

In Re: Pasupulati Nanjappa

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Court : Andhra Pradesh

Decided On : Apr-21-1961

Reported in : AIR1961AP471; 1961CriLJ611

Judge : P. Chandra Reddy, C.J., ;Satyanarayana Raju and ;Anantanarayana Ayyar, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 408, 409 and 409(2); Code of Criminal Procedure (CrPC) (Amendment) Act, 1955

Appeal No. : Criminal Revn. Case Nos. 372 and 457 of 1960 and Criminal Revn. Petn. No. 287 of 1960

Appellant : In Re: Pasupulati Nanjappa

Advocate for Def. : Public Prosecutor and ;A. Gangadhara Rao, Amicus Curiae

Advocate for Pet/Ap. : G. Krishna Reddy and ;D. Sivarama Krishna, Advs.

Judgement :

Anantanarayana Ayyar, J.

1. The Additional Sessions Judge of Cuddapah received C. A. No. 71 of 1960 filed i.e., presented by an appellant (P. Nanjappa) against his conviction and sentence by Judicial Second Class Magistrate, Cuddapah and disposed it of by setting aside the conviction and sentence and remanding the case for retrial. The same

appellant filed Cri. R. C. 372 of 1960 against that judgment of the Additional Sessions Judge.

2. The Additional Sessions Judge, Sriakulam heard C. A. No. 269 of 1959 against conviction and sentence by Judicial II Class Magistrate, Sompeta. A preliminary objection was raised by Assistant Public Prosecutor Grade I, Sriiakulam, that an Additional Sessions Judge was not competent to receive an appeal and that, therefore, the appeal (which had been received and admitted by the Additional Sessions Judge) was liable to be dismissed for want of jurisdiction. The learned Additional Sessions Judge upheld the objection and, accordingly, returned the appeal for presentation to the proper court. The correctness and validity of that order is the subject matter of Cr. R. C. No. 457 of 1960.

The common question of law which arose in the two cases and which has been argued before us is :

'Whether the Additional Sessions Judge concerned had power and competence to receive and hear appeals presented to him against conviction and sentence passed by a Second Class Magistrate ?'

Before the Criminal Procedure Code was amended by Amendment Act XXVI of 1955, Section 407 made provision for appeals against convictions by Magistrates of Second or Third Class and Section 408 made provision for appeals from convictions by a Magistrate of the First Class. By the Amendment Act of 1955, all appeals from convictions of all Magistrates were made to lie to the Court of Session by omitting Section 407 altogether and suitably amending Section 408. Necessary amendment was also made to Section 409 Sections 407, 408 and 409 before and after amendment, are as follows :

Before amendment.After amendment.

S. 407 (1) Any person convict-ed on a trial by any Magic-trate of the second or third class . . . - may appeal to the District Magistrate,

Omitted.(2) The District Magistrate may direct that any appeal under this section, or any class of such appeals shall be heard by any Magistrate of the First Class

subordi-nate to him and empowered by the State Government to hear such appeals and thereupon such appeal or class of appeals may be presented to or, if already presented to the District Magistrate may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

S. 408 : Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the First class.....may appeal to the Court of Session . . .

Any person convicted on trial held by an Assistant Sessions Judge, a District Magistrate or any other Magistrate , . . may appeal to the Court of Sessions.

S. 409: An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judges-

(1) Subject to the provisions of this section an appeal to the Court of Session or Sessions Judge shall be heard by an Additional Sessions Judge or an Assistant Sessions Judge

Provided that an Additional Sessions Judge shall hear only such appeals as the State Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

(2) An Additional Session Judge or an Assistant Sessions Judge, shall hear only such appeals as the State Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

3. The proviso to section 409, as it stood before the amendment of 1955, was substantially the same as Sub-section (2) of Section 409 after the amendment of 1955 so far as the hearing of appeals by Additional Sessions Judge was concerned. Prior to the amendment of 1955, the practice was for all appeals to the Court of Session to be taken on file only by the Sessions Judge.

4. With a view to implement the provisions of Amendment Act XXVI of 1955, Government passed G. O. Ms. No. 750 dated 26-3-1956 in which it is stated as

follows in para 10 :

'..... .The Additional District and Sessions Judges will also be specifically empowered under Section 409(2) Cr. p. C. to receive and hear appeals from II and III Class Magistrates, so that parties may file their appeals directly in the Court of the Additional District and Sessions Judges

Subsequently, Government passed G. O. Ms. 934/Home (Courts II) Department dated 13-4-56 in which it was stated as under :

'In exercise of the powers conferred by Sub-section (2) of Section 409 Cr. P. C. the Government of Andhra Pradesh hereby directs that the Additional District and Sessions Judges shall hear appeals of persons convicted on a trial held by any Magistrate of second or third class exercising jurisdiction within the Districts mentioned

Thus, when, under this G. O. (No. 934), the State Government made a direction under Section 409(2) Cr. P. C. they did not make any provision empowering the Additional Sessions Judge to receive appeals as contemplated and expected in the earlier G. O. No. 750 dated 26-3-56. Obviously, the Additional Sessions Judge, Cuddapah directly received C. A. No. 71 of 1960 from a conviction of a Second Class Magistrate on presentation by the appellant, and took it on his file under the impression and belief that the direction to hear which is given in G. O. Ms. No. 934 dated 13-4-1956 implied and included the power to receive and take on file such appeals. The Additional Sessions Judge, Srikakulam seems to have acted under a similar impression and belief when he received and took on file C. A. No. 269 of 1959.

5. In *Queen Empress v. Kunjan Menon*, 1 Mad LJ 397 (FB), Government passed orders under Section 197 Cr. P. C. directing the prosecution of Kunjan Menon (a sub-Judge) and designated the Sessions Court, Tellichery as the Court before which the trial was to be held. Also in the same Order, Government appointed Mr. Irvine to officiate as District and Sessions Judge of Tellichery. An application was made by Kunjan Menon for transfer of the cases to some other Court. Government passed further order adhering to their previous decision as regards the Court

before which the trial should be held and the officer who should try the case and appointed Mr. Irvine as Additional Sessions Judge, Tellichery for the purpose of trying the concerned case against Kunjan Menon. An objection was taken On behalf of Kunjan Menon that Mr. Irvine was an Additional Sessions Judge and that his Court was an Additional Sessions Court, which was distinct from the Sessions Court, and that consequently, the only person who could try the case under the Government order was the Sessions Judge himself viz., Mr. Cox. A Full Bench of the Madras High Court consisting of Chief Justice and four other Judges held as follows :

'Mr. Irvine was appointed Additional Sessions Judge of North Malabar, but his appointment did not, as Mr. Subrahmanyam maintains, constitute an Additional Sessions Court. There can be only one Sessions Court for each Sessions Division, but there may be more than one Judge of such Sessions Division. If an Additional Sessions Judge is appointed he can only try such cases as the Local Government directs, or as the Sessions Judge makes over to him. Mr. Irvine was appointed by the Local Government to try the present case and the objection is untenable'.

The Full Bench considered that the order of the Government amounted to an order under Section 197, specifying the Sessions Court, North Malabar (at Tellichery) as the Court before which the trial was to be held plus a direction under Section 193(2) that Mr. Irvine, Additional Sessions Judge, was to try the case.

6. The above decision was followed by a Bench of the Calcutta High Court in Superintendent and Remembrancer of Legal Affairs Bengal v. Ijjatulla Paikar, AIR 1931 Cal 190 wherein, they observed as follows :

'Thus there is only one Court of Session in each Sessional division, sitting at different places, and manned by a number of Judges. The Court is the Court of Session. It is not accurate to refer to the 'Court of the Sessions Judge', and the 'Court of the Additional Sessions Judge' and so on except colloquially. Just as in the High Court, we do not refer to the constituent Courts as the Court of any particular Judge, either 'permanent' or 'additional''

This decision was followed by a Full Bench of the Patna High Court in *Kamaleshwar Singh v. Dharmdeo Singh*, : AIR1957 Pat375 . In that case, the relevant facts were as follows: An Assistant Sessions Judge received, admitted and took on file an appeal which was presented to him against a conviction by a Second Class Magistrate (Munsif-Magistrate). The Assistant Sessions Judge also heard the appeal and disposed it of by allowing it. There was no order of State Government directing him to hear the appeal or any category of appeals.

The question which arose before the learned Judges was whether the order of acquittal passed by the learned Assistant Sessions Judge was illegal and without jurisdiction. The learned Judges decided that the learned Assistant Sessions Judge had no power or authority to receive and admit the appeal, that his hearing was in contravention of the provisions of Sub-section (2) of Section 409 Cr. P. C. and that his order of acquittal was without jurisdiction and invalid and had to be set aside. Shai, J. after a careful consideration of the relevant provisions of the Code of Criminal Procedure, formulated four propositions as follows :

(1) There can be only one court of Session in a Sessions division and there can be only one Judge of the Court, or, in other words, there can be only one Sessions Judge in a Sessions-division. But, there can be more than one Additional Sessions Judge to exercise jurisdiction in one Court of Session.

(2) A court presided over by an Additional or Assistant Sessions Judge is also a Court of Session and is a part or constituent of the same court of Session which is headed by the Sessions Judge.

(3) A Sessions Judge has complete jurisdiction by virtue of his position as Judge of the Court of Session to receive, hear and dispose of all matters such as applications, appeals or cases which are required by law to be submitted to, or filed in, the court of Session. An Additional or Assistant Sessions Judge however, is not competent by virtue of his office to receive, hear or dispose of any matter submitted to, or filed in, the Court of Session in which he exercises jurisdiction. He gets jurisdiction to deal with such a matter only when it is placed before him either under a general or special order of the State Government or a general or special order of the Sessions Judge of the division.

(4) An Additional or Assistant Sessions Judge exercises full powers of a Court of Sessions subject only to such limitations or restrictions as are expressly placed upon his powers by Jaw in respect of cases which are legally placed before him for disposal. An Additional Sessions Judge has, in cases within his seisin, the same powers as a Sessions Judge.

This decision was followed by a Division Bench of this Court in Narayanamma v. Satyanarayana, : AIR 1960 AP425 wherein, it was held that an Additional Sessions Judge and Assistant Sessions Judge had no inherent jurisdiction to entertain appeals and had no power or jurisdiction to hear appeals other than those which came before him by virtue of an order referred to in Section 409(2) Cr. P. C. The facts of that case were as follows: Certain accused were convicted by a First Class Magistrate and they filed C A. No. 387/56 before the Sessions Judge, Sri B. T. M. Raghavacharyulu. The latter duly and lawfully admitted the appeal. He died on 3-1-1957.

On 8-1-1957, Sri W. V. V. Sundar Rao, who was Additional Sessions Judge in the same District was permitted by the High Court to perform the current duties of the office of the District Judge of Visakhapatnam. He was not appointed as Sessions Judge of Visakhapatnam. All the same, he passed an order making over the Criminal appeal to himself, apparently under an erroneous impression that he could assume the powers of the Sessions Judge under Section 409(2) Cr. P. C. He heard the appeal the same day and, in due course, pronounced judgment acquitting the appellants. Thereupon, the complainant filed an appeal under Section 417(3) to the High Court. The learned Judges of the High Court held that the Additional Sessions Judge did not have jurisdiction to hear the appeal, because he had no inherent power to take the appeal on file as Additional Sessions Judge and because the appeal had not come before him by a valid order passed under Section 409(2).

The making over by Sri W. V. V. Sundar Rao was not a valid order under Section 409(2), as it was not an order made by the Sessions Judge. G. O. No. 934, under which the State Government gave direction regarding hearing of appeals against convictions by Second or Third Class Magistrates was not applicable to appeal

concerned in that case which was against a conviction by a First Class Magistrate. The learned Judges held that jurisdiction could not be given by a mere consent of parties and that the transfer of appeal under Section 409(2) by a Sessions Judge was not a mere procedural Or an administrative matter, but was a condition precedent to the Additional Sessions Judge getting lawful seisin of the appeal and for hearing and disposing of the appeal. We agree with that view.

The above decision was followed by Sanjeeva Rao Nayudu, J. in Venkata Narasayya v. State of Andhra Pradesh, Cri. R. C. No. 64 of 1958 (AP). The criminal appeals concerned in that case were against convictions by a judicial Second Class Magistrate. But, Sanjeeva Row Nayudu, J. held that the disposal of the appeal by the Additional Sessions Judge was without jurisdiction, as the latter had received the appeal directly (on presentation to him) and disposed of without any reference to the Sessions Judge at all.

7. In Public Prosecutor v. Kadiri Koya Haji, ILR 39 Mad 527 : (AIR 1916 Mad 110 (FB)), the question arose whether there was a valid presentation of the appeals, when they were presented by the Public Prosecutor to a Division Bench of the Madras High Court which was disposing of criminal business and not to a Single Judge who was sitting in Admission Court. A Full Bench of the Madras High Court held that the fact that) a single Judge sitting in the Admission Court was entrusted with the duty of admitting criminal appeals did not deprive the Divisional Court constituted for the disposal of criminal business, of the right to exercise its power of admitting criminal appeals. The learned Judge (Oldfield, J.) observed as follows :

'It is a sufficient answer to this objection that under Section 13, Charter Act, rules for the exercise of the High Court's appellate jurisdiction by one or more Judges or by Divisional Courts can be made only by such High Court, the powers of the Chief Justice being only those conferred by Section 14 to determine which Judges shall sit alone and which in Divisional Courts. It is by reference to the rules so made that the respective powers of Judges sitting alone and of Divisional Courts must be ascertained, not by reference to the notes to the sittings list, which are merely instructions for the guidance of practitioners and parties. The rules made

by this Court are contained in the Appellate Side Rules; and under Rule 1 (1) (f), applications for the admission of appeals from the judgment of any Criminal Court are ordinarily to be made before a single Judge. This does not in terms, and is not intended to, deprive the Divisional Court, constituted for the disposal of criminal business, of the right to exercise its powers in special cases, such as those before us, in which convenience and the acquaintance with the circumstances, which the two learned Judges concerned had rendered their Interpretation specially advisable.....'

That case was decided on the basis of the interpretation of the rules relating to the admission of appeals in the High Court and did not turn upon, the interpretation of Section 409 Cr. P. C. with which we are concerned in the present cases.

8. We are in respectful agreement with the principles decided by the learned Judges of the Full Bench of the Patna High Court, : AIR1957 Pat375 in the matter and also with the four propositions as enunciated by Sahai, J. We consider that the following feature also strengthen those propositions.

8a. The Code has made a clear distinction between power to receive and take cognizance and power to hear and dispose of. Section 190 Cr. P. C. runs as follows:--

'(i) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf may take cognizance of any offence;

(ii) The State Government, or the District Magistrate, subject to the general or special orders of the State Government, may empower any Magistrate to take cognizance under Sub-section (1) Clause (a) or Clause (b), of offences for which he may try or commit for trial.

(iii) The State Government may empower any Magistrate of the first or second class to take cognizance under Sub-section (1) Clause (c) of offences for which he may try or commit for trial.'

This indicates several ways in which a Magistrate may have power to take cognizance of an offence--

(i) Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate have power under the Code to take cognizance of offences under Clauses (a), (b) (c) of Sub-section (1), each by virtue of his office and position without any need to be specially empowered.

(ii) Any other Magistrate has no such power to take cognizance by virtue of his position or office but can be invested with such power.

9. The Legislature considered it necessary to make specific provision in Section 407 (2) (old) for presentation of appeals directly to a subordinate Magistrate who was empowered as mentioned in that sub-section. But, there is no such provision in Section 409(2) or in any other portion of the Code of Criminal Procedure enabling the presentation of any appeal directly to an Additional Sessions Judge or empowering an Additional Sessions Judge to receive appeals directly from appellants or authorising the State Government to empower the Additional Sessions Judges to receive appeals directly from appellants. Chaudhuri, J., in the decision Cited supra viz., : AIR1957 Pat375 (FB) observed that it was not the intention of the Legislature that the power given to Assistant Sessions Judges and Additional Sessions Judges to hear appeals under Section 409 should include the power to receive and admit such appeals. It is interesting to note that, in introducing the amending bill, the Hon' ble Minister has stated as follows (in Parliamentary Debates -- Part II, Vol. IV, 1954, Column 6463):

'....At present all appeals from second class and third class magistrates are filed before a District Magistrate and he disposes of them. We have now changed this procedure and we direct that every appeal from a magistrate shall lie to a Sessions Judge. No appeal shall lie to the District Magistrate at all. Appeal from a third class Magistrate and a Second Class Magistrate must go to the Sessions Judge. It will be filed before, him. He may either hear it himself or the Additional Sessions Judge may hear it or the Assistant Sessions Judge may hear it, otherwise not...'

10. But, this statement of the Hon'ble Minister cannot be used as an extrinsic aid to the interpretation of Sections 408 and 409 Cr. p. C. as amended by Act XXVI of 1955, in view of the decision in *Aswinikumar v. Arabinda Bose*, : [1953]4SCR1 .

In the last sentence of Section 407 (2) (old) provision is made expressly to enable District Magistrate to withdraw to his file, appeals which, have been presented to a subordinate Magistrate (and taken on file by him) as a result of the empowering of that Subordinate Magistrate to receive appeals direct from appellants. When Section 528 Cr. p. C. was amended by 'SIFJSADKFJSALKFASDLKFJALKFJJGJGJHG' XXVI of 1955, in making provision for withdrawal and recall by the Sessions Judge from the file of the Additional Sessions Judge or Assistant Sessions Judge, provision has been made regarding cases or appeals which the Sessions Judge had already made Over to them (Additional Sessions Judge or Assistant Sessions judge).

But, no provision at all was made regarding any cases or appeals which are actually presented to Additional Sessions Judge or Assistant Sessions Judge. This also suggests that the Legislature did not contemplate any appeals being presented (filed by appellants) directly before the Additional or Assistant Judges or being received admitted and taken on file by such Judges. There is reason to believe that the Legislature intended and contemplated that appeals should be received and admitted only by the Sessions Judge and not by an Additional or Assistant Sessions Judge.

11. It is clear (vide decision of the Patna High Court cited supra) that an Additional Sessions Judge has no power under the Code by virtue of his office, to receive appeals and admit them G. O. No. 934 gives only a direction that an Additional Sessions Judge shall hear appeals of persons convicted by second or third class Magistrates. It does not expressly confer on an Additional Sessions Judge a power to receive such appeals if presented to him and to admit and take them on file.

It cannot be said that the direction to hear contained in the G. O. implied or included a power to receive, admit and take on file. Section 409(2), under which the G. O. was passed, does not authorise the State Government to direct any Additional or Assistant Sessions Judge to receive and admit, or authorise any

convicted accused to present such appeals before an Additional Sessions Judge. Section 409(2) also does not expressly or by implication give power to an Additional or Assistant Sessions Judge to receive appeals direct from parties and to admit them and to take them on file.

12. The result is that on the law as it stands and as correctly explained in the propositions laid down by the Full Bench of the Patna High Court, with which we have agreed, each of Additional Sessions Judges, Cuddapah and Srikakulam acted illegally in receiving C. A. 71 of 1960 and C.A. 269 of 1959 (respectively) directly from the appellant and admitting it and taking it on file.

13. Therefore, we answer the question as follows:

The Additional Sessions Judge in each of the two cases had no power and competence to receive and admit the appeal which was presented to him against conviction and sentence passed by second class magistrate. He also had no power and competence to hear and dispose of the appeal which he had received directly from the appellant.

14. The action of the learned Additional Sessions Judge, Srikakulam in C.A. 269 of 1959 in returning the appeal for presentation to the proper competent court was right and lawful. So, we confirm the order of the Additional Sessions Judge in the above appeal and order accordingly in Cr. R. C. No. 457 of 1960. The learned Additional Sessions Judge, Cuddapah acted without jurisdiction in hearing the appeal viz. C. A. 71 of 1960 and disposing it of His judgment in that C. A, has to be set aside. Accordingly, Cri. R. C. No. 372 of 1960 is allowed and the judgment of the learned Additional Sessions Judge is set aside. The appeal memo in C. A. 71 of 1960 is directed to be returned by the learned, Additional Sessions Judge to the appellant for presentation to proper court.

15. It is desirable that the Legislature suitably amends the Code of Criminal Procedure so as to make provision for empowering Additional Sessions Judges to receive directly from parties and take on file appeals against judgments of second and third class Magistrates and thereby facilitate quicker disposal of work.