

In Re: State of Andhra Pradesh

In Re: State of Andhra Pradesh

SooperKanoon Citation : sooperkanoon.com/427044

Court : Andhra Pradesh

Decided On : Oct-24-1991

Reported in : 1992CriLJ1827

Judge : G. Radhakrishna Rao, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 1(2)

Appeal No. : Criminal Revn. Case No. 529 of 1991

Appellant : In Re: State of Andhra Pradesh

Advocate for Pet/Ap. : Public Prosecutor

Judgement :

ORDER

1. As the case is coming from a tribal area of Srikakulam District, the learned Agency Magistrate by following the Criminal Procedure Code, 1898, committed the case to the Court of Session. The learned Sessions Judge registered the case as Sessions Case No. 19 of 1991 and made it over for disposal to the learned Additional Sessions Judge. The learned Additional Sessions Judge raised an objection that the committal order itself is bad as the provisions under the new Code of Criminal Procedure alone are applicable. The reason that has been given by the learned Additional Sessions Judge is that in S. 1(2)(b) of the Code of Criminal Procedure, 1973, the expression 'tribal areas' has been mentioned. While

construing the 'tribal areas' the learned Additional Sessions Judge took into consideration the explanation to proviso to sub-sec. (2) of S. 1 of that Code read with para 20 of the Sixth Schedule to the Constitution and came to the conclusion that the 'tribal areas' that have been mentioned therein do not cover the 'tribal areas' in Andhra Pradesh and so in Andhra Pradesh the only Code that is applicable is the Code of Criminal Procedure 1973. The said sub-s. (2) of S. 1 of the Code of Criminal Procedure, 1973, reads as follows :

'It extends to the whole of India except the State of Jammu and Kashmir :

Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply.

(a) to the State of Nagaland.

(b) to the Tribal Areas.

2. but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be with such supplemental, incidental or consequential modifications, as may be specified in the notification.

3. Explanation :

4. In this section, 'tribal areas' means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in Para 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.'

5. Therefore, notice has been given to the learned public prosecutor. Sub-para (1) of Para 5 of Part B of the Fifth Schedule to the Constitution reads as follows :

'Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any such direction given under this sub-paragraph may be given so as to have

retrospective effect.'

6. In pursuance of the power that has been conferred, a Gazette Publication has been made on March, 29th 1974, which reads as follows :

'In exercise of the powers conferred by Sub-para (1) of Para 5 of the Fifth Schedule to the Constitution of India, the Governor of Andhra Pradesh hereby directs that the Code of Criminal Procedure 1973 (Central Act II of 1974), shall apply to the Scheduled areas in the State of Andhra Pradesh subject to the modification that in sub-sec. (2) of S. 1 of the said Code after the existing proviso, the following proviso shall be inserted, namely :

'Provided further that the provisions of this Code shall not apply on and from the 1st day of April, 1974 to the Scheduled areas in the State of Andhra Pradesh, but the State Government may, by notification, apply such provisions or any of them to the whole or part of such scheduled areas with effect from such date or dates and with such supplemental, incidental or consequential modifications as may be specified in the notification.'

This direction shall come into force on the 1st day of April, 1974.'

7. By virtue of this notification another proviso has been added and direction is to the effect that the old Procedure Code alone is applicable to the Scheduled areas. Since, this 'Tribal area' is also a 'Scheduled area', the provisions of the Criminal Procedure Code, 1898, will apply. The committal order that has been passed by following the provisions under the old Act is perfectly correct. The reference is answered accordingly.

8. Order accordingly.