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**(1971) 02 AP CK 0001**  
**In the Andhra Pradesh High Court**

The State of Andhra Pradesh

APPELLANT

Vs

Golla Ramulu

RESPONDENT

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**Date of Decision :** 02-02-1971

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 167, 344

**Citation :** (1971) 2 AnWR 1

**Hon'ble Judges :** Mohammed Mirza, J

**Bench :** Single Bench

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**Judgement**

Mohammed Mirza, J.—This reference is made by the learned Principal Subordinate Judge, Hyderabad, recommending that the order of the Magistrate refusing to handing over of the accused to the Police for purposes of recovery of a knife, is set aside. In P. R.C. 16 of 1970 the Police had filed a charge-sheet alleging that on 5-6-1970 at about 7.45 P. M., the respondent along with others formed into an unlawful assembly with the common object of causing deaths to Pottisatti, Krishna and Sambaiah and committed rioting, in the course of which Sambaiah was stabbed as a result of which he died. The respondent, after the commission of the crime, was said to be absconding. In the mean time, when the investigation was completed by the Police, a charge-sheet was filed on 4-7-1970 against 16 persons and this respondent was shown as absconding, but it appears that on 21-8-1970 the respondent appeared and surrendered himself to the II City Magistrate. A petition for releasing him on bail was also filed and a notice was given to the Assistant Public Prosecutor and the case was posted for hearing next day. On be-half of the prosecution, C. M. P. No. 547/70 was filed requesting the Court to hand over the respondent in the custody of the Police for the recovery of the knife which was alleged to have been. used in the course of stabbing the deceased.

2. The learned Magistrate took a view that the Court must be satisfied that handing over of the accused to the custody of the Police was necessary before an order is made, but in the present case it was the view of the learned Magistrate

that in the bail application it was stated that the respondent was falsely implicated due to enmity and the question of recovery did not arise. Further the learned Magistrate observed that the investigation in the case was completed as mentioned in the charge-sheet and when once the accused was remanded to judicial custody the question of remanding him to Police custody does not arise.

3. The learned Sessions Judge, before whom a revision petition was filed against the order of the Magistrate, has taken a view that the filing of a charge-sheet does not preclude the prosecution from further investigation of the case, and u/s 344, Criminal P.C. the court can always, if it thinks necessary, remand the accused to the custody of the Police for further investigation.

4. The learned Counsel for the-respondent has urged before me that. neither the enquiry nor the trial has been started and Section 344 of the Criminal P.C. is not applicable in the circumstances of the case. It appears to me that the learned Magistrate had taken the charge-sheet on file which prima facie shows that he had taken cognizance of the offence and as such the enquiry had commenced and it cannot be said that Section 344, Criminal P.C. was not applicable. Even if it is to be accepted that it was not the case where the enquiry had commenced nothing prevents the court to act under Sub-section (3) of Section 167, Criminal P.C. which is in the following words:

A Magistrate authorising under this section detention in the custody of the Police shall record his reasons for so doing.

Under this Clause, a Magistrate has vide and unrestricted power to remand an accused to the custody of the Police at any stage before the enquiry or trial.

5. In either case, I think, the powers of Court are not restricted or limited by any provision of law in making orders of remand and therefore, I agree with the conclusion of the learned Pro. Sessions Judge that the order of the Magistrate is not legally correct and I direct that the respondent will be handed over to the custody of the Police for a period of 5 days as prayed for. The reference is. therefore, allowed as observed above.