

Krishna and anr. Vs. State of Mysore

Krishna and anr. Vs. State of Mysore

SooperKanoon Citation : sooperkanoon.com/370537

Court : Karnataka

Decided On : Aug-10-1956

Reported in : AIR1957Kant5; AIR1957Mys5; 1957CriLJ76; ILR1958KAR589

Judge : Padmanabhiah and ;Hombe Gowda, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 162, 162(1), 173, 207(4), 207A, 207A(4), 207A(6), 207A(7) and 251A; Evidence Act - Sections 145

Appeal No. : Criminal Revn. Petn. No. 245 of 1956

Appellant : Krishna and anr.

Respondent : State of Mysore

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : Mahesh Chander Guru and ;S.R. Rajasekhara Murthy, Adv.

Judgement :

Padmanabhiah, J.

1. This is a revision petition preferred by the petitioners-accused 1 & 2 against the order of the learned City Magistrate, Bangalore, in C. C. No. 1912 of 1956, committing them to the Court of Session, Bangalore, to take their trial for offences

under Sections 302, 307, 457. 380, 392, 394, 397 and 460 read with Section 34, Penal Code.

2. The facts that have given rise to this petition are briefly as under:

3. The petitioners and another by name Govinda Reddy were the accused in C. C. No. 1912/56 on the file of the learned City Magistrate, Bangalore. As some of the offences charge-sheeted were exclusively triable by a Court of session, the procedure laid down in Section 207-A, Criminal P. C. was followed.

On the side of the prosecution, no evidence was adduced but on a perusal of the documents referred to u/s. 173. Criminal P. C. and produced on the side of the prosecution, the learned Magistrate came to the conclusion that a prime facie case was made out against them for the offences referred to above and committed them to take their trial before the Court of Session for the said offences. As against that order of committal, the present petition is filed.

4. The main point that arises for consideration is whether there are sufficient grounds for quashing the order of commitment made by the learned City Magistrate. The most important ground of attack against the order of committal urged on the side of the petitioners is that Section 207-A(4), Criminal P. C. contemplates the recording of evidence by the Magistrate, that the provisions of that section are mandatory, that the evidence referred to therein has not been taken and that the order of committal made solely on the basis of the documents produced by the prosecution and referred to in Section 173, Criminal P. C. is illegal.

We have carefully considered the arguments advanced by the learned counsel for the petitioners and we are of opinion that there is no substance in the present petition.

5. Section 207-A(4) reads thus:

'The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate-is of opinion that it is necessary in the

interests of justice to take the evidence of anyone or more of the other witnesses for the prosecution, he may take such evidence also.'

This provision could not have been clearer than what it is. It consists of two portions; the former portion relates to the examination of witnesses to the actual commission of the offence and the latter portion refers to the evidence of any one or more of the other witnesses for the prosecution.

The recording of the evidence referred to in the latter part of the section appears to be a matter which is purely within the discretion of the Magistrate, and therefore the omission to examine in that behalf any other witness or witnesses suo motu cannot be such as to vitiate the order of committal. So the only other question that remains for consideration is whether it is obligatory on the part of the Court or Magistrate to examine witnesses that the prosecution may produce under the former part of Section 207-A (4).

6. In our opinion, the evidence contemplated in the first part of Section 207-A(4) is the evidence of witnesses to the actual commission of the offence alleged. That it is so, is also clear from the words 'evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged' appearing in Section 207-A(4).

So, what is obligatory on the Magistrate is the recording of the evidence of witnesses to the actual occurrence, and if there are no witnesses to speak to the actual commission of the offence, the Magistrate is not bound to examine any other witness or witnesses. This appears to be the gist of Section 207A(4) as to the examination of witnesses.

7. In this case, it is conceded on the side of the prosecution that no witness to the actual commission of the offence is available. When that is so and in view of the clear language of Section 207-A, we cannot countenance the contention that Section 207-A requires examination of witnesses, whether they are witnesses to the actual commission of the offence or not. That would amount to reading something into Section 207-A which is not there.

It is the duty of Courts to interpret the law as it is and it need hardly be stated that the object of enacting Section 207-A was to simplify the procedure and secure an expeditious termination of the proceedings by shortening the duration of the enquiry. That being the object of the section, it is unlikely that the Legislature could have contemplated examination of all the witnesses for the prosecution during the enquiry stage.

8. Our attention was drawn to Section (1) of Section 207-A and it was contended that according to that sub-section, no committal can be made without any evidence recorded by the Magistrate. We do not see any force in this contention also. The words 'such evidence' appearing in the said subsection can only mean the evidence contemplated under Section 207-A(4).

We have already referred to the nature of the evidence that is contemplated under that sub-section. Such evidence as contemplated under Section 207-A (4) may or may not be available. If such evidence is available, then the Magistrate has to consider it under Section (7) before making the commitment.

When there is no evidence as to the actual commission of the offence alleged, against an accused, what will be left will be the documents referred to in Section 173, Criminal P. C. From a perusal of Sections 207(4), 207-A(6) and 207-A(7), we have come to the conclusion that there is nothing illegal in committing the accused to the Court of Session solely on the basis of the documents referred to in Section 173 when on the side of the prosecution there is no evidence as to the actual commission of the offence.

9. It was contended by the learned counsel for the petitioners that if this should be the view, then no difference exists between Section 207-A and Section 251-A. It is not correct to say that there is no difference between the procedures laid down in these two sections. Section 207-A deals with an enquiry before a Magistrate where the case is triable exclusively by a Court of Session or High Court, and Section 251-A relates to the procedure to be followed in the trial of warrant cases instituted on police reports.

Under Section 251-A it is not obligatory on the part of the Magistrate to record any evidence either of witnesses to the actual commission of the offence or otherwise and he can frame a charge solely depending upon the documents produced on the side of the prosecution and referred to in Section 173, Criminal P. C., whereas under Section 207-A(4) it is incumbent on the Court to examine witnesses as to the actual commission of the offence. This is the main difference between the two sections. Therefore it is futile to contend that there is no difference between the procedures laid down in the two Sections 207-A and 251-A.

10. It was further urged that statements of witnesses recorded under Section 162, Criminal P. C. during the course of investigation have been made use of by the Magistrate and that this is contrary to the provisions of Section 162(1), Criminal P. C. That provision provides that the statement recorded under Section 162(1), if duly proved, may be used by the accused, & with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145, Evidence Act and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

No doubt, Section 162(1) limits the use of the statements recorded under Section 162 but we cannot accept the argument advanced by the learned counsel for the petitioners that those statements cannot be made use of by a Committing Magistrate under Section 207-A.

From a reading of that section, it is obvious that it was the intention of the Legislature that a Magistrate must look into those statements and consider them before making an order of committal. When that is so, we may have to construe Section 207-A as an exception to Section 162(1), Criminal P. C. Under these circumstances, we are of opinion that there are no grounds to interfere with the order of committal which appears to us quite legal and valid.

11. In the result, the order of the learned Magistrate is confirmed and this revision petition stands dismissed.

12. Revision dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com