at p. 342.

There is, I think a great deal of difference between a case in which the Sessions Court is enjoined in certain circumstances not to take cognizance of an offence and a case in which the Sessions Court is not a Court of competent jurisdiction in relation to that offence.

There is no doubt that the decision of the case turned mainly on the question that once a case was committed to a Court of Session by a Magistrate duly authorised in that behalf, the trial by it in the circumstances of the case was a mere irregularity. The authorities which I have examined lay down clearly that a Court of Session can only take cognizance of an offence on an order of committal by a Magistrate, which is also in accord with the plain reading of the section

itself, and if there is no order of commitment at all the defect is a substantial one which cannot be cured u/s 537 of the Cr.P.C.

9. The transfer by the Chief Minister under Sub-Section (2) of Section 5 of the Regulation of an offence which has been taken cognizance of by the Special Judge to a Court constituted under the Code would imply that transfers should be made to such a Court as would under the procedure laid down in the Code be competent to take cognizance of the offence so transferred and does not necessarily refer to transfers of such cases to a Sessions Court only for the reason that the offence which the Special Judge can try would be any offence under the Penal Code triable by any grade of Magistrates or by a Sessions Judge. Once the Chief Minister in exercise of his power under the said Sub-Section transfers a case to an ordinary court from the Special Judge, then the procedure under the Criminal Procedure Code would apply in toto and it cannot be contended that he has the power to transfer the case to a court of such gradation as was not competent to take cognizance of it. This would indicate that the section empowering the Chief Minister to transfer cases, intended to restrict the action to be taken in the matter of such transfers to conform to the general requisites of the Procedure laid down in the Code. If on that other hand the argument of the Government Advocate that the power of the Chief Minister to transfer cases to ordinary courts was unfettered, the validity of which could not be questioned, is accepted, it would then mean that the Chief Minister can transfer a case triable by a Sessions Court to even a second class Magistrate for trial creating an anomaly which is unwarranted. Sub-Section (2) of Section 5 of the said Regulation in effect means that where the Chief Minister decides to transfer a case to ordinary courts under the Criminal Procedure Code, he must transfer the case to a competent court which can take cognizance of it in its initial stage under the particular procedure prescribed by the Code under which! it is constituted, i.e., where an offence triable exclusively by a Court of Session is to be transferred to a Special Judge, the Chief Minister should transfer the case from such Special Judge to the Magistrate for enquiry and committal under the provisions of the Hyderabad Criminal Procedure Code analogous to Chapter XVIII of the Indian Criminal Procedure Code and not directly either to a Court of Session or to a Magistrate not competent to make an enquiry in relation to such offences.

10. The result of the above discussion is that there being no committal order by any Magistrate to the Sessions Court of Medak, that court could not take cognizance of this case. As such the proceedings and the trial by the Sessions Court of Nalgonda to which the case was subsequently transferred are vitiated and will have to be and are hereby quashed and the convictions and sentences of the accused set aside. We direct that the file be sent to the Magistrate having jurisdiction to make an enquiry for disposal according to law.

Deshpande, J.

11. I agree.