

The State Vs. Rajkumar Satthi and ors.

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Court : Andhra Pradesh

Decided On : Aug-05-1980

Reported in : 1980CriLJ1355

Judge : Jayachandra Reddy and ;Madhusudan Rao, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 120, 124A, 392, 452 and 477A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 323, 325 and 325(1)

Appeal No. : Criminal Revn. Case No. 497 of 1979 and Case Referred No. 3 of 1979

Appellant : The State

Respondent : Rajkumar Satthi and ors.

Advocate for Def. : B. Veerabhadra Rao, Adv.

Advocate for Pet/Ap. : Public Prosecutor

Judgement :

Madhusudan Rao, J.

1. This revision case is registered on a reference made by the learned Metropolitan Sessions Judge, Hyderabad, in Sessions Case No. 54 of 1979 on the file of his Court requesting that the committal of the case made by the IV

Metropolitan Magistrate, Hyderabad, may be quashed.

2. The facts leading up to the reference are : The Inspector of Police, Chikkadapalli, Hyderabad, filed a charge-sheet against three accused alleging that they participated in three incidents forming the same transaction and that they are liable for punishment under sections 452 and 392 read with Section 34, I.P.C. in respect of one incident, under section 324 read with Section 34, I.P.C. in respect of another incident and under section 392, I.P.C. in respect of the third incident. It was requested in the charge-sheet that, in the event of conviction, the three accused may be bound over under section 106, Cr.P.C. besides being sentenced appropriately. It was further mentioned in the charge-sheet that the first accused has 12 previous convictions to his credit and the last conviction was in a case filed in the year 1975. The case was filed in the Court of the IV Metropolitan Magistrate, Hyderabad. On the appearance of the accused and after furnishing the necessary documents to the accused, the learned Magistrate, converted the Calendar Case into a Preliminary Register Case and committed the case to the Court of the Metropolitan Sessions Judge, Hyderabad, being of the opinion that the crime is grave and that the offence alleged by the prosecution is one punishable with imprisonment which may extend to 14 years under the second part of Section 392, I.P.C. When the matter came up before the Sessions Court, the learned defence Counsel contended that the committal of the Court of Session was invalid and improper. After hearing the arguments on both sides, the learned Sessions Judge has referred the question of the validity of the committal to this Court being of the view that there is a conflict on the question in the decisions of the High Court.

3. The Magistrate passed the order of committal in the exercise of the powers conferred on a Magistrate under section 323 Cr.P.C. and relying on a decision of this Court in *A. K. Joshi v. State of Andh Pra*, 1979 Cri LJ 63.

4. Sri B. Veerabhadra Rao, the learned Counsel for the accused No. 1 contends that the committal is bad in so far as the Magistrate committed the case only because he was of the opinion that he could not award adequate sentence and that, in such cases, he had to proceed only under section 325 Cr.P.C., which is specifically enacted to meet such a situation. In support of this submission,

reliance is placed on *M. Agamma v. State of Andh Pra*, (1977) 1 APLJ (HC) 376 : (1978 Cri LJ 709). Before dealing with case relied on by the learned Magistrate and the other case cited by the learned Counsel for the accused, it may be necessary to examine the relevant provision in the Code :

S. 323 : If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions herein before contained.'

Section 324 : Where a person, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code (45 of 1860) with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, and the Magistrate before whom the case is pending is satisfied that there is ground for presuming that such person has committed the offence, he shall be sent for trial to the Chief Judicial Magistrate or committed to the Court of Session, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted.

(2) xxx xxx xxx Section 325 : (1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or being a Magistrate of the Second Class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, xx xx xx

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further

evidence. and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.'

5. Section 322, which corresponds to Section 346 of the old Code, provides for cases where the evidence appears to the Magistrate to warrant a presumption of lack of jurisdiction to try or commit. Sections 323 to 325 take in their ambit cases which a Magistrate is normally empowered to try but in which there are circumstances requiring their trial by a higher Court like the Court of Session or the Chief Judicial Magistrate. Section 324 provides for the forwarding of the case of a previous convict liable to enhanced punishment to the Chief Judicial Magistrate or its committal to the Court of Session unless when the Magistrate opines that he himself can pass an adequate sentence in the event of a conviction. For the application of this section, there must be some material, which can reasonably be construed by the Magistrate as ground for presuming that the accused has committed the offence. Before resorting to this section, the Magistrate must examine other relevant circumstances like the interval between the previous conviction and the date of offence of the instant prosecution the trivial or pettiness or value of the property involved in the later case and see whether he can himself pass an adequate sentence in the event of the accused being convicted.

6. Section 325 provides for the same being resorted to 'after hearing the evidence for the prosecution and the accused' and the Magistrate being of the opinion that the accused is guilty. It is not open to a Magistrate to invoke S. 325 at any earlier stage. The language of the section is clear and specific. It is only when a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty and that he ought to receive a punishment different in kind from, or more severe than, that which the Magistrate is empowered to inflict, he may record the opinion and submit his proceedings and forward the accused to the Chief Judicial Magistrate to whom he is subordinate. While Section 324 applies to previous convicts for offences against coinage, stamp law or property. Section 325 applies to all offences tried under the Code. The purpose and purport of both the Sections is to provide for the imposition of a proper sentence in cases in which the Magistrate, though competent to try, opines that the accused persons deserve a sentence different from the one or more than

he is empowered to award under the law. Both the provisions contemplate submissions of the records by the Magistrate to the Chief Judicial Magistrate who is empowered to dispose of the case and award proper sentence. While Section 325 restricts the forwarding of the case only to the Chief Judicial Magistrate Section 324 alternates the forwarding by committal to the Court of Session also; but the committal to the Court of Session is merely an alternative and not the primary. What the Court should see under section 324 is whether the Magistrate himself cannot pass an adequate sentence in the event of the accused being convicted. If not, cannot the case be forwarded to the Chief Judicial Magistrate, who, as the law now stands, is empowered to impose a sentence extending up to seven years' imprisonment. This being the position with regard to Sections 324 and 325, let us now examine Section 323 of the Code.

7. Section 323 is a general provision. It applies to all cases tried under the Code. It corresponds to Section 347 of the old Code except that the words 'or High Court' in Section 347 are deleted in Section 323. The Section confers in general terms a wide and comprehensive power on a Magistrate to commit a case to the Court of Session at any stage of the enquiry or trial before signing the judgment if only it appears to him that the case is one which ought to be tried by a Court of Session. If the case appears to be one which is exclusively triable by a Court of Session, the Magistrate has no alternative but to commit the case to a Court of Session as required under section 209, Cr.P.C. It is only a case which appears to the Magistrate to be one which ought to be tried by the Court of Session that the Magistrate can act under this section. The words 'if it appears to him' contemplate the formulation of a judicial opinion. Though the discretion to commit is wide under this section, the discretion has to be exercised judicially and no hard and fast rule can be enunciated as to in what cases committal should be made under this section and in what other cases it should not be made. It all depends on the facts and circumstances of each case.

8. In *Lakshminarayana v. Suryanarayana*, AIR 1932 Mad 502 : (33 Cri LJ 765). It was pointed out that, though it is not an unalterable rule that a case and counter should be tried by the same Court, it may be desirable that the case triable by a Magistrate is committed to the Court of Session, if such case is a counter case or

a cross-case to a case already committed to the Court of Session, so that both the cases are heard and disposed of by the same Court.

9. In *Emperor v. Ghulam Hussain*, AIR 1943 Sind 112 : (44 Cri LJ 631), it was held that, though ordinarily a Magistrate should try a case which he is competent to try and which he can adequately punish, it is desirable and advantageous that, when a case is committed to sessions, the counter case should also be committed and tried by the Court of Session though the Magistrate himself is competent to try the counter case and inflict adequate punishment.

10. In *Rex v. Matoley* (1949) 50 Cri LJ 59 : (AIR 1949 All 1), a full Bench of the Allahabad High Court approved the committal made in a case triable by the committing Magistrate, as the committal was based on the ground that it was a cross-case to a sessions case already committed.

11. In *Emperor v. Krishnaji Prabhakar Khadilker*, (1929) ILR 53 Bom 611 : (30 Cri LJ 1090), an editor of a Marathi daily newspaper was charged by the Chief Presidency Magistrate, Bombay, under section 124-A, I.P.C., in respect of an article which appeared in one of the issues of the Daily. The offence was triable by a Court of Session, or by the Chief Presidency Magistrate and the punishment that might be imposed was either transportation for life or for any other term (as the law then stood) and fine or imprisonment of either description for three years and fine. When the trial commenced before the Chief Presidency Magistrate, the accused filed an application for enquiring into his case on the footing of its eventual committal by the Magistrate to the High Court Criminal Sessions. On objection by the Crown, the application was rejected firstly on the ground that there was congestion of work in the High Court Criminal Sessions and secondly on the ground that the Chief Presidency Magistrate was competent to adequately deal with the case. When the accused filed a revision before the High Court the High Court directed committal in view of the fact that the accused was charged with a serious offence which was punishable with transportation for life, that the Daily which the accused edited enjoyed a large circulation owing to which the case assumed a public importance, that the Sessions Court would be in a better position than the Chief Presidency Magistrate to pass an adequate sentence and

that the desire of the petitioner that he should be tried before a Judge and Jury was not unreasonable.

12. In *In Re, Sant Prakash Sahni*, 1974 Cri LJ 60, the Madras High Court held that, when the charge was that the Reserve Bank and the Government of India were defrauded to the tune of Rs. 34 lakhs, the conversion of the Calendar Case into a Preliminary Register Case is not illegal or improper.

13. In *State of Uttar Pradesh v. Khushi Ram*, : 1960 CriLJ1378 , though the Magistrate was competent to try and award proper sentence, he committed the accused to stand his trial before the Court of Session being under the erroneous impression that he could not impose adequate sentence. Their Lordships of the Supreme Court held that such a commitment is not a nullity.

14. In *Emperor v. Bhimaji Venkaji Nadgir*, (1918) ILR 42 Bom 172 : (19 Cri LJ 342) it was held that a Magistrate was not competent to commit a case which he could himself try and dispose of, solely by the wish of the parties and the terms of a Government Resolution. It was pointed out that it was the duty of the Magistrate to determine on entirely judicial considerations whether the accused should be committed to a Court of Session or not.

15. In *Emperor v. Achaldas Jethamal*, AIR 1926 Born 251 : (27 Cri LJ 479), the Magistrate committed the accused on two grounds; the first is that one of the accused requested a committal; the second is that, according to the Pleader for the accused, the case created sensation in the Marwadi community and the amount involved the offence being of cheating, is large. The amount involved was Rupees 4,000/-. The Division Bench of the Bombay High Court quashed the committal holding that they are not proper grounds.

16. In *Emperor v. Krishnaji Landge*, AIR 1945 Bom 493 : (47 Cri LJ 231) it was held that the committal of a case to the Sessions which is triable by the Magistrate and is not exclusively triable by the Court of Session on the ground that the accused wanted the case to be committed to the Sessions and that the case involved a complicated question of law is illegal and is liable to be quashed.

17. As pointed out already, the power to commit under section 323 Cr.P.C.. is wide taking in its amplitude cases which are not exclusively triable by the Court of Session and under the new Code, preliminary enquiries into cases exclusively triable by the Court of Session have been dispensed with. The files of the Sessions Courts are quite heavy with the cases concerning offences which are exclusively triable by the Court of Session. They cannot be made heavier by indiscriminate user of Section 323 of the Code by committal of cases which can be tried and disposed of by the Magistrates. The normal rule is that every Court, when it is seized of a case which it is competent to try and dispose of, should dispose of the same the best of its ability. The high power vested in the Sessions Courts has to be utilised for those cases which require under the Code trial by the Sessions Court. This does not mean that Section 323 should be allowed to remain a dead letter. It can be invoked and in fact should be invoked whenever the ends of Justice demand. It should however be remembered that, before acting under Section 323 Cr.P.C., there is a provision under Section 325 which specifically deals with cases for punishment more than what the trial Magistrate can award. When, from the records, it appears to a Magistrate that the accused may have to be given a heavier sentence than what he could impose, it would not be proper for the Magistrate to straightway act under Section 323 Cr.P.C. and commit the case to the Court of Session. It would be appropriate that he tries the case and reaches the stage contemplated in S. 325 and if he opines, after hearing the prosecution and the defence evidence, that the accused is guilty he may take recourse to Section 325 in which case he will have to forward the records to the Chief Judicial Magistrate who is empowered to impose a sentence of seven years' imprisonment. If there should be a case where the sentence ought to be even far more than a Chief Judicial Magistrate can award, there will be no difficulty in the Magistrate forwarding the case to the Chief Judicial Magistrate in so far as Section 325(3) provides that the Chief Judicial Magistrate can pass any order which he thinks fit and such order can be an order of committal to the Court of Session. It is just possible, after the hearing of the evidence for the prosecution and the defence, that the Magistrate might opine that the accused is not guilty in which case it would, he perfectly open to him to acquit the accused. Committing cases without reaching the stage where he could form an opinion of guilt, but which are likely to

end in an acquittal after hearing the evidence for the prosecution and the defence under section 323 Cr.P.C., merely because it appears to him from the nature of the allegations that, in the remote prospect of the accused being convicted he might not be able to award adequate sentence, would be wasting the precious time of the Sessions Court, as after all the Magistrate is quite competent to try the case and acquit the accused, if he should find the accused not guilty. Section 323, Cr.P.C. should be resorted to only when the Magistrate opines that the case ought to be tried by a Court of Session for reasons other than this inability to award adequate sentence.

18. The decisions under the old Code approving of committals made under the corresponding old Section 347 of that Code merely on the ground of the Magistrate's inability to award adequate sentence cannot now be good law in so far as the power to act under section 349 of the Old Code was then limited only to the Second and Third Class Magistrate and the case could be forwarded only to the District Magistrate or Sub-Divisional Magistrate whose powers again were limited to the extent of imposing a sentence of imprisonment for two years. Under the present Code, Section 325 provides for the forwarding of cases by all Magistrates Third, Second and First Class, to the Chief Judicial Magistrates who are invested with powers to impose a sentence which may extend to seven years' imprisonment.

19. We are fortified in this view of our by an earlier single Judge's decision in *M. Agamma v. State of Andh Pra*, (1977) 1 APLJ (HC) 376 : (1978 Cri LJ 709) and the decisions of the Gujarat and Karnataka High Courts in *Narendra v. State of Gujarat*, 1978 Cri LJ 1193 and *Shivarajveerappa v. State of Karnataka*, 1977 Cri LJ 1113.

20. In *M. Agamma v. State of Andhra Pradesh* (1977) 1 APLJ (HC) 376 : (1978 Cri LJ 709) Punneya, J., held :

'The creation of the Chief Judicial Magistrate under S. 29, Cr.P.C. (new) is intended to give relief to the Court of 'Session, as the Chief Judicial Magistrate as empowered to impose a sentence of imprisonment for seven years. When Section 325 is available in the Code to assist the Magistrate to submit the case to the

Chief Judicial Magistrate for awarding adequate sentence prescribed for the offences with which the accused stand charged, the learned Magistrate committed illegality in committing the case under Section 323 to the Court of Session on the ground that it is the Court of Session that is competent to give adequate sentence in the case on hand.'

21. In *Narendra v. State of Gujarat*, 1978 Cri LJ 1193, Desai, J., pointed out AS follows :

'Therefore, on a correct interpretation of the relevant provisions, no Magistrate can straightway commit a case to the Court of Session, under S. 323, on the ground that the punishment that the accused should receive ought to be different in kind and more severe than that which he is competent to inflict. He has got to follow the Procedure under S. 325 of the Code and there is no other alternative left for him in such a case. It follows as a necessary consequence that, after following the procedure under section 325, if he comes to the opinion contemplated by sub-section (1) thereof, he has to submit the proceedings to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be.'

22. In *Shivarajveerappa v. State of Karnataka*, 1977 Cri LJ 1113, a Division Bench of the Karnataka High Court quashed the committal of an accused charge-sheeted under sections 477-A and 120 read with Section 34, I.P.C. when the committal was made merely in view of the gravity of the offence alleged and the maximum punishment that is provided for those offences. The Bench held that the First Class Magistrate, who was competent to try the case and who was empowered to award a sentence of three years' imprisonment, should have proceeded with the trial and if he opined, after reaching the stage contemplated in Section 325(1), that the accused was guilty and deserved a more severe punishment than what he could have imposed, he should have resorted to Section 325 Cr.P.C. instead of straightway committing the accused to the Court of Session.

23. In *A. K. Joshi's case* 1979 Cri LJ 63 (Andh Pra) Gangadhara Rao, J., did not lay down any such proposition of law as that a Magistrate can commit to the Court of Session even when he opines that he cannot impose an adequate sentence on the accused. What the learned Judge held is that, under section 323 Cr.P.C. for

committing case, it is not necessary that the offence should be exclusively triable by the Court of Session, that it would suffice if the Magistrate opinion that it is a case which ought to be tried by a Court of Session and that the opinion as to what case ought to be tried by a Court of Session depends on the facts and circumstances of each case. The learned Judge observed in paragraph 8 of the judgment :

'I am of the opinion that each case must be decided on its own facts and no hard and fast rule can be laid down.'

Again in paragraph 9, it was pointed out :

On the facts of this case, I am of the opinion that the learned Magistrate is justified in holding that it is a case fit to be tried by the Court of Session.'

24. No doubt, the learned Judge observed that Section 323 does not lay down any conditions except that it must appear to the Magistrate that the case is one which ought to be tried by the Court of Session : but that observation cannot be construed as a broad proposition of law permitting a Magistrate to commit every and any case triable by him by merely saying that, in his opinion, the case is one which ought to be tried by a Court of Session.

25. In *V. V. Raghavaloo v. State*, 1978 Cri LJ 209 (Andh Pra), Chennakesav Reddy, J., also did not lay down that a Magistrate can commit a case to the Court of Session if he is merely of the view that he might not be able to award an adequate sentence. The learned Judge observed in paragraph 5 of the judgment :

'What the section really requires is merely the opinion of the Magistrate and not the satisfaction of the Magistrate. The said opinion may be on the basis of the nature and gravity of the offence, the punishment to be met and such other matters of aggravation.'

26. It may be noticed that the learned Judge contemplated the existence of the three factors : (1) nature and gravity of the offence, (2) punishment to be met and (3) such other matters of aggravation, cumulatively by the use of the word 'and' and not alternatively in which case he would have used the word 'or' before 'such

other matters of aggravation.' Neither of the learned Judges held that a Magistrate can act under section 323 Cr.P.C. and commit the accused to the Court of Session when he merely opines that he might not be able to award adequate sentence in the case.

27. For the reasons recorded, the reference made by the learned Metropolitan Sessions Judge is accepted. The committal is made only on the grounds that one, of the offence alleged is punishable with imprisonment which may extend to 14 years. The IV Metropolitan Magistrate, who is invested with first class powers, is competent to try the case and he ought to have proceeded with the case. If he opined, after hearing the evidence for the prosecution and the accused, that the accused is guilty and that he ought to receive a punishment different in kind or more severe than that which he is empowered to inflict, he should have then recorded his opinion and submitted his proceedings to the Chief Metropolitan Magistrate to whom he is a subordinate, as specifically provided in Section 325(1) of the Code. The order of committal passed by the Magistrate is, therefore, quashed and he is directed to dispose of the case according to law. The Metropolitan Sessions Judge shall send back the case records to the IV Metropolitan Magistrate.

28. Reference accepted.

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