The State of Mysore Vs. Seetharam

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Court : Karnataka

Decided On : Jan-25-1963

Reported in : AIR1964Mys50; 1964CriLJ410; ILR1963KAR469; (1963)1MysLJ520

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

Acts : Code of Criminal Procedure (CrPC) , 1908 - Sections 173(4), 207-A(10), 435, 438, 464, 464(1), 465 and 469; Indian Penal Code (IPC), 1898 - Sections 302

Appeal No. : Criminal Revn. Case No. 59 of 1962

Appellant : The State of Mysore

Respondent : Seetharam

Advocate for Def. : U.L. Narayana Rao, Adv.

Advocate for Pet/Ap. : M.K. Srinivasa Iyengar, Adv.

Judgement :

Sadasivayya, J.

1. This Revision Case arises out of a reference made by the learned Sessions Judge, South Kanara recommending that the order dated 22-9-1962 made by the Additional District Munsiff Magistrate, Udipi in P. R. C. No. 6 of 1962 committing

the accused Seetharama to take his trial before the Court of Session for an offence under Section 302 of the Indian Penal Code, be quashed.

In consequence of the said order of commitment, Seetharama had to, be tried in Sessions Case No. 33 of 1962, in the Court of the Sessions Judge, South Kanara. But, before the trial could commence, an application was filed by the counsel food the accused; that application purported to be under Sections 435 and 438 read with Sections 464 and 465 of (he Criminal Procedure Code. It was alleged in that application that from the documents referred to under Section 173 (4) of the Criminal Procedure Code and produced before the Magistrate, there was every reason for the Magistrate to believe that the accused was a person of unsound mind and consequently incapable of making Ms defence; it was further alleged that on account of the non-compliance with the provisions of Section 464 of the Criminal Procedure Code, by the Magistrate, the order of committal was liable to be quashed. After hearing the Public Prosecutor and the counsel for the accused the learned Sessions Judge took the view that the mandatory provisions of Section 464 of the Criminal Procedure Code had been completely ignored by the committing Magistrate and that the committal order was liable to be quashed. That is why he made the reference out of which the present revision case arises.

2. No witnesses had been examined before the Committing Magistrate. In the course of his order, the committing Magistrate has stated as follows:

'The learned Assistant Public Prosecutor Udipi, in charge of the prosecution filed a memo to the effect that the prosecution does not propose to examine any witness at this stage, since there are no witnesses to the actual commission of the offence alleged. The learned Assistant Public Prosecutor represented that the documents under Section 173(4) Cr. P. C. prepared in this case disclose a prima-facie case against the accused and consequently he is liable to be committed to stand his trial before the Court of Session. The accused is undefended and consequently he had nothing to represent in this connection.

3. On a careful examination of the documents under Section 173(4) Cr. P. C., J am of the opinion that the accused should be committed for trial before the Court of Session and accordingly I framed charges against the accused for an offence

under Section 302 I. P. C., read over and explained the charges to him and also furnished a copy of the same free of cost in the open court. The accused stated that he would file a list of witnesses before the Court of Session.

4. In the result, I direct that the accused shall be committed for trial before the court of Session under Section 207-A (10) Cr. P. C.'

It will be noticed that there is nothing in the above order, to indicate that any question of the accused's unsoundness of mind arose for consideration before the Committing Magistrate.

But, the contention of Sri. U. L. Narayana Rao (who has taken considerable pains to state all the material aspects of the case and has placed all the relevant facts before us is, that in the documents referred to is Section 173(4) of the Cr. P. C. and which must have been perused by the Magistrate, there is sufficient material to indicate that the accused was of unsound mind. The documents which he has brought to our notice in this connection, are the statements of some of the witnesses recorded by the police either on 17-8-1962 (the date of the occurrence) or on the next day, in which the witnesses have stated that the accused was of unsound mind; the learned Advocate has also referred to the application for remand, dated 18-8-1962 made by the Police Inspector of Udipi to the Magistrate. In the last portion of this application for remand, the Inspector of Police has prayed,

'that the accused may kindly be remanded to Sub Jail Udipi for 10 days and ordered to be kept in a separate cell being a person of unsound mind.' On this application the Magistrate passed the order on 20-8-1962, remanding the accused to jail custody till 1-9-1962, he did not make any specific order in regard to the Police Inspector's request that the accused be ordered to be kept in a separate cell. The next document upon which reliance has been placed by Sri Narayana Rao is the letter dated 1-9-1962 by the Police Inspector of Udipi, forwarded to the Magistrate, along with the charge sheet. In this letter, it is stated as follows: 'The offence appears to be the result of un-soundness of mind, as could be seen from the circumstances of the case. But the nature of unsound-ness and the extent to which the accused can understand things etc. is not known. I therefore re-quest

that! the question of getting expert medical opinion under Section 464 or 469 Cr. P. C. may be considered'.

It is on the basis of the recitals in the documents above referred to, that the contentions have been urged before us by Sri Narayana Rao, that the Magistrate ought to have followed the procedure laid down in Section 464 of the Criminal Procedure Code and that the failure on the part of the Magistrate to have complied with the requirements of Section 464 Cr. P. C. renders the committal order passed by him invalid in law and therefore liable to be quashed. On the other hand, the argument of Sri M.K. Srinivasa lyengar who has appeared on behalf of the State is, that there is really no material on the basis of which it may be said that the magistrate had reason to believe that the accused was of unsound mind at the time of inquiry and consequently incapable of making his defence; it is therefore urged by him that there was no necessity for the Magistrate to resort to the procedure prescribed by Section 464 Cr. P. C. and that there is no good ground to quash that order of commitment.

3. Sub-section (1) of Section 464 Criminal Procedure Code, which is the provision relevant for the present purpose, is as follows:

'464. Procedure in case of accused being lunatic.--(1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the State-Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.'

It is clear from the language of Sub-section (1) that I the Magistrate holding an inquiry or trial should I inquire into the fact of unsoundness of mind of the accused, when he has reason to believe that the accused is of unsound mind and consequently incapable of making his defence. Not only must the Magistrate have reason to believe that the accused is of unsound mind, but also that consequently the accused is incapable of making his defence. It is clear that it is with the condition of the mind of the accused at the time of the inquiry or the trial that the

Magistrate is concerned. In other words the Magistrate is not, at that stage, concerned with the condition of the mind of the accused at the time of the alleged commission of the offence.

In the present case, no material has been pointed out to us on the basis of which a contention could be advanced that during the inquiry before the Committing Magistrate, either that the accused was of unsound mind or that consequently he was incapable of making his defence. On the other hand, we find from the examination of the accused on 22-9-1962, as recorded by the Committing Magistrate, the accused was able to give understandable answers to the questions put to him. He was asked by the Magistrate as to whether he had received the copies of documents under Section 173 (4) of the Cr. P. C. the accused answered in the affirmative. He was asked whether he did not hear the charges against him read over and explained to him in Kannada Language and whether he had also not received a copy of the charges; to this also the accused answered in the affirmative. He was then asked by the Magistrate as to whether he would file a list of witnesses whom he wanted to be summoned to give evidence on his behalf; to this, the accused stated that he would file the same into the Court of Session. In two places in the record of the examination of the accused, he has signed his name in English. There is nothing on record to show that the demeanour or the behaviour of the accused, at any time during the inquiry or during his examination by the Magistrate on 22-9-1962, indicated any abnormality. Even in the application which was filed by the counsel for the accused before the learned Sessions Judge praying that a recommendation be made for the quashing of the commitment order, it is not alleged that the accused had either conducted himself or behaved in an abnormal fashion, during the inquiry before the Committing Magistrate. When such was the situation,- we find it difficult to support the contention that the Committing Magistrate had reason to believe^ either that the accused was, at the time of the inquiry, of unsound mind or that he was consequently incapable of making his defence.

The learned advocate for the accused has, no doubt, brought to our notice certain statements in the documents referred to in Section 173 (4) of the Cr. P. C., to the effect that the accused was of unsound mind; these statements have been

recorded, either on the 17th or on the 18th of August 1962. Neither these statements nor the statement made by the Inspector of Police in his remand application dated 18-8-1962 op his letter dated 1-9-1962, can be accepted as being indicative of the mental condition, of the accused at the time of the inquiry before the Committing Magistrate. On the other hand, the record of the examination of the accused by the Magistrate on 22-9-1962, discloses no abnormal behaviour or condition on the part of the accused, during the inquiry.

4. Sri Narayana Rao brought to our notice a number of decisions which relate to cases of non-compliance by the court of trial, with the requirements of Section 465, Cr. P. C. We do not consider it necessary to refer to those decisions, particularly, in view of the fact that we are not sitting in appeal after the trial is over and there is any question of non-compliance with Section 465 of Cr. P. C. The trial in the present case has not yet taken place and we are now concerned only with the question as to whether the order of commitment is liable to be quashed on the ground of non-compliance with requirements of Section 464 Cr. P. C. Sri Narayana Rao brought to our notice certain observations made by the High Court of Allahabad in the case of Emperor v. Jhabbu reported on ILR 42 All 137: AIR 1920 All 354 in regard to the non-compliance with the requirements of Section 464 of the Criminal Procedure Code. He sought to rely on the following observation at p. 140 (of ILR All): (at p. 355 of AIR).

'In the first place, Section 464 of the Code of Criminal Procedure clearly contemplates that a Magistrate who has once found reason to doubt the soundness of mind of an accused person brought before him shall examine the medical expert' whose opinion was taken as a preliminary to the holding of the inquiry and not, as was done in this case at the very close. In fact the committing Magistrate was bound to enquire, before he began to record evidence in this case, whether the accused, Jhabbu, was or was not incapacitated by unsoundness of mind from making his defence. He did not record any finding to that effect before entering upon the inquiry and his subsequent examination of the Civil Assistant Surgeon does not really cover the defect.'

It is argued, that in the present case also, the Magistrate ought to have enquired into the question of unsoundness of mind of the accused, before proceeding to make the committal order. For the reasons which will be presently stated, we are satisfied that the above Allahabad case cannot be of any assistance to the accused in this case. It will be seen from what has been stated by their Lordships of the Allahabad High Court at p. 139 (of ILR): (at p. 355 of AIR) that in that case even when the accused was first brought before that Magistrate, he undoubtedly found reason to believe that the man was of unsound mind and consequently incapable of making his defence. That Magistrate had even found it necessary to cause an inquiry to be made into the fact of such unsoundness and had caused the accused's person to be examined by the Civil Assistant Surgeon of Bareilly. After having gone to that extent in doubting the soundness of the mind of the accused, the Magistrate had clearly violated the requirements of Section 464 of the Cr; P. C., in not having examined the medical expert for finding out whether Jhabbu was or was not incapacitated by unsoundness of mind from making his defence. But, in the present case there is absolutely no material, to afford basis for the contention that the conduct or the behaviour of the accused before, the inquiring Magistrate was such as to raise even a suspicion against the soundness of his mind, at the time of the enquiry.

Even if it were to be accepted for purposes of argument, that the documents referred to under Section 173(4) of the Cr. P. C., produced before the Magistrate, indicated unsoundness of mind, at or about the tune when the alleged offence took place that would not, by itself, be sufficient for assuming that the Magistrate had reason to believe that the accused was of unsound mind at the time of the inquiry before him, particularly when there is no material to show that the accused had displayed any abnormal behaviour or conduct during the inquiry before the Magistrate. In these circumstances, even assuming that on a perusal of those documents, the Magistrate was inclined to view that by reason of unsoundness of mind at the time when the act was committed, the accused was incapable of knowing that the act was wrong or contrary to law, yet, he had to commit the accused to take his trial before the Court of Sessions, as required under Section 469 Cr. P. C.

5. It is no doubt true that the mandatory provisions of Section 464 Cr. P. C. ought to be strictly complied with by Magistrate But, from what has been stated above, it is quite clear that there is nothing on record to show that the Committing Magistrate had reason to believe either that the accused was of unsound mind at the time of the enquiry or that the accused was consequently incapable of making his defence. Therefore, in the present case, there is no question of the Magistrate having acted in contravention of the requirements of Section 464 of the Cr. P. C.

6. In the result, the reference made by the learned Sessions Judge is rejected.

7. Reference rejected.