

**State Vs. Chand Khan**

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**Court :** Andhra Pradesh

**Decided On :** Nov-08-1955

**Reported in :** 1956CriLJ402

**Judge :** Manohar Pershad and ;Kumarayya, JJ.

**Appellant :** State

**Respondent :** Chand Khan

**Judgement :**

ORDER

**Kumarayya, J.**

1. This is a reference by the learned Sessions Judge, Adilabad, recommending that the order of the First Class Magistrate, Nirmal, committing the accused Chand Khan for trial before the Sessions Judge, Adilabad be quashed.

2. Chand Khan, the accused was charged for having beaten his wife very severely inflicting thereby injuries on the vital organs which resulted in her death the very next day. He was challaned under Section 304, I.P.C. by the Police before the Magistrate, Nirmal. The learned Magistrate after preliminary inquiry came to the conclusion that the accused has committed an offence falling under Section 304, I.P.C. for which he ought to be tried by the Court of Session and accordingly made a commitment order.

On 13-6-1955, when the case came up for trial before the Sessions Judge, the learned Judge entertained a doubt whether the commitment could be in border as this case was triable by the Additional District Magistrate, Adilabad. who was invested with powers under Section 30, Criminal P.C. After hearing the parties, he held, the view that though the police had filed challan before the Magistrate, Nirmal, the only course open to him was to act under Section 346, Criminal P.C. and make over the case to the Additional District Magistrate, Adilabad, rather than start committal proceedings. The order of commitment was, therefore, bad in law and should be quashed under Section 215, Criminal P.C.

3. We feel this reference should be rejected. A commitment order made by a competent Magistrate can be quashed only on a point of law. The Magistrate must have contravened some provision of law or there must be some serious legal flaw in commitment sufficient to prejudice the accused. If it is only an error in exercise of discretion vested in the Magistrate, the High Court will seldom interfere in such a case.

It is stated in this case that as the offence under Section 304. I.P.C. was triable by the Additional District Magistrate. Adilabad by virtue of the special powers conferred on him under Section 30. Criminal P.C. and was therefore not exclusively triable by the Court of Session, there was no occasion for the Magistrate, Nirmal, to adopt the procedure under Section 207 Criminal P.C. but Section 346. Criminal P.C. was the only relevant provision which ought to have been followed by him As the Magistrate has disregarded this provision, the order of commitment should be quashed.

4. We are not inclined to agree with this contention. We may point out that several benches of this Court, namely, the Bench in - 'State v. Hanmappa' Cri. Ref. No. 64/6 of 1952-53, D/- 10-7-1952 (Hyd) (A) the Bench in - 'Khanda v. State' Cri. Ref No. 427/6 of 1952-53 D/- 16-10-1952 (Hyd) (B); the Bench in - 'Venkat Rao V. State' Cri. Ref. No. 645/6 of 1952-53. D/- 19-6-1953 (Hyd) (C); including the Bench of Shri Schripat Rao C.J. and Dr. Siadat All Khan J. in - 'Kalidas v. State' Cri. Ref. No. 634/6 of 1952-53 D/- 19-6-1953 (Hyd) (D) have rejected the references to quash commitment order on the ground that offence is triable by the District

Magistrate specially empowered.

In a recent case Cri. Ref. No. 376 of 1955, D/- 16-9-1955 (Hyd) (E) the Bench of Mohamed Ahmed Ansari and P. J. Reddy JJ. has similarly rejected such a reference. In our opinion powers of a Magistrate to commit are not limited to cases exclusively triable by a Court of Session. To hold otherwise is to ignore the clear provisions of Sections 206, 207 and 347 of Criminal P.C.

Section 206, Criminal P.C. gives wide discretion to a First Class Magistrate to commit any person for trial to the Court of Session for any offence triable by such Court. The words 'any offence triable by such Court' are general and of wide application. They do not necessarily mean any offence which is exclusively triable by a Court of Session as shown in Col. 8 of Sen 2 of Criminal Procedure Code.

Thus it is not merely in cases which are exclusively triable by a Court of Session but also; in all cases which in the opinion of the Magistrate ought to be tried by such Court, that the Magistrate has wide discretion to order commitment. The general powers under Section 206, Criminal P.C. are not in any way limited in this regard by the provisions of Section 207, Criminal P.C. The words used in that Section are express and admit of no other interpretation than the one stated above. Section 347, Criminal P.C. lends further support to this view. In - 'Rex v. Matoley' AIR 1949 All 1 (PB) (P) the Full Bench of the Allahabad High Court has observed that

the reasons for which a Magistrate who is otherwise competent may commit a case to the Court of Session are not in any way limited either to a case which he cannot try or to a case in which he cannot adequately punish. A Magistrate otherwise competent may commit any person for trial to the Court of Session for any offence.

Thus the contention that the Magistrate had no power to commit or hold preliminary inquiry for commitment as the case was not exclusively triable by the Sessions Judge fails.

5. It is also contended that as the Additional District Magistrate, Adilabad, was invested with powers under Section 30, Criminal P.C. such offences as are not punishable with death ought not to be tried by the Court of Session and as such the Magistrate could not commit this case. We cannot accept this view either. Section 28(2), Criminal P.C. makes it abundantly clear that the Court of Session is empowered to try every offence. It is true that the provisions of Section 28, Criminal P, C. are subject to other provisions of the Code including Section 30, Criminal P.C.

But the investment of powers under Section 30, Criminal P.C. by the State Government does not oust the jurisdiction of the Court of Session, nor the powers of such a Magistrate especially empowered and those of the Sessions Judge become mutually exclusive. Powers under Section 30, Criminal P.C. only enable the District Magistrate to try cases which otherwise on account of Col. 8, Sch. 2 of Criminal P.C. he could not try.

Thus in consequence of these powers the District Magistrate is also empowered to try the offence under Section 304, I. P. C which according to the Schedule is exclusively triable by a Court of Session. It does not follow that on account of these powers, the Court of District Magistrate virtually is turned into a Court of Session.

The section makes it clear that such a Magistrate specially empowered shall try the said offence only as a Magistrate. He will be governed by the procedure laid down in Chap. XXI and not Chapter XXIII. There will be no question of commitment or making over the case to him by a Magistrate. Further there is always a marked difference between the powers of such a Magistrate and of a Sessions Judge in relation to the award of sentence.

Section 34, Criminal P.C. empowers such a Magistrate to pass a sentence only upto seven years while the Court of Session can award any sentence upto the maximum. The result is that having regard to the seriousness of the offence if such a Magistrate considers that he cannot award adequate punishment and that a more severe punishment is necessary he may commit the case to the Court of Session. Thus obviously enough the investment of powers under Section 30,

Criminal P.C. has in no way affected the powers of the Court of Session conferred under Section 28(2), Criminal P.C. to try all offences, of course, only on commitment.

All offences exclusively triable by that Court according to Sch. 2 of Criminal P.C. and also such other offences as in the opinion of the Magistrate ought to have tried by such Court shall still be committed to the Court of Session, even though they may also be triable by the Magistrates specially empowered. One significant feature of the investment of powers is that it has in effect conferred a choice of forum on the prosecution. The prosecuting agency has, now, an option to choose the forum of either the specially empowered Magistrate or of having the case committed by a First Class Magistrate in view of the seriousness of the offence or special circumstances of the case.

The object of conferring special powers on Magistrate is no doubt mainly to reduce the pressure of work in the Court of Session and also to avoid delay which committal proceedings may entail. But these considerations cannot be allowed to prevail over what the ends of justice would warrant. Cases on the borderline of jurisdiction and cases of great difficulty, or those apparently calling for a more severe punishment than the Magistrate can impose should not ordinarily be brought for trial before the specially empowered Magistrate.

When the prosecution having regard to the circumstances of the case chose to take the case to the Court of Session rather than Institute the same before the District Magistrate and has for this purpose filed the challan before the Magistrate for commitment, there is nothing illegal or contrary to the provision of the Code if the Magistrate having come to the conclusion that the case ought to be tried by the Sessions Judge, commits the same.

That apart, a Magistrate holding preliminary inquiry for commitment has to observe strictly the procedure laid down in Chap. XVIII, Criminal P.C. He has jurisdiction to commit or to discharge. Only in the absence of sufficient grounds to commit, if it appears that the accused should be tried before himself or some other Magistrate, he shall proceed accordingly. But when there are good grounds for commitment, the Magistrate is bound to commit the case to the Court of Session. Provisions of

Sections 209 and 210, Criminal P.C. are specific and leave no choice to the Magistrate.

As held in - 'Amirkhan v. Emperor' 7 Cal WN 457 at p. 460 (G) such a Magistrate has no power to send the case to any Magistrate with special powers under Section 30, Criminal P.C. although such especially empowered Magistrate may have jurisdiction to try the offence. On this ground also we are reluctant to accept the contention that the committing Magistrate could avail of the provisions of Section 346, Criminal P.C. and send the case to the District Magistrate especially empowered. Section 346, Criminal P.C. is a general provision. To our mind, it cannot override the special provisions of Section 210, Criminal P.C. Further this provision does not apply to a case where the Magistrate is of the opinion that the case ought to be tried by a Court of Session.

The contention is that before entering into preliminary inquiry, the Magistrate ought to have resorted to the provisions of Section 346, Criminal P.C. on the mere ground that the offence is also triable by the Magistrate specially empowered. But when the Magistrate having regard to the facts of the challan was of the view that the case ought to be tried by the Court of Session, there was no occasion for him to take any proceeding other than what he did. We are clear in our mind that there is nothing illegal in the order of commitment.

Our attention is invited to the case of - 'Sanghram v. State' ILR 1954 Hyd 971 (H) decided by a Division Bench of this Court. It was a case under Section 304 I.P.C. It was committed to the Sessions Court and the High Court quashed the committal order on the ground that the procedure laid down under Section 346, Criminal P.C. was not followed.

If the said case is an authority for the proposition that the Magistrate has no discretion to commit a case not exclusively triable by a Court of session, with due respect to the learned Judges, we beg to differ, as in this ruling the latter part of Section 207, Criminal P.C. which gives discretion to the Magistrate to commit any case which in his opinion ought to be tried by the Sessions Court, was not considered.

We repel the contention that the committal to the Sessions Court was without power or even an unsound exercise of the discretion vested in the Magistrate. We reject this reference and direct that the accused be bound over to be present before the Sessions Judge on 28-11-1955.

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