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The State Vs. Kampu Shetty

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Court : Karnataka

Decided On : Jan-28-1963

Reported in : AIR1965Kant95; AIR1965Mys95; 1965CriLJ456; (1964)1MysLJ538

Judge : M. Sadasivayya and ;Ahmed Ali Khan, JJ.

Appeal No. : Criminal Revn. Case No. 48 of 1962

Appellant : The State

Respondent : Kampu Shetty

Judgement :

M. Sadasivayya, J.

(1) This revision case arises out of a reference made under Section 341 of the Cr. P.C. by the Second Additional District Munsiff-Magistrate, Mangalore. This pertains to accused No. 16 in Preliminary Register Case No. 4 of 1961 on the file of the said Magistrate. Accused No. 4 of 1961 on the file of the said Magistrate. Accused No. 16, along with some of the other accused in that case, has been charged for an offence punishable under section 395 of the I.P.C. and has been committed to take his trial, along with those accused, before the Court of Sessions at Mangalore. After so committing the said accused to take his trial before the Court of Session, the said committing Magistrate has made the present reference under section 341 of the Cr. P.C.

(2) Shri M.K. Sreenivasa Iyengar, the learned High Court Government Pleader has appeared for the State; the 16th accused, though served with notice, has not appeared before this Court either in person or through counsel.

(3) The committing Magistrate is of the view that the 16th accused Kampu Sheety, though not insane, cannot be made to understand the proceedings, because he is deaf and dumb. The circumstances under which the learned Magistrate came to take this view, may be stated in the words of the Magistrate himself, as found in his letter of reference :--

'.....Before the evidence on behalf of the prosecution was begun to be recorded in P.R.C. 4/61, the Advocate for the accused Sri. S.P. Lobo drew my attention to the fact that the 16th accused Kampu Shetty, though not insane, cannot be made to understand the proceedings on the ground that he is deaf and dumb. In support of that, he also filed a memo to that effect. the learned Assistant Public Prosecutor, Grade II in charge of the prosecution at that stage, having seen the memo, neither disputed the correctness of the ground nor did he in any way satisfy the Court that the 16th accused was in a position to understand the proceedings of the Court. Moreover, while examining the witnesses on behalf of the prosecution, I used to watch the 16th accused now and then, as to whether he could follow the evidence to any extent; but I found that he used to put up blank looks suggestive of his inability to follow the proceedings. Moreover, after the evidence on behalf to the prosecution was closed, when I began to question each accused, and recorded their pleas with reference to various pieces of evidence appearing against each of them, I also questioned the 16th accused with reference to certain important pieces of evidence appearing against him. The 16th accused apart from nodding his head, did not even make gestures or signs so as to enable me to understand whether he understood the questions I put to him. Just below the questions framed against the 16th accused, I have also made a note to that effect.

(4) The attitude taken by the Assistant Public Prosecutor, Grade II, referred to above, was in no way helpful to the Court for the purpose of ascertaining as to whether the 16th accused cannot be made to understand the proceedings of the

Court. But, that did not in any way lessen the responsibility of the learned Magistrate to make every reasonable attempt to find out whether it was not possible to make the 16th accused understand the proceedings of the Court. Apart from merely observing the demeanour and the conduct of the 16th accused and questioning him with reference to certain pieces of evidence, the learned Magistrate does not seem to have made any attempt or taken any steps to make the 16th accused understand the proceedings of the Court. No endeavour seems to have been made to find out as to whether it was not possible for any of the relations or friends of the 16th accused to communicate with him by signs and as to whether it would both be possible for such a person to interpret the proceedings of the Court, by means of such signs to the 16th accused.

As has been pointed out by the High Court of Bombay in the case of the State v. Radhamal, AIR 1960 Bom 526,

'when it is alleged in any criminal proceedings that an accused is deaf and dumb, the Court may proceed with the enquiry or trial, but it should first enquire into the antecedents of the accused and should make an endeavour to find out as to how his friends and close relatives are accustomed to communicate with him in ordinary affairs and record its own conclusions, if necessary by taking evidence.'

In the present case, no such endeavour has been made by the learned committing Magistrate; the 16th accused, does not appear to have been sent before any Doctor for the purpose of ascertaining the degree of his disability.

(5) In a decision reported in AIR 1960 Mys. 315 State v. Nooka Maktumsab, his Lordship Srinivasa Rau, J. (as he then was), has stated as follows:-

'The fact that a person is deaf and dumb does not necessarily mean that he cannot understand or cannot be made to understand, the proceeding before a Court, though the disability is undoubtedly a serious handicap to communication either way. Before the Court of enquiry or trial forwards the proceedings to the High Court under S. 341, Cr. P.C., it must be satisfied that the accused cannot be made to understand the proceedings and the inquiry or trial must result in a commitment or a conviction.'

It seems to us that the observation made by the committing Magistrate in regard to the demeanour and the conduct of the 16th accused, is not, by itself, sufficient to have enabled the Magistrate to arrive at a proper conclusion on the question as to whether the 16th accused cannot be made to understand the proceedings of the Court.

(6) As has been pointed out by the Allahabad High Court in Emperor v. Ulfat Singh, AIR 1967 All 301 and by the High Court of Bombay in AIR 1960 Bom 526, the object of S. 341 of the Cr. P.C. is that the High Court should be in a position to satisfy itself that the accused is ensured a fair trial. It is also within the power of the High Court to give necessary directions to the trial Court before whom such an accused is to be tried, to ensure that sufficient provision is made in his defence and that he will have a fair trial. In a case reported in : AIR1957 Ker9 , In re Padmanabhan Nair, a Magistrate before whom a deaf and dumb accused had been produced in the course of an inquiry, had come to the conclusion (after evidence had been given by the Medical Officer that the accused cannot be made to understand the proceedings of the Court. But the preliminary enquiry was conducted by a successor Magistrate, who made no attempt to communicate the proceedings of the Court to hearing dates. On a reference being made to the High Court, for the quashing of the committal order and directing a fresh enquiry, their Lordships of the Kerala High Court took the view that no useful purpose was likely to be served by quashing the committal and directing a fresh enquiry; they found that the needs of the case would be sufficiently served by giving the trial Judge such directions, as in the opinion of the High Court, were proper to ensure a fair trial of the case.

In the course of their order, their Lordships stated as follows :--

'As the enquiry as to the capacity of the accused to understand the proceedings in court preceded the preliminary enquiry, the Magistrate who conducted the latter enquiry did not endeavour to see whether the accused can be made to understand the proceedings. As such we think it incumbent on us to direct the learned Sessions Judge to ascertain for himself whether the accused can be made to understand the proceedings with the help of his relations or friends. It is the

Court's duty to make a proper endeavour to see whether the accused can be made to understand the proceedings.

To our minds court witnesses 2 and 3 who were examined by the Magistrate to ascertain the capacity of the accused would be the best persons to assist the Court in this task. We do not however seek to restrict the court's direction in the matter of choosing the persons to assist it at the trial. If the learned Judge finds that the accused can be made to understand the proceedings the trial Court must proceed in the ordinary way. On the other hand if the learned Judge takes the same view as the committal court as to the accused's physical and mental capacities the procedure prescribed under Section 341 should be followed.

If the trial proceeds in the ordinary way the Court can pass sentence if the accused is found guilty and convicted. However if it is found that the accused cannot be made to understand the proceedings the Court can convict him if the evidence warrants it, but it cannot pass sentence against him. The Court must forward the proceedings to this Court to pass such orders as this court thinks fit.'

Adverting to the powers of the High court under section 341 of the Cr. P.C., the High Court of Bombay in the case of AIR 1960 Bom 526 has observed as under :--

'Under the provisions of this section the High Court has wide powers to take such action and to give such directions as it deems fit and proper in the interest of justice to ensure a fair trial of the accused, if it decides that the trial should proceed against him, after the order of committal. However, the Court trying such an accused will be directed to see that he has necessary legal assistance, that the trial proceeds on the basis that the accused has pleaded not guilty to the charge, and that all possible defences open to him in the circumstances of the case are considered.'

(7) In the circumstances of the present case, we think that consequent on the order of committal, the trial should proceed against the 16th accused. We direct that the learned Sessions Judge shall ascertain for himself, whether the 16th accused can be made to understand the proceedings with the help of his relations or friends; the learned Sessions Judge will make every attempt to see whether the

16th accused can be made to understand the proceedings.

(8) It the trial Judge finds that the 16th accused can be made to understand the proceedings, the trial as against the 16th accused will proceed in the ordinary way. If, on the other hand, he is satisfied that the 16th accused cannot be made to understand the proceedings of the Court, the procedure prescribed under S. 341 should be followed. That is, if the 16th accused cannot be made to understand the proceedings, the trial court can convict him if the evidence warrants it, but cannot pass sentence against him; the trial court will have to forward proceedings to this court to pass such orders as the High Court thinks fit.

(9) The trial Court will see that the 16th accused will have the necessary legal assistance. It would appear that he had been represented by an Advocate, before the committing Magistrate. Should it happen that the 16th accused is not represented by his own Advocate before the trial Court the learned Sessions Judge shall appoint a competent Advocate, at the cost of Government, to defend the 16th accused. the trial as against the 16th accused will proceed on the basis that he has pleaded not guilty to the charge and all possible defences open to him in the circumstances of the case shall be taken into consideration.

(10) The reference shall stand answered, in the above terms.

(11) Reference answered accordingly.

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