

State of Karnataka Vs. Prakash

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Court : Karnataka

Decided On : Feb-23-1982

Reported in : ILR1982KAR614

Judge : D.R. Vithal Rao and ;M.S. Nesargi, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 209 and 395(2)

Appeal No. : Criminal Reference Case No. 1 of 1982

Appellant : State of Karnataka

Respondent : Prakash

Advocate for Pet/Ap. : A.M. Farooq, Govt. Pleader

Judgement :

Nesargi, J.

1. This reference has been made by the Sessions Judge, Tumkur, in exercise of his power under S. 395(2), Cr.P.C.

2. The relevant facts as seen from the order of the learned Sessions Judge are that the Judicial Magistrate. First Class, Tiptur, committed the accused Prakash son of Rajanna, aged 15 years, of Ballekatte Village, Tiptur, Tiptur Taluk, to the Court of Session to take trial for having committed an offence punishable under

Section 376 of the Indian Penal Code which is exclusively triable by a Sessions Court. The case was registered in the Sessions Court as Sessions Case No. 62/81. The Public Prosecutor and Sri K. V. Subramanyaswamy the learned Advocate appeared on behalf of the State and the accused, before the Sessions Judge. The Sessions Judge found that the charge-sheet itself described the accused as aged 15 years and therefore a child within the meaning of the provisions of the Karnataka Children Act, 1964 (hereinafter referred to as the Act). Thereafter, he probed into the matter by directing the Public Prosecutor to produce the certified extract of the admission register relating to the accused from the school in which he was studying. That extract was produced. It was signed by the Head Master, Sri Mallikarjuna High School, Kuppalu, Tiptur Taluk. That showed the accused was studying in VIII standard during the years 1980-81 and 81-82 and his date of birth as per the school admission register was 20-6-1966. The Sessions Judge concluded that the accused had not completed 16 years of age even on the date on which he looked into the matter after receiving the certified extract apart from the fact being that he was below 16 years of age on the date of the offence. He concluded that the accused was a juvenile and therefore was to be tried by a Juvenile Court in view of the provisions of the Act. On finding these facts and the further fact that the court of the Chief Judicial Magistrate, Tumkur, is the Juvenile Court concerned, he after applying the principle laid down by this Court in *State of Mysore v. Hanumantha* (AIR 1966 Mys 271) : (1966 Cri LJ 1168) and the principle laid down by the Supreme Court in the decision in *Raghubir v. State of Haryana* : 1981 CriLJ1497 , concluded that he himself has no jurisdiction to try the case against the accused who was the juvenile and therefore the committal order passed by the Judicial Magistrate, First Class. Tiptur in C.C. 920/81 was to be quashed. After having concluded so he has applied Section 395(2) Cr.P.C. and made a reference to this court requesting this court to quash the committal order of the JMFC. Tiptur.

3. Section 395(2) Cr.P.C. cannot apply to such a case because the ingredients are not satisfied on the face of it particularly when the law on the point has been settled in the aforementioned decisions and other decisions which we do not consider it necessary to cite as it would amount to repetition of the principle that has been well settled.

4. Now the question is whether the committal order made by the J.M.F.C. Tiptur has to be quashed and that would subserve the ends of justice. Mere quashing of the committal order would not subserve the ends of justice because the proceedings will be quashed and there would not be any further direction. There has got to be a direction that the offence said to have been committed by the accused as a juvenile has to be tried by a competent Court. Therefore, the request of the Sessions Judge that the committal order be quashed cannot be accepted in that form. It has to be accepted with certain additional factors such as further direction being issued.

5. Sri A. M. Farooq, learned Government Pleader, brought to our notice sub-section (3) of S. 8 of Act and urged that the case has 'otherwise' come before the Sessions Judge and therefore the Sessions Judge has jurisdiction and power to try the case against the juvenile accused. We cannot accept this contention because the words 'or otherwise' appearing at the end of sub-section (3) of Section 8 of the Act have to be construed to mean as by some process prescribed by law. That is the principle laid down in the decision in *Siddappa v. State of Mysore* (1965-2 Mys LJ 326). It was the duty of the Judicial Magistrate, First Class, Tiptur, to find out whether the accused he was required to commit in exercise of power under Section 209 Cr.P.C. was or was not a juvenile. He failed to discharge that duty and passed the order in question. Therefore, it cannot be said that the case has reached the Court of Session at Tumkur in due process of law thereby satisfying the meaning of the words 'or otherwise' appearing at the end of sub-section (3) of Section 8 of the Act.

6. The Sessions Judge has pointed out that the Court of the Chief Judicial Magistrate, Tumkur, has been designated as the Juvenile Court under the Act. Section 9(1) of the Act provides that when any court of a Magistrate not empowered to exercise the powers of a Juvenile Court under this Act is of opinion that a person brought before it as a child, it shall record such opinion and forward the child and the record of the proceeding to the Court having jurisdiction under this Act to deal with and dispose of the proceeding. It is evident that the J.M.F.C. Tiptur was required in law to find out whether the accused before him was or was not a juvenile and then proceed either to act under S. 209 Cr.P.C. or under S. 9(1)

of the Act.

7. Now it is clearly seen that the accused is a juvenile. The Judicial Magistrate, First Class, Tiptur, could not have passed a committal order. The Magistrate ought to have acted under Section 9(1) of the Act and forwarded the accused for trial before the Chief Judicial Magistrate, Tumkur, whose Court is designated under the Act as the Juvenile Court. Hence, we pass the following order :-

We accept the reference, set aside the committal order passed by the J. M. F. C. Tiptur in C.C. No. 920/81, and direct the Sessions Judge, Tumkur, to send back the papers to the J.M.F.C. Tiptur within a reasonable time directing the Magistrate to register the case in its original number and then proceed in accordance with the provisions of Section 9(1) of the Act. We are aware that we have passed this order without issuing notice to the accused. We have proceeded to do so as no prejudice would be caused and is likely to be caused to the accused because the trial has yet to commence and he has to face the trial.

8. We direct the office to send a copy of this order to all the Courts of Magistrates in the State for guidance.

9. Order accordingly.