

(1965) 10 KAR CK 0006

In the Karnataka High Court

Case No : Criminal Revision Case No. 21 of 1965

The State of Mysore

APPELLANT

Vs

Neelkanthgouda and Others

RESPONDENT

Date of Decision : 19-10-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 173, 417, 438
Penal Code, 1860 (IPC) — Section 341, 342, 379, 396

Citation : AIR 1967 Kar 5 : (1967) CriLJ 96

Hon'ble Judges : C. Honniah, J

Bench : Single Bench

Advocate : Bheemasenacharya Ashrit, High Court Govt. Pleader, for the Appellant; K. Jagannatha Shetty, for the Respondent

Judgement

1. This is a reference by the District Magistrate, Raichur, u/s 438 Cr. P. C. against the orders of the First Class Magistrate, Deodurg dated 19-11-64 discharging the respondents (accused) of the offence u/s 396 I. P. C. and dated 16-2-1965 acquitting the respondents of the offences under Sections 379, 341, 342 and 323. I. P. C. in case No. 20/2 of 1964.

2. The Police of Jalhsdli in Dcodurg Taluk, Raichur District filed a charge sheet against the respondents for offences under Sections 395, 341, 342 and 323. I. P. C. on the allegation that on 17-3-64 of about 10.30 P. M. they beat one Ayyuppa (P. W. 1) and forcibly removed from his person, a wrist watch, a gold chain, a silver "Lingadakui". a torch and a sum of Rs. 45. The learned Magistrate held an enquiry u/s 207-A, Cr. P. C. He recorded the evidence of three witnesses and after considering the evidence and documents referred to in Section 173 Cr. P. C., came to the conclusion that the evidence and documents disclosed no grounds for committing the respondents for trial for the offence u/s 395, I. P. C. and so discharged them. But it appeared to him that there was prima facie case against the respondents for offences under Sections 379, 341, 342 and 328. I. P. C and so ordered that the respondents should be tried before himself.

3. Against the order of discharge, the State preferred a revision petition before the District Magistrate. The District Magistrate called for the records from the Court of the First Class Magistrate. During the pendency of the revision petition the learned Magistrate acquitted the respondents of the charges under Sections 379, 341, 342 and 323, I. P. C. As the records relating to the case had been called for by the District Magistrate in connection with the revision petition Wed by the State against the order of discharge, until the disposal of the revision petition the Magistrate could not have preceded with the case.

4. On 16-2-1965. the case was not posted for evidence One of the respondents was absent in spite of that the learned Magistrate has proceeded to acquit the accused on the basis that the prosecution was not diligent and that no stay order had been communicated in fact and by inference it is clear that when a revision petition was pending against the order of the learned Magistrate and the records had been called for. the learned Magistrate could not have proceeded further and therefore, the order passed by the learned Magistrate is an illegal order.

5. From the reference it is clear that the order passed by the learned Magistrate discharging the respondents of the charge u/s 395. I P C. was not justified on the facts of the case The District Magistrate himself was competent to set aside the order of discharge and commit the accused to take their trial before the Sessions Court. In the normal course, he could have done so, but before he could pass an order in that behalf, the State brought to the notice of the learned District Magistrate about the illegal order passed by the Magistrate acquitting the accused of the other charges The District Magistrate, on examination of the records, came to the conclusion that the order of acquittal was illegal In such a case the District Magistrate himself has no power to deal with the matter and the illegality is such that the interference of the High Court is necessary and therefore, the proper course open to the District Magistrate was to report the matter for the orders of the High Court That is exactly what has been done in this case.

6. Mr. K. Jagannatha Shetty, the learned counsel for the respondents, contended that as the State has not preferred an appeal against the order of acquittal no proceedings by way of revision shall be entertained at the instance of the party who could have appealed. According to him the State preferred a revision petition to the Court of the District Magistrate against the order of acquittal and the reference made by the District Magistrate to this Court in fact is a revision petition by the State so far as it relates to the order of acquittal and therefore, Clause (5) of Section 439 is a bar. The mere fact that the State Government could have appealed against the order of acquittal passed by the Magistrate does not take away the powers of the District Magistrate to make a reference in respect of the order. Sub section (R) of Section 439 has no application to such a case.

It is certainly competent for the District Magistrate to refer the case to the High Court u/s 438 as he is not a person capable to move the Government to file an

appeal u/s 417. Where the District Magistrate finds on examining the records of a proceeding that the order is contrary to law or the sentence is too severe or inadequate, he has power to report the matter to the High Court. He cannot, however, exercise such a power. If he has himself jurisdiction to rectify such error or illegality or to pass suitable orders in respect of the matter. Thus, where he finds that an order of discharge is improper he should pass suitable orders u/s 436 or Section 437 and not make any report u/s 438. In case, however, where the District Magistrate finds that he himself has no power to deal with the matter and the illegality or the irregularity is such that the interference of the High Court is necessary, the proper course is to report the matter for orders of the High Court. The reference made by the District Magistrate cannot be construed as a revision petition preferred by the State.

7. On facts the order of discharge passed by the Magistrate cannot be sustained. The order of acquittal is an illegal order and therefore. I accept the reference and direct the Magistrate to frame charges against the respondents for offences under Sections 395, 379, 341, 342 and 823, 1 P. C and commit them to take their trial in the Court of the Sessions Judge at Raichur.

8. Reference accepted.