

**State of Mysore Vs. Subba and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/377335](http://sooperkanoon.com/377335)

**Court :** Karnataka

**Decided On :** Jul-21-1970

**Reported in :** 1971CriLJ440

**Judge :** Ahmed Ali Khan, J.

**Appellant :** State of Mysore

**Respondent :** Subba and anr.

**Judgement :**

ORDER

**Ahmed Ali Khan, J.**

1. This reference is made by the Sessions Judge at Mysore, Under Section 438 of the Criminal P.C. with a recommendation that the orders passed by the Sub.Divl. Magistrate, Mysore on 4-6-1969 in C.Misc. Nos. 65 of 1969 and 64 of 1969 respectively on the file of his Court, are liable to be set aside. The impugned orders were passed by the Sub-Divisional Magistrate directing dropping of the proceedings against the accused respondents and releasing them when they were produced before him by the Police for remand. The learned Sessions Judge has made reference to this Court, in both the above referred cases, by a common order. As the point of law involved in both the cases is identically the same, it would be convenient to dispose them of by a common order by this Court.

2. Briefly stated, the relevant facts are as follows : The police, Lashkar police station( Mysore City, registered two oases against the respondents in Crime Nos. 217 of 1969 and 218 of 1969 respectively, Under Section 55 (a) and (b) of the Criminal P.C.J. and submitted P.I.R. to the Court of the Sub.Divl. Magistrate,, Mysore, both the respondents were produced by the police before the Sub-DM. Magistrate-on 4-0.1960 with to separate remand applications, with a request 10 remand the accused persons to judicial custody till 16-6-1969, pending submission of the final report. The Sub.Divisional Magistrate passed the orders in revision. In case No. 64/69, the order passed by the Sub.Divisional Magistrate was -

Accused produced before me today at 12.30 p. m. He is examined. The Police Sub-Inspector, Lashkar is also examined. There does not seem to be anything against the accused. Proceedings dropped and he is released.

The order passed in Case No. C. Mis. 65/69 was as follows : -

Accused ptoduced before me today at 12-30 p. m. He is examined and the police-Sub-Inspector, Lashkar is also examined. There is no prima facie evidence against the-accused. He is released.

The state filed two revision petitions before-the Sessions Judge, Mysore, Challenging the correctness and legality of the orders passed by the Sub-Divisional Magistrate. This reference ia made by the learned Sessions Judge,. Mysore to this Court, in the said revision petitions, with a recommendation to quash the orders passed by the Sub.Divl. Magistrate.

3. It was argued on behalf,of the state that the order passed by the Sub-Divi. Magistrate with a direction of dropping the proceedings against the respondents id illegal and bad is law, inasmuch as the cases against them were under investigation and no final report was submitted by the police. It was submitted that although in the order passed by the Sub-Divl. Magistrate in Case No. C Misc. 65/69,, the word 'dropped' is not used, nevertheless-the effect of the order is that the proceedings were being dropped. It was urged that the prayer of the police, while producing the accused-respondents before the Sub-Divl. Magistrate on 4.6.1969, was to remand them to-judicial custody till 16-6-1869, pending sub.

mission of final report. Therefore, the impugned orders passed by the Sub.Divl. Magistrate are illegal. I think there is substance in the contention advanced on behalf of the State. By a perusal of the record, it appears that the Sub.Divl. Magistrate made the orders-mentioned above, on the respective remand applications. But the record does not contain any statement, either of the accused or of the Sub-Inspector recorded by the Sub-Divl. Magistrate. Therefore, the record does not show as to how and in what manner the accused and the Sub inspector of police were examined. Evidently, the learned Sessions Judge was right in his view that the procedure adopted by the Sub-Divl. Magistrate was improper and irregular.

4. To determine the legality of the impugned orders, it is necessary to examine the legal position and to see whether the orders passed by the Sub-Divl. Magistrate have sanction of law behind them. The provisions relating to arrest and production of the accused persons, investigation of the offences by the police and submission of the report by them as a result of investigation made, are contained in the Code of Criminal Procedure. Section 61 of the Code of Criminal Procedure lays down :

61. Person arrested not to be detained more than twenty four hours. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate Under Section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Section 167 of the Code provides-

167. Procedure when investigation can not be completed in twenty-four hours: -

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation if he is not below the rank of Sub-Inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary

hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate. (2) The Magistrate to whom an accused person is forwarded under this Section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary he may order the accused to be forwarded to a Magistrate having such jurisdiction.....' (the remaining portion of the Section not relevant for our purpose).

It is, thus, clear that Section 61 of the Code of Criminal Procedure provides that no person shall be detained in custody by a police officer, without a warrant, for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order by a Magistrate Under Section 167 of the Code of Criminal Procedure, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. If however, the police require more period for this purpose of investigation, they have to follow the procedure prescribed in this behalf in the Code of Criminal Procedure indicated in Section 167, which occurs in Chapter XIV of the Code. The Magistrate before whom the accused person is forwarded may, whether he has or has not jurisdiction to try the case from time to time authorise detention of the accused in such custody as such Magistrate, thinks fit for a term not exceeding 15 days in the whole, as envisaged in Sub-section (2) of Section 167 of the Code. In this case, the police produced the accused for remand before the Sub-Divisional Magistrate, who passed the impugned orders to the effect that the proceedings are dropped.

It is clear by a reading of Section 167 of the Code that it does not empower the Magistrate to pass such an order. It only authorises him to make an order with regard to detention of the accused in such custody as he thinks fit and that too for a term not exceeding fifteen days in the whole. It also enjoins that if the said Magistrate has no jurisdiction to try the case, or to commit it for trial and if he considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. But, nowhere it authorises the

Magistrate to drop the proceedings, when the accused is produced before him for remand. Thus, it is obvious that the Sub.Divisional Magistrate had no competence to pass the orders, which he has made. Further, the effect of the orders made by the Sub.Divisional Magistrate is that the investigation has come to an end. Now, the Magistrate has no power to stifle proceedings in investigation by the police. The proceedings before the police in investigation are proceedings over which the police alone have full control and the Magistrate has no power to interfere in such proceedings. That was the principle enunciated by the Privy Council in *Emperor v. Nazir Ahmad*, reported in and cited with approval by the Supreme Court in *Abhinandan Jha v. Dinesh Mishra* reported in : [1988]1SCR1102 wherein their Lordships have cited the observations of Lord Porter as follows :Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the court to intervene in an appropriate case when moved Under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's Junctions begin when a charge is preferred before it, and not until then.

It was further observed by the Supreme Court in Para 11 of the judgment m follows :-

We are referring to these observations or the purpose of emphasizing that the scheme of (chap. XIV, clearly shows that the formation of an opinion as to whether

or not there is case to place the accused on trial, has been hit- to the officer in charge of a police station.

It is thus, manifest that impugned orders passed by the Sub.Divisional, Magistrate are illegal for' the reason that he had no competence to pass the same and they are liable to be set aside.

6. In the result, the orders passed by the Sub-Divisional Magistrate on 4.6.1969 are set aside and the proceeding before the police will remain unaffected by the said orders. This reference is disposed of accordingly.

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