

The State Vs. Kasim Hussain

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Court : Andhra Pradesh

Decided On : Dec-07-1950

Reported in : 1951CriLJ487

Judge : Shripat Rao and ;Ansari, JJ.

Appellant : The State

Respondent : Kasim Hussain

Judgement :

ORDER

1. This is a reference by the Sessions Judge at Secunderabad.
2. The short facts are that the criminal case against the accused triable without jury was transferred by a Divisional Bench of this Court from the original side of this High Court to the Sessions Judge for trial. The learned Sessions Judge in his reference has quoted certain rulings of the Sind Chief Court and other High Courts in support of the view that the original side of the High Court is not equal in any sense of the term to the Court of Sessions. He has also referred to a decision of this Court reported in 24 Deccan L. R. 258.
3. Ordinarily, we would have rejected this reference without any discussion as the case has been transferred by a Division Bench of this High Court, and it is not within our power as another Division Bench, to sit in appeal on the judgment or orders passed by the previous Division Bench.

4. But the question was raised at the Bar on behalf of the accused that the Original Side not being subordinate to the High Court, no case from that Court can be transferred (by the Divisional or any other Bench of the High Court) to some other Court of Sessions and we think that we should express our opinion as briefly as possible with regard to this question. Moreover, there has been a long standing practice of this High Court to transfer Sessions cases triable without jury from the original side to some other Sessions Court to relieve the congestion of work in that Court and to facilitate speedy disposals. A doubt has been cast on this practice and it is better that we should examine the legal position.

5. Mr. Shri Kishen, learned Counsel for the accused has emphatically argued that the Hon'ble Judge on the Original Side of the High Court has equal status with other Hon'ble Judges of this High Court and his Court being one of the Benches of the High Court, it cannot in any way be regarded subordinate to the High Courts nor can the power of transfer which is exercised with regard to cases before other Courts of Sessions, be exercised by the High Court with regard to its own Original Side. He has referred to Section 6, Hyderabad Criminal P.C. which provides that besides the High Court and the Courts constituted under any law other than the Code for the time being in force, there shall be five classes of Criminal Courts namely-(1) Court of Sessions, (2) Court of District Magistrate, (3) Magistrates of the 1st Class, (i) Magistrates of the 2nd Class and (c) Magistrates of the 8rd Class. He argues that the High Court is a Court beside the Court of Sessions and is therefore not a Court of Sessions and has cited Emperor v. Harendra Chandra A.I.R. (12) 1925 Cal. 384 : (26 Cr. L.J. 385) in which it has been held that the High Court exercising Original Criminal Jurisdiction is not a Court of Session within the meaning of the Code of Criminal Procedure. Mukherji J., who delivered the judgment, has carefully referred to the various sections of the Indian Criminal P, C., wherein a distinction has been maintained between a Court of Sessions and a High Court, But the relevant sections mentioned in Mukherji J.'s judgment do not find place in our Criminal P, C. On the contrary, Section 9, Clause (2) of our Criminal P.C., provides that the High Court on the Original Side will be considered the Court of Session for the city of Hyderabad and that the Government may by order declare the same Court as the Sessions Court for any other district. There are no such provisions in Section 8, Indian Criminal P.C. which in other respects is

analogous to our Section 9. The said ruling therefore has no bearing in view of the state of the law prevailing under our Criminal Procedure Code. Further the explanation to Section 9 of our Code provides that the Original Side of the High Court shall be considered a Court of Sessions for the purposes of submission of the sentence to the High Court for confirmation under s. 302, Hyderabad Criminal P.C. (s. 874, Indian Criminal P.C.). It also lays down that the provisions of Section 309, Hyderabad Criminal P.C. (Section 379, Indian Criminal P.C.) shall be applicable to the Original Criminal Side of the High Court. The result is that the sentence after confirmation by the High Court has got to be transmitted for the purposes of execution to the Original Criminal Side and for this purpose also it is treated as a Court of Sessions. Section 311, Hyderabad Criminal P.C., (s. 381, Indian Criminal P.C.) which requires the Court of Session to carry out and execute orders passed by way of confirmation has also been made applicable to the Original Side and for this purpose also that Court is to be regarded as a Court of Session. Then the provisions of Sections 338 and 342, Hyderabad Criminal P. C , (Sections 410 and 417, Indian Criminal P.C.,) have been made applicable with the result that an appeal lies to the High Court from an order of acquittal of conviction and sentence by the Judge on the Original Side, to the High Court and the provisions of the said sections which provide an appeal from such an order of the Sessions Judge have been made applicable. There is no such provision in the analogous Sections of the Indian Criminal P.C. referred to above. In brief so far as the trial of Sessions cases is concerned, the Original Criminal Side of the High Court is obliged to perform the same duties as any other Court of Sessions and its status therefore is that of a Court of Session. The result is that the High Court in its appellate jurisdiction including powers of revision and reference can exercise the same powers with regard to the Original Criminal Side of the High Court as it exercises, with regard to any other Court of Sessions. It appears that the Legislature thought it necessary to introduce an amendment in the Indian Criminal P.C., 1898, and s. 411-A was introduced in 1943. This section gave a limited power of appeal to the High Court from a conviction and sentence or from an order of acquittal from the Original Criminal Side. Clause (3) of the section provides that such an appeal shall be heard by a Division Bench of the High Court composed of not less than two Judges. It is also made clear in the section that it will operate

notwithstanding anything contained in the Letters Patent and in Sections 418 and 419, Indian Criminal P.C. It is thus clear that the distinction sought to be maintained in the Indian Criminal P.C. between Original Side of the High Court and any other Court of Session does not find its place in our Code so far as its status of a Sessions Court is concerned. The Original Side takes cognizance of a case to be tried in a Court of Sessions when the accused is committed to it by a City Magistrate and the section under which such cognizance is taken is Section 198 which is the general section for a Sessions Court to take cognizance of an offence when committed to it by a Magistrate. There is a different section so far as High Court is concerned in the Indian Criminal Procedure Code, and there the High Court does not take cognizance under the equivalent general section i. e. Section 193, Indian Criminal P.C. It is obvious from the above, that so far as the question of subordination of the Original Side is concerned the answer must be given in the affirmative in the light of the provisions of our Criminal P.C. We therefore hold that the Original Side of the High Court is subordinate to the appellate Side (including power of revision, reference and transfer) of the High Court. We are further fortified in our view by the provisions of the Explain. to Section 11, Hyderabad High Court Act introduced by the amendment dated 19th Meher 1348F. The said section lays down that the decisions of the High Court shall be final except with regard to sentences of life imprisonments or death. Clause (2) provides that the finality will be farther subject to the powers of amendment and cancellation exercisable by H. E. H. the Nizam (this Sub-clause obviously refers to the powers of the Judicial Committee of H. E. H. the Nizam which in view of the Constitution of India Article 87i(iv) has become defunct. It is neither intended nor is it necessary here to discuss the validity of the said Sub-clause in view of the provisions of the Constitution). The explanation to this section provides that the provisions of the section are not intended to give finality to the judgments of the Original Side and the remedy by way of appeal and revision will be available against such judgments subject to provisions of the Procedural Law. It is clear that the Original Side has been made subject to the appellate jurisdiction of the High Court and the Criminal Procedure Code provides the procedure in this respect.

6. Mr. Shri Kishen argued that the words 'appeal and revision' in the explanation do not cover the power to transfer a case though for purposes of appellate and revisional jurisdiction, the Original Side may be considered subordinate to the appellate side of the High Court. But the said words should be read in the light of Section 7 of the High Court. Charter which divides the judicial powers of the High Court in two sub-divisions (1) Original (2) Appellate including revision and reference. We are of the opinion that the general appellate jurisdiction (and not the technical appellate jurisdiction) includes the jurisdiction by way not only of reference and revision but also of the power of transfer. This power is inherent in the appellate jurisdiction. We therefore hold that it is within the powers of the appellate Side of the High Court to transfer a case from the Original Side.

7. The powers and jurisdiction of the Original Side of the Indian High Courts which have been established by Letters Patent are defined in that document (Letters Patent) and they are more or less but not quite similar to those that are defined in the Hyderabad High Court Act and the Hyderabad Criminal P.C. Hence, it is not necessary here to discuss the case cited in *Ramaswamy Chettiar v. V. T. Chettiar* Firm A.I.R. (21) 1934 Rang 265: (12 Rang. 548 F, R.) and some other rulings of the Indian High Courts which are based on the provisions of their Letters Patent and which hold that the Original Side of the High Court being an integral part of the High Court is not subordinate. Moreover, the Rangoon case was with respect to a civil matter and it was decided therein that for the purposes of Section 23, cl. (3), Civil P.C. the Original Side is not subordinate to the High Court. No case has been cited before us which has discussed the question of subordination of Original Criminal Side after the amendment in 1943, introducing Section . A, Indian Criminal P.C. It will be an interesting and 411 engrossing study to consider this question of subordination or see how far the Indian ruling;) will be affected in the light of Section 411. However, it is not necessary for us to enter into that discussion. We wish to limit our observations in this case only to the extent of the Original Criminal Side of the High Court. We do not wish to enter into a discussion whether the Original Civil Side of the High Court is subordinate to the appellate side of the High Court or not and involve ourselves into a long discussion of the various provisions in the Civil Laws though it is a matter of every day experience that revisions, references and appeals are filed from the judgments of the Original

Civil Side.

8. Some arguments were advanced with regard to the merits of the order of the Division Bench which transferred this case to the Court of Sessions Judge, Secunderabad. It was urged that no notice was given to the accused before transfer. These questions are irrelevant to the point of issue. When once it is conceded that the Division Bench had the power to transfer it can exercise that power rightly and some times wrongly as well. We are not an appellate Court over that Division Bench. It is also clear that under Section 494, Hyderabad Criminal P.C. notice to the accused is not necessary.

9. There is no doubt that the order of transfer was passed on the judicial side and not on the administrative side and hence arguments advanced in this respect have no force.

10. This decision be sent to the lower Court in answer to the reference under consideration.

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