

State Vs. Tavana Naika

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Court : Karnataka

Decided On : Feb-18-1959

Reported in : AIR1959Kant193; AIR1959Mys193; 1959CriLJ1004; ILR1959KAR239

Judge : M. Sadasivayya and ;A. Narayana Pai, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 177, 185, 185(1) and 531; [Indian Penal Code \(IPC\), 1860](#) - Sections 366 and 376

Appeal No. : Criminal Revision Case No. 55 of 1958

Appellant : State

Respondent : Tavana Naika

Advocate for Pet/Ap. : G. Shankara Chetty, Additional Asst. Adv. General

Judgement :

M. Sadasivayya, J.

1. The question which arises in this Criminal Revision Case, is one which has to be decided under Sub-section (1) of Section 185 of the Cr. P. C. The respondent had been committed by the Munsiff-Magistrate of Tiplur, to take his trial before the Court of Sessions, Bangalore Division, for offences under Sections 366 and 376 of the Indian Penal Code According to the charges which had been framed by the

Munsiff-Magistrate, the offence under Section 366 had been committed at Gubehalli of Chikkanaikanahalli Taluk.

It is not disputed that the said village in Chikkanaikanahalli Taluk is within the territorial jurisdiction of the Sessions Judge of Bangalore Division. So far as the offence, under Section 376 of the I. P. C. was concerned, the charge disclosed that the offence had been committed at Tarikere and Peelapura. These two last mentioned places are not within the territorial jurisdiction of the Sessions Court, Bangalore Division, but are within the territorial jurisdiction of the Sessions Court, Shimoga Division.

The First Additional Sessions Judge, Bangalore, before whom the Sessions Case came up for trial, felt that he could not proceed with the trial in so far as the offence under Section 376 of the I. P. C. was concerned, in view of the fact that Tarikere and Peelapura which were the places where the offence was alleged to have been committed, were not within his territorial jurisdiction.

Hence, he has made this reference seeking the decision of the High Court under Section 185 of the Cr. P. C. The respondent was served with notice and he has stated that he has no means to engage a counsel. Considerable assistance has been given to us by Sri Shankara Chetty the learned Assistant Advocate General who has appeared for the State.

2. It would appear that Tarikere and Peelapura are certainly not within the territorial jurisdiction of the Munsiff-Magistrate of Tiptur; it is not clear as to why it was not noticed at the stage of the committal proceedings that the alleged offence under Section 376 of the I. P. C. had been committed beyond the limits of the territorial jurisdiction, of the Committing Magistrate. However, the undisputed fact remains that Tarikere and Peelapura where the offence under Section 376 of the I. P. C. is alleged to have been committed, is not within the territorial jurisdiction of the Sessions Judge, Bangalore Division.

That being so, ordinarily the trial in so far as it relates to the offence under Section 376 of the I. P. C., ought not to take place before the Sessions Judge, Bangalore Division, but should take place only before that Sessions Judge within whose

jurisdiction Tarikere and Peelapura are situated. Sri Shankara Chetty has invited our attention to a decision reported in Assistant Sessions Judge, North Arcot v. Ramammal ILR 36 Mad 387 in which the view has been taken where the committal by the Magistrate is to a Court of Session which has no jurisdiction to try the case under Section 177 Cr. P. C., such commitment is illegal.

But, in a later decision of the Madras High Court reported in Ganapathy Chetty v. Rex, ILR 42 Mad 791: (AIR 1920 Mad 824), while referring to the earlier decision in ILR 36 Mad 387, one of the learned Judges of the Division Bench has observed that after the trial had taken place to its termination. Section 531 of the Cr. P. C. might cure the the defect.

On a plain reading of Section 531, Cr. P.C. it would appear that the curative provisions of that Section would extend also to a trial which has taken place in a wrong Sessions Division; therefore, in a case where the trial has proceeded to its conclusion and the Court is satisfied that no failure of justice has been occasioned by the trial having taken place in a wrong Sessions Division, the error may amount merely to an irregularity curable under Section 531 of the Cr. P. C.

But at the same time, it appears to us, that the fact that the curative provisions of Section 531 may be available at a later stage, should not be an excuse to overlook a material irregularity pertaining to jurisdiction, when it is brought to the notice of the Court before the commencement of the trial. In the present case, the defect or irregularity having been brought to the notice of the Court even before the commencement of the Sessions trial, we think it proper that the irregularity should be avoided.

3. The commitment in so far as it relates to the offence under section 376 of the I. P. C., will have to be set aside. So far as the offence under Section 366 of the I. P. C. is concerned, the corn moment is proper and there is no impediment to the trial in regard to that offence, proceeding before the Court of Sessions, Bangalore Division.

Under Section 561-A of the Cr. P. C., wequash the commitment in so far as it relates to theoffence under Section 376 of the I. P. C., without prejudice to fresh

proceedings being taken before the appropriate Committing Magistrate with a view to obtain a proper order of commitment for a trial before the Sessions Court having territorial jurisdiction over the places in which the said offence is alleged to have been committed. The commitment by the Munsiff-Magistrate, Tiptur, in so far as it relates to the offence under Section 366 of the I. P. C. is left unaffected and we direct the First Additional Sessions Judge to proceed with the trial of the accused for that offence and dispose of the case expeditiously.

4. Order accordingly.

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