
(1987) 03 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 142 of 1986

Yelugula Siva Prasad and Another

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 06-03-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 12, 228, 228(1)
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (1987) 03 AP CK 0004

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : M.S.K. Sastry, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. A charge-sheet has been filed against A-1 and A-2 for the offences under S. 498A and S. 306 I.P.C. read with S. 34 IPC. The Addl. Judicial 1st Class Magistrate, Vizianagaram, having found that it is a case exclusively triable by a Court of Session, committed the case in PRC No. 24/85 by means of an order dated 20-12-1985. The Principal Sessions Judge, Vizianagaram, registered the case as Sessions Case No. 51 of 1985 and made over the same for disposal to the Asstt. Sessions Judge, Vizianagaram. The Asstt. Sessions Judge, Vizianagaram, in his order dated 11-3-1986 found that no case has been made out against the accused under S. 306 IPC and only a case under S. 498A IPC has been made out. Accordingly he sent the case for re-trial by the Chief Judicial Magistrate, Vizianagaram, by invoking the powers under S. 228(1)(a) Cr.P.C. It is against that order, the present revision petition has been filed.

2. It is contended by Sri M. S. K. Sastry, that under S. 12 Cr.P.C. in every District (not being a Metropolitan area), the High Court shall appoint a Judicial Magistrate of the First Class to be the Chief Judicial Magistrate, but in this case the Addl. Dist. Judge is designated as the Chief Judicial Magistrate and he is holding a higher position than that of the Asstt. Sessions Judge, and, therefore, the order

that has been passed by the learned Asstt. Sessions Judge is not correct.

3. It is true that only Magistrates of First Class were considered to be the persons that can try the cases and that those persons can be designated as Chief Judicial Magistrates. In this State, the Addl. Dist. Judges have been designated as the Chief Judicial Magistrate. No doubt he is holding a superior post. But while considering the position with regard to the Sessions Division the Chief Judicial Magistrate is holding the rank lower than the Asstt. Sessions Judge. The Asstt. Sessions Judge is having powers to dispose of the cases that were entrusted to him by the Principal Sessions Judge. While he is exercising the powers as Assistant Sessions Judge, definitely he is competent to exercise his discretion under S. 228 Cr.P.C. and then if he was of the opinion that the case is not exclusively triable by the Court of Session, he can frame a charge against the accused and transfer the same to the Chief Judicial Magistrate for trying the same. The Code has not given any choice either to the Sessions Judge or the Asstt. Sessions Judge in the event of their arriving at the conclusion that there is no case triable by the Court of session they can remit the case to any of the First Class Magistrates within the District. What has been contemplated under S. 228 Cr.P.C. is only a Chief Judicial Magistrate. Simply because the Chief Judicial Magistrate is holding the higher position than that of the Assistant Sessions Judge in a different capacity, we cannot say that he is not competent to try the cases. No doubt an anomalous situation has arisen in this case. It cannot be said that the Asstt. Sessions Judge in the event of his arriving at an opinion that there is no case exclusively triable by the Court of Session, he has to remit the case to the Magistrate of first class only. What has been contemplated is the only First Class Magistrates to be conferred with the powers as Chief Judicial Magistrates. In this State the Additional District Judges have been conferred with the powers of the Chief Judicial Magistrate. I feel that the impugned order does not suffer from any illegality or irregularity as pointed out by the learned counsel.

4. Sri Sastry also contended that by the virtue of the trial by the Addl. District Judge in the capacity of Chief Judicial Magistrate, the petitioner lost his right of appeal to the Court of Session. The offence with which the accused is charged is S. 498A IPC and the maximum sentence is only three years. In the event the court comes to a conclusion that the offence has been made out and if the accused is sentenced for the maximum term of sentence, the petitioner loses no right of appeal as the Sessions Court will entertain an appeal from the order of the Chief Judicial Magistrate. Therefore, I see no force in the contention of the learned counsel for the petitioner.

5. The revision case is, therefore, dismissed.

6. Petition dismissed.