

(1962) 05 KL CK 0008

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 46 of 1962

Velayudhan Pillai Thankappan Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-05-1962

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 173, 207A(4), 207A(6), 207A(7), 439

Citation : AIR 1963 Ker 85 : (1963) CriLJ 290

Hon'ble Judges : P. Govinda Menon, J; Anna Chandy, J

Bench : Division Bench

Advocate : V. Nagappan Nair, for the Appellant; State Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—The petitioner before us was put up before the Sub-Magistrate of Attingal for an alleged offence u/s 314, I. P. C. There were no witnesses to the actual commission of the offence and the prosecution rested their case entirely on circumstantial evidence. No witnesses were, therefore, examined and the learned Magistrate after following the procedure laid down u/s 207-A, Cr. P. C. came to the conclusion that the accused should be committed for trial and passed an order of commitment, The petitioner has come up to this court to quash the order of commitment.

2. The first ground urged is that the commitment without taking evidence is illegal or at any rate the Magistrate has not exercised his discretion properly in not examining any witnesses. Under clause (4) to Section 207-A, Cr. P. C., the examination of witnesses is made obligatory only in cases where there are witnesses to the actual commission of the offence. In such a case the prosecution may produce witnesses and the Magistrate is then bound to examine them. Clause (4) does not state that in a case depending upon circumstantial evidence the prosecution is bound to produce and examine any witnesses at the stage of the preliminary enquiry. The question depends solely on the

discretionary power conferred on the Magistrate under that clause to decide whether it is necessary for him in the Interests of justice to examine any of the witnesses, If the Magistrate in the exercise of his discretion decides that no witness need be examined there is no legal impediment in his committing the case and the documents referred to in section 173, Cr. P. C.

3. This question whether in a case depending solely on circumstantial evidence a committal order could be passed by a Magistrate without examining any of the witnesses of the prosecution has now been settled by the decision of the Full Bench of this Court In *State of Kerala v. Varghese Vaidyan* 1960 KLT 607: AIR 1961 Ker following the decision of the Supreme Court in *Macherla Hanumantha Rao and Others Vs. The State of Andhra Pradesh*, .

In a more recent decision in *Shriram and Others Vs. The State of Bombay*, , the question again came up for consideration and it was held:

"Under Section 207-A in a proceeding instituted on a police report, the Magistrate is bound to take evidence of only such eye-witnesses as are actually produced by the prosecution in court. The Magistrate if he is of opinion that it is in the interest of justice to take evidence, whether of eye-witnesses not produced by the prosecution or others, has a duty to do so. If the Magistrate is not of that opinion and if the prosecution has not examined any eye-witnesses, he has jurisdiction to discharge or commit the accused to Sessions merely on the basis of the documents referred to in section 173."

4. In this case the learned Magistrate has, after exercising his discretion, come to the conclusion that the interests of justice will not suffer by the non-examination of the prosecution witnesses at the stage of preliminary enquiry. It is inadvisable for us at this stage to discuss the evidence and come to a decision on the sufficiency or otherwise of the materials available before the learned Magistrate to justify a committal. We will only rest content by saying that there has been no perverse exercise of discretion by the learned Magistrate. Even otherwise the High Court in revision will not interfere with an order of commitment made by a competent Magistrate merely on the ground that the Magistrate did not exercise his discretion properly.

5. The next point taken up is that the procedure adopted by the learned Magistrate in questioning the accused on the documents produced u/s 173, Cr. P. C. is illegal and unwarranted and has vitiated the entire proceedings. The procedure which the Magistrate has to follow under clause (7) of section 207-A is that after satisfying himself that the accused has been supplied with the requisite documents, he has to take the evidence of such of the eye-witnesses as may be produced by the prosecution and of those other witnesses whom he considers it necessary to examine in the interests of Justice. He may then, if necessary, examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him. Thereafter, he has to give the prosecution and the accused an opportunity of being heard. He has then to

consider the evidence if any taken by him, the documents referred to In Section 173 and the statement of the accused, if any, recorded by him in the light of the arguments advanced by the prosecution and the accused and decide whether the accused should or should not be committed for trial. The evidence referred to is certainly the evidence taken under sub-section (4) and does not include the documents which are mentioned separately in both Sub-sections (6) and (7). The section contemplates only an examination of the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, that is in the evidence, if any, recorded under Sub-section (4).

6. It is, therefore, urged that the Magistrate has no power to question the accused for the purpose of enabling him to explain any circumstances appearing in the documents referred to in section 173. But on a close scrutiny of the section it would be seen that the section enjoins on the Magistrate to give the prosecution and the accused an opportunity of being heard before deciding whether there are or not sufficient grounds for committing the accused for trial. The hearing is given to the accused in order to enable him to show cause why he should not be committed for trial. The Magistrate is, therefore, under an obligation to give a hearing to the accused so that the accused may be able to satisfy him that sufficient grounds do not exist for committing him to the Sessions Court. In cases in which no evidence has been recorded under sub-section (4) the accused can satisfy the Magistrate by reference only to the documents referred to in Section 173. The Magistrate is, therefore, bound to hear the explanation of the accused in regard to circumstances appearing in the documents referred to in Section 173 and if the Magistrate questions the accused for the purpose of enabling him to explain any circumstances appearing in the documents referred to in Section 173 he cannot be said to have gone out of his way or to have committed any error of law. I am fortified in the view I take by the decision of the Bombay High Court In Ramdas Kikabhai Vs. State, . If out of the question so asked there were any objectionable question or questions which ought not to have really been asked and whether answers to such questions could be taken as evidence u/s 237, Cr. P. C., do not really arise at this stage and can be gone into at the proper stage by the trial Judge when objection is raised.

7. The next contention is that the charge framed by the committing Magistrate does not satisfy the requirements of Section 222 of the Code as the charge does not contain sufficient particulars as to time and place of the commission of the offence. When the trial commences before the Sessions Court the Sessions Judge would frame proper charges u/s 271, Cr. P. C. and so the question whether the charge framed by the committing Magistrate is proper does not really arise at this stage.

8. No case has, therefore, been made out for interference. It is Inadvisable to Interfere In a pending case u/s 561A where there is no manifest or patent Injustice apparent on the face of the proceedings caning for prompt redress. We wish to make It clear that we express no opinion about the evidence that might

be adduced in the case.

The revision petition Is dismissed.