

State of Mysore Vs. Anantreddy and ors.

State of Mysore Vs. Anantreddy and ors.

SooperKanoon Citation : sooperkanoon.com/376331

Court : Karnataka

Decided On : Oct-29-1965

Reported in : AIR1966Mys210; 1966CriLJ932; (1965)2MysLJ786

Judge : K.S. Somnath Iyer and ;Ahmed Ali Khan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 207-A(4)

Appeal No. : Criminal Revn. Case No. 33 of 1965

Appellant : State of Mysore

Respondent : Anantreddy and ors.

Judgement :

Somnath Iyer, J.

(1) This reference has for its source a revision petition which was presented by 31 accused to the District Magistrate, Gulbarga before whom the complaint ventilated was that there was non-compliance with the provisions of S. 207-A(4) of Cr.P.C. by the committing Magistrate. What the committing Magistrate was to examine only one witness to the actual commission of the offence alleged, without insisting upon the production of the other witnesses to the commission of the offence.

(2) It was urged before the District Magistrate that the committing Magistrate was under a statutory duty to examine all the witnesses to the commission of the

offence and that the transgression of the statutory duty vitiated the order of commitment.

(3) In this court Mr. Jagannath Setty, the learned Advocate for the accused, depends upon *Kirmal Singh v. State of Uttar Pradesh* : 1965 CriLJ636 and Urges that the order of committal should be vacated.

(4) The four principle which emerge from this pronouncement of the Supreme Court are: firstly that the committing Magistrate must needs examine all the witnesses to the commission of the offence alleged whom the prosecution produces secondly that he must consider all the documents referred to in S. 173; thirdly that he should make an application of his judicial mind to the question whether the witnesses to the commission of the offence not produced by the prosecutor should be examined or whether there are any exceptional grounds not to examine them; and fourthly that he should insist upon the examination of those witnesses if there are no reasons for thinking that they need not be examined.

(5) The Supreme Court in *Kirpal Singh's case*, : 1965 CriLJ636 deprecated the neglect to examine all the witnesses to the commission of the offence alleged without the bestowal of sufficient thought to the question whether the witnesses not produced by the prosecutor should or not be examined.

(6) In the case before us there are no indications that the committing mad bestowed thought to the question whether the case was one which did not fall within the rule prescribing such examination. So, the omission to examine the other witnesses to the commission of the offence alleged, was not proper.

(7) But that does not mean that we should, as suggested by Mr. Jagannatha Shetty, say that the order of committal stands vitiated. In our opinion, an order of committal preceded by the examination of only those witnesses produced by the prosecutor without considering the propriety of insistence on the examination of others is not such a serious infirmity in the preliminary enquiry as to vitiate it.

(8)The decision in *Kirpal Singh's case*, : 1965 CriLJ636 to which Mr. Shetty appealed does not make a difference enunciation. The accused in that case failed

in their appeal before the Supreme Court although there was an infirmity in the preliminary enquiry in that case similar to that which exists in the case before us. If the order of committal was illegal in consequence of such omission the appeal would have succeeded on the ground that the trial which was not preceded by a proper order of committal was no trial which was not preceded by a proper order of committal was no trial under Cr.P.C.

(9) We dismiss this reference.

(10) Reference dismissed

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