

K. Keshavamurthy Vs. State of Karnataka

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Court : Karnataka

Decided On : Dec-12-1975

Reported in : 1976CriLJ761

Judge : M.S. Nesargi, J.

Appellant : K. Keshavamurthy

Respondent : State of Karnataka

Judgement :

ORDER

M.S. Nesargi, J.

1. These petitions can be conveniently disposed of together as they arise out of a common order dated 9-5-1975 passed by the Additional Judicial Magistrate First Class, Holenarasipur, in Criminal Cases Nos. 215 to 221 of 1974, holding that the provisions prescribed in the Code of Criminal Procedure, 1898 (hereinafter referred to as the 'Old Code') and not the provisions of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'New Code') would be applicable and therefore the prosecution had made out a prima facie case of an offence punishable under Section 406 of the Indian Penal Code against the petitioner.

2. The facts giving rise to these petitions may be narrated as follows:

On 17-4-1973 one Raghunathaiah filed a private complaint before the Magistrate alleging that the petitioner had committed offences punishable under Sections 408 and 420 of the Penal Code. On receipt of the complaint, the then Magistrate passed an order as follows:

Complaint presented in person. It is referred to S. Cr. I. Dept., Bangalore, under Section 156(3), Criminal P.C. Await report.

Ultimately on 1-4-1974 the police submitted seven chargesheets against the petitioner. The learned Magistrate passed an order as follows on the same day i.e., 1-4-1974 on all the chargesheets:

Take the case on file. Issue SS to the accused by 6-5-1974.

3. During the trial the defence raised an objection when charges were to be framed that Section 468 of the New Code would be applicable as the charge-sheets were filed before the Court on 1-4-1974 and hence Section 484(2) of the New Code would not save the situation. The prosecution objected to the submission made by the defence and the learned Magistrate passed the impugned order.

4. The basic reasoning of the learned Magistrate, as seen from the impugned order, is that on Raghunathaiah filing the private complaint, cognizance of the offences had been taken and in that view of the matter, the private complaint was pending in the Court right from 17-4-1973, hence Section 484(2) of the New Code would not be applicable and as such the provisions of the Old Code only would be applicable.

5. To my mind the question appears to be a simple one. The facts narrated in the preceding paragraphs show that the learned Magistrate was not right in assuming that on 17-4-1973 cognizance of the offences complained of in put private complaint filed by Raghunathaiah had been taken. The order passed by the Magistrate on 17-4-1973 which is excerpted above makes It plain that the Magistrate had not recorded the sworn statement of the complainant and had directed an investigation to be made by the police under Section 150(3) of the Old Code. That being so, it is manifest that cognizance of the offences alleged in the complaint filed by Raghunathaiah had not been taken by then. Then the question would be whether any application, trial or inquiry was pending before the Magistrate immediately before the date on which the New Code came into force, that date being 1-4-1974.

6. Till seven charge-sheets were filed by the police on 1-4-1974, the material that was before the Magistrate consisted of the complaint filed by Raghunathaiah and the order passed by the Magistrate directing an investigation by the police under Section 156(3) of the Old Code Hence the question that naturally arises Is whether it can be said that an inquiry or a trial was before the Magistrate when the private complaint was filed under the Old Code and an order directing investigation by the police under Section 156(3) of the Old Code was passed by the Magistrate without taking cognizance of the offences.

7. The word 'inquiry' is defined as follows in both the Codes: 'Inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court The word 'trial' is not defined. It is crystal clear that during the period between 17-4-1973 and 1-4-1974 it cannot at all be said that the case was pending before the Magistrate for trial, because cognizance of the offences alleged by Raghunathaiah had not been taken and process had not been issued against the petitioner. Hence the position boils down to the simple question whether under these circumstances an inquiry during the period between 17-4-1973 and 1-4-1974 was pending before the Magistrate.

8. All that the Magistrate had done was not to take cognizance of the offences but to order the police under Section 156(3) of the Old Code to Investigate into the alleged offences. I am unable to see how in these circumstances the definition of the word 'Inquiry' as narrated above can be said to be satisfied, it was contended before the Magistrate and the same is the contention advanced before me that because the Magistrate had entertained the complaint filed by Raghunathaiah and ordered investigation by the police, a case was pending before Mm for inquiry as to whether he should further proceed or not with the matter as against the petitioner and hence an 'inquiry' was pending immediately before the coming into force of the new Code and as such Section 484(2) of the New Code would be attracted.

9. That takes me to the question as to whether a direction to investigate under Section 156(3) of the Old Code to the police into the alleged offences amounts to an inquiry. I have no doubt In my mind that it does not amount to an 'inquiry', because the Magistrate or the Court would not be inquiring into the matter as required by the definition of the word 'inquiry'. After such an investigation by the police is ordered by the Magistrate, the police investigate applying the procedure found in Chapter XTV of the old Code and file their final report under Section 173 of the Old Code. If the final report makes out that offences appeared to have been committed, the Magistrate takes cognizance of the offences and then proceeds to issue process against the concerned accused. The case will be tried as on police report and not on the basis of the private complaint The procedure under Section 251-A and not under Section 10 of the CrP Code would apply.

10. The above view is supported by the decision in *Srnangowda v. Verrappa* (1963) 2 Mys LJ 41: 1962-2 Cri LJ 41. It has been held therein that when on the filing of a private complaint an inquiry under Section 156(3) of the Old Code was ordered and the police, after investigation, submitted a charge-sheet, the private complaint lost its original character -and the case was one instituted on police report In *K. B. Subbiah Shetty v. M. Surendra Rao* (1906) 2 Mys LJ 74; *Kitti v. Thammiah Setty* (1867) 2 Mys LJ 105 : 1967 Cri LJ 1667 and *1C. V. Subbiah v. State of Mysore* (1968) 2 Mys LJ 604 :1969 Cri LJ 754) it has been held that if after taking cognizance of the offences alleged in the private complaint, even if an order for investigation under Section 156(3) of the old Code is made and a charge-sheet is submitted by the Police that charge-sheet should be treated as merely

a consequence of the action taken by the police under Section 202 of the Old Code and that the Magistrate cannot proceed under Section 251-A (2) but has got to proceed under Section 252 of the Old Code. In *Jamuna Singh v. Bbadai Sah* : 1964CriLJ468 . Their Lordships were dealing with the provisions of Sections 417(3), 200, 202, 150(3) and 173 of the Old Code. In that case, the concerned Magistrate, after completing the examination of the complainant on oath under Section 200 of the Old Code, had passed an order as follows:

Examined the complaint on s. a. The offence is cognizable one. To S.I. Baikunthpur for instituting a case and report by 12-12-1956.

11. The question that Their Lordship were examining was whether the case that was instituted before the Magistrate was one instituted upon a complaint so as to attract the provisions of Section 417(3) of the Old Code. Their Lordships held that in view of the fact that the Magistrate had taken cognizance of the offence alleged by recording the sworn statement of the complainant, the report submitted by the police in pursuance of the order passed by the Magistrate as excerpted above was a report under Section 892 of the Old Code and not under Section 156(3) of the Old Code and hence the case was one instituted upon a complaint

12. The aforementioned discussion of the position in law makes it abundantly clear that when on receipt of a private complaint under Section 200 of the Old Code a Magistrate directs an investigation by the police under Section 156 (?) of the Old Code without taking cognizance of the offences as alleged, all that he does is to treat the private complaint as first information and forward the same to the concerned police for investigation, and filing of a final report under Section 173 of the Old Code. That is exactly what has happened in the case on hand. Therefore it is not possible to hold that during the period between 17-4-1973 and 1-4-1974 any 'inquiry' within the definition of the two Codes was pending before the Magistrate. In that view of the matter, it has to be held that as the charge-sheets were filed on 1-4-1974, the provisions of the New Code were called into play. Hence the order passed by the learned Magistrate is not sustainable in law.

13. The petitions are allowed and the order dated 9-5-1975 passed by the Additional Judicial Magistrate First Class, Holenarasipur, in Criminal Cases Nos. 215 to 221 of 1974 is set aside. The Magistrate, on receipt of the records, shall proceed to dispose of the cases applying the provisions of the Code of Criminal Procedure, 1973,

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