

Gopal Kashiah Vs. State

Gopal Kashiah Vs. State

SooperKanoon Citation : sooperkanoon.com/428321

Court : Andhra Pradesh

Decided On : Mar-16-1965

Reported in : AIR1966AP180; 1966CriLJ649

Judge : Jaganmohan Reddy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 207A, 251A and 347

Appeal No. : Criminal Revn. Case No. 723 of 1964 and Crl. Revn. Petn. No. 643 of 1964

Appellant : Gopal Kashiah

Respondent : State

Advocate for Def. : O. Chinnappa Reddy, Public Prosecutor

Advocate for Pet/Ap. : T.V. Sarma and ;G.S. Dwarakeswara Rao, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

Jaganmohan Reddy, J.

1. This revision challenges the jurisdiction of the Magistrate to commit a case which is tried by him under Section 251-A Cr. P. C. without recording the evidence

by adopting the procedure prescribed for committal under Section 207-A. Cr. P. C.

2. Mr. Sarma's contention is that in a case which is initially tried as a warrant case under Section 251-A on a Police Report, if the Magistrate comes to the conclusion that it is a case to be tried by the Sessions Court, he should commit it under Section 347 Cr. P. C. only by adopting the procedure under Section 251-A by recording the evidence of all the witnesses. Section 347 Cr. P. C. is in the following terms:

'Section 347 (1): If in any inquiry before a Magistrate, or in any trial before a Magistrate, before signing judgments, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall commit the accused under the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under Section 346'

A plain reading of the above section shows that a Magistrate who is empowered to commit a case under the provisions of Chapter XVIII, can, in an inquiry or in a trial at any stage of the proceedings upto the signing of the judgment, commit the case, if it appears to him that it is one which ought to be tried by a Court of Session or by High Court. The Legislature has further prescribed that this committal should be done under the provisions 'hereinbefore contained.' The only provisions for committal of a case which come within the ambit of the words 'hereinbefore contained' are those prescribed under Sections 207 to 220 of Chapter XVIII. The contention of Mr. Sarma that the procedure prescribed under Section 347 also would take in Section 251-A is, in my view, without substance, because that is contained in the chapter relating to trial of warrant cases. It is idle to say that he must complete the trial by recording the evidence of all the witnesses and that only then he must commit the case, because, it is only if, during the trial, the Magistrate comes to the conclusion that the case is one which ought to be tried by the Court of Session or High Court, that he should commit the case. If the intention of the Legislature was that he must complete the trial by recording the evidence of all the witnesses before committing the case, it could have said so in clear and

unambiguous terms.

When, on the other hand, the Legislature specifically and 1 say so even at the risk of repetition used the words 'commit the accused under the provisions hereinbefore contained', it only refers to the provisions relating to committal, and the provisions relating to committal are no other provisions than those contained in Chapter XVIII, Section 251-A has no place in that Chapter nor does it deal with the committal on any construction. The amendment of Section 207-A and Section 208 has been effected by the Legislature to expedite the trial of Sessions cases on police reports. But, in so far as cases on private complaints are concerned, the amendment to Section 208 clearly postulates all such evidence as may be adduced in support of the prosecution or on behalf of the accused as may be called by the Magistrate. There is no provision for the accused to examine the witnesses during the committal proceedings under Section 207-A. So that what Section 208 means in relation to private complaint is that all witnesses who are necessary for the prosecution case should be examined and the accused also should be given an opportunity to examine his witnesses. Apart from this there is no warrant for the contention that in a case filed on a Police report the Magistrate has to examine all the witnesses who have to be examined in the Sessions Court, excepting those who have witnessed the actual commission of the offence. The Magistrate has been given a discretion to insist upon examination of all such witnesses even though they may not have been produced.

3. I am, therefore, of opinion that under Section 347 Cr. P. C. the Magistrate can commit a case such as the one before me without; having the necessity of recording the evidence of all the witnesses, who are going to be examined in the Sessions Court as if it is a trial of a warrant case by the application of Section 251-A Cr. P. C.

4. This revision is accordingly dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com