

State Vs. Ganpat and ors.

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SooperKanoon Citation : sooperkanoon.com/340500

Court : Mumbai

Decided On : Jul-22-1961

Reported in : AIR1962Bom165; (1961)63BOMLR983; ILR1961Bom1001

Judge : Kotval, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#), - Sections 213 and 215, 347 and 439

Appeal No. : Criminal Reference No. 10 of 1961

Appellant : State

Respondent : Ganpat and ors.

Advocate for Def. : V.R. Manohar, Adv.

Advocate for Pet/Ap. : G.R. Mudholkar, Asst. Special Govt. Pleader

Judgement :

ORDER

(1) This is a reference by Mr. P.S. Malvankar, Sessions Judge, Akola, recommending that the order of commitment made by the Civil Judge and judicial Magistrate, First Class, Murtizapur, Mr. A.S. Korane, should be quashed and that the Magistrate should be directed to proceed with the case and dispose it of according to law.

(2) On a complaint filed before the trying Magistrate by one Bhaskar Shankar, the eleven opponents were tried for offences punishable under sections 120-B, 147, 455, 341 and 440 of the Indian Penal Code. It was the complainant's case that one Subhash was the tenant of the house in dispute. He died on 23-3-1960. Since there were no known heirs or relations of the deceased, the police took possession of his property which was lying unclaimed in the house and thereafter the said Bhaskar Shankar took the house on rent from 1-6-1960. The name of the owner of the house is not known and he has not been examined, but his Gumashta Ramkrishna has given evidence that the house was given on rent to the complainant Bhaskar Shankar. According to the complainant, the opponents attempted to dispossess him by force and unlawfully and the complainant gave a report to the police on 10-6-1960. Thereafter, on 14-6-1960 all the opponents came to the house and in pursuance of a common object, pushed aside the complainant and his brother, and the opponent No. 1 Ganpat broke open the lock with a hammer and a chisel and the other opponents threatened the complainant. They unlawfully entered the house and threw out all the household belongings of the complainant though the complainant was in lawful occupation of the house. The trying Magistrate examined six prosecution witnesses and took the view that the offences disclosed were of a serious nature and that in his opinion, therefore, they should be tried by a Court of Session. Accordingly, he drew up a committal order dated 24-10-1960 and committed the opponents to stand their trial in the Court of Session.

(3) When the matter came before the learned Session Judge, an application was preferred before him signed by both the Public Prosecutor and the advocate appearing on behalf of the accused praying that the committal order be quashed and that a recommendation should be made to this Court to that effect and praying that the case should be heard and decided by the trying Magistrate himself. The learned Sessions Judge has accepted that application and made a recommendation as above. The Sessions Judge has quoted in extenso the reasoning of the trying Magistrate and then taken up each of the individual sections under which the offences were alleged to have been committed by the opponents to show that the view which the Magistrate took was somewhat unnecessarily serious and that the offences were not as they were made out to be

. In doing so, the learned Sessions Judge has expressed his views upon the evidence recorded before the Magistrate which might have been avoided. Apart from this, the Sessions Judge has held:

'It seems to me, therefore, that there is nothing very grave and serious about the offence alleged to have been committed by the accused persons so as to hold that the case ought to be tried by the Sessions Court'.

In this conclusion the Sessions Judge may perhaps be right. I do not say that he is, - but the question that has been raised in this reference on behalf of the State by the learned Asst. Special Government pleader is whether even upon that finding it was open to the Sessions Judge to make a recommendation that the committal order should be quashed.

(4) No doubt, section 347 of the Code of Criminal Procedure is in very general terms and sub-section (1) thereof gives a very wide discretion to the trying Magistrate in the matter of committing proceedings to the Sessions Court. It states:

'If in any inquiry before a Magistrate, or in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court and of he is empowered to commit for trial, he shall commit the accused under the provisions herein before contained.'

There are very few limitations imposed by this sub-section on the powers of the Magistrate. He is empowered to do so at any time before signing the judgment and at any stage and in any inquiry or in any trial. But the crucial words in the sub-section are 'Ifit appears to him at any stage.' The normal connotation of the word 'appears' is 'seems' or 'to be in one's opinion' (See Shorter Oxford Dictionary). Therefore, it is the mere opinion of the Magistrate that must prevail. The words are not 'if satisfied that.....' so that a superior Court can judge whether there was sufficient ground for satisfaction. I shall presently show that this interpretation is supported by other provisions of the Code itself. Therefore, the question that arises in this reference is whether it can possibly whom the

Magistrate examined and upon the views which he has expressed that it did not 'appear' to him that the case should be committed to the Court of Session. This is not a case where a magistrate could never form an opinion that the case ought to be committed to a Court of Session. That he took a more serious view of the matter than he ought to have taken of the case is not a ground for interference.

(5) Apart from this, the Magistrate in making the committal order expressly purported to the Code of Criminal Procedure. The reference to section 213 was most apposite but the significance of that reference was with all respect to him lost sight of by the Sessions Judge as also by the learned Public Prosecutor when he set his hand to the joint application. If the Sessions Judge had referred to Chapter XVIII in which section 213 appears, he would have found that by virtue of section 215 'a commitment once made under section 213 by a competent Magistrate can be quashed by the High Court only, and only on a point of law' . Therefore, it seems to me that there is an express prohibition to interfere with a committal order even by the High Court unless there is a point of law involved, and it is clear upon the statement in the order of reference that there is no point of law involved upon which the committal order can be set aside here. A perusal of section 347 with sections 213 and 215 of the Code of Criminal Procedure indicates that the legislature endowed a committal order once made with considerable sanctity and it was not considered safe to permit it to be set aside except upon a point of law. These provisions to which I have referred have not been adverted to in the order of reference, and though it may be that sitting in place of the Magistrate a Superior Court may feel however strongly that it would not have made the committal order in a case, it seems to me that it can only be set aside if there is an error of law and not on a mere reappraisal of the evidence or the circumstances. The reference is rejected. The trial will now proceed before the Sessions Court.

(6) BF//D.V.C.

(7) Reference rejected.