

S.M. Kumar Vs. the State of A.P. Represented by the Public Prosecutor

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Court : Andhra Pradesh

Decided On : Aug-04-2004

Reported in : 2004(2)ALD(Cri)561

Judge : P.S. Narayana, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 14, 190, 190(1), 193, 195 to 199, 207, 209, 227 and 537; Indian Penal Code (IPC) - Sections 366, 375(6) and 376; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 2 and 3(1); Criminal Law Amendment Act, 1952; The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 - Rule 7, 7(1) and 7(2)

Appeal No. : Criminal Appeal No. 1412 of 1997

Appellant : S.M. Kumar

Respondent : The State of A.P. Represented by the Public Prosecutor

Advocate for Def. : Niranjan Reddy, Additional Public Prosecutor

Advocate for Pet/Ap. : C. Ramachandra Raju, Adv.

Disposition : Appeal allowed

Judgement :

P.S. Narayana, J.

1. Heard Sri C. Ramchandra Raju, learned counsel representing the appellant-accused and Sri Niranjan Reddy, learned Additional Public Prosecutor and perused the record.

2. Sri C. Ramachandra Raju, learned counsel representing the appellant-accused would contend that there is an illegality that would touch the very jurisdiction of the Special Court inasmuch as it is clear from the record that the charge sheet was filed straightway on 11-04-1997, and cognizance was taken by the learned Special Judge on 22-05-1997 and there is no committal and hence the whole trial is vitiated.

3. The learned counsel elaborately explained the scope and ambit of Sections 193 and 209 of Criminal Procedure Code and also the object of committal proceedings and the illegality, which would vitiate the very trial itself. In the alternative, the learned counsel also had drawn the attention of this Court to the evidence available on record and would submit that the evidence is so artificial and the same cannot be believed and on merits also the appellant-accused is entitled for acquittal.

4. On the contrary, the learned Additional Public Prosecutor, Sri Niranjan Reddy would contend that the object of the committal proceedings is only to put on notice, the accused, of the charges with which he is charged and the mere fact there was no committal would not cause any prejudice to the accused and there is ample evidence on record i.e., the evidence of P.Ws. 1 to 15 and Exs. P-1 to P-13 and especially in the light of the findings recorded by the learned Judge, the said findings need not be disturbed. However, in all fairness the learned Additional Public Prosecutor would submit that the charge sheet was filed before the Special Judge on 11-04-1997 and cognizance was taken on 22-05-1997 and there is no committal of the case.

5. The case of the prosecution in short is that the victim girl prosecutrix-PW1 belongs to Scheduled Caste and is daughter of one Madhavaiah through his second wife. The father of the victim girl will be doing business in iron scrap in

Jeeva Kona area of Tirupathi. It is also the case of the prosecution that PW-1 was married to a person working as Scavenger in Tirupathi Municipality by name Ganesh, but because of great disparity in the age the victim girl-PW1 refused to join her husband. Since one month prior to the offence the husband of the victim girl, Ganesh was forcing the parents of the victim girl to send her to him for leading marital life. Hence, the victim girl with a view to escape from joining her husband absconded from the house and had taken shelter in the house of P. Chengalrayulu, resident of Rayalpuram Harijanawada in Chandragiri, who is related to her as junior paternal uncle. Instead of keeping of the victim girl idle, Chengalrayulu engaged her as a Servant-maid in the house of PW2-J. Subba Lakshmi, a resident of Akkagarla Colony in Chandragiri. While working in the house of PW-2, the victim girl PW1 entered in the house of a neighbouring muslim gentleman Mahaboob Basha-PW9 and committed theft of Rs. 10/- and while she was coming out of the said house she was caught red handedly and consequently there was a panchayat where the neighbouring people of the locality Akkagarla Colony gathered. It appears that the accused originally was a resident of Kerala and had settled in Akkagarla colony, Chandragiri and eking his livelihood by running a tea shop. At the time of Panchayat on 01-07-1996 at about 9 p.m. the accused also joined the people and began to question PW1-victim girl about the theft committed by her and at the same time the accused developed an idea to use PW1 sexually. At about 10 p.m. on 01-07-1996 the accused managed to convene the other elders that the victim girl would not speak truth if she was interrogated by all of them and managed to take PW-1 to a distance under the guise of interrogating her. After taking to a distance the accused consoled PW1 and directed her to abscond and hide herself near a hillock at the outskirts of the village and that he would take her to her parents house and allowed PW1 to go away. The accused returned to the gathering and told them that PW1 had absconded in the darkness and thereafter the people began to search for her. Meanwhile the accused joined the victim girl-PW1 and instigated her to hide under a big stone hillock and went away. On the intervening night of 1/2.07.1996 the accused again came back to PW-1 and took her to a nearby-dilapidated hut and thereafter accused forcibly committed sexual intercourse with PW-1 by threatening her not to raise any alarm. After completing rape the accused left the place. Due to

fear PW1 the victim girl spent at the scene of offence till the next day up to noon time and thereafter came down to the house of PW-2 with a view to take away her clothes. On being questioned by PW-2, PW-1 narrated the entire incident as to how she was raped by the accused and consequently the people gathered there and came to know about the incident and took the victim girl to Chandragiri Police Station on the same night where PW-1 presented a report of the incident. The Sub-Inspector of Police- PW13 registered a case as Crime No. 168 of 1996 under Sections 376 of Indian Penal Code read with Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act'). PW13 had taken up investigation and seized the clothes of PW-1, which she was wearing at the time of offence and sent her to hospital. Thereafter, PW-12 examined several witnesses of the locality and recorded their statements and arrested the accused on 06-07-1996 and recovered the clothes of the accused, which he was wearing at the time of offence and sent him for remand. The entire investigation disclosed that the accused has committed offences punishable under Sections 366, 375(6), and 376 of I.P.C. and Sections 3(1)(x) and 2(v) of the Act.

6. The charge sheet was filed before the Special Sessions Judge-cum-IV Additional District and Sessions Judge, Chittoor at Tirupathi. It is no doubt recorded that all copies of documents were supplied to him as required under Section 207 of Cr.P.C. and inasmuch as there are no grounds to discharge the accused the matter was further proceeded with. But it is clear from the record available that there are no committal proceedings in this regard. The prosecution had examined PWs. 1 to 15 and marked Exs. P-1 to P-13.

PW-1 is the victim girl who had narrated how the incident happened. PW-2 is a resident of Akkagarla colony of Chandragiri, who was examined only to speak about that PW-1 joined as servant-maid in her house and PW-1 committed theft of Rs. 10/- in the neighbouring house of one Mahaboob Basha. PW-3 is a resident of Akkagarla colony of Chadnragiri, who found the people gathering at the temple and went there. PW-4 is another witness, who deposed about the apprehension of PW-1 while she was committed theft. PW-5 is also a resident of Akkagarla colony of Chandragiri. PW-3 to PW-5, however, were declared hostile. PW-6 who is a resident of Chandragiri deposed that on 02-07-1996 at about 6 or 7 p.m. while he

was going to his house, he found a gathering at the temple and he enquired and then PW1 represented that the accused had raped her. PW-7 is the father of PW-1 who has deposed about the age of the girl and also this witness sending PW-1 to the house of brother Chengalrayulu at Chadnragiri. PW-8 is the junior paternal uncle of PW-1, who deposed that he had put in the house of PW-2 as a maid-servant. PW-9 is one Mahaboob Basha, who deposed that PW-1 committed theft in his house relating to which there was a panchayat. PW-10 was declared hostile. PW-11 is the Woman Assistant Surgeon of Government Maternity Hospital, who had examined PW-1 and issued Ex. P-8 wound certificate. PW-12 is a resident of Chandragiri, who is said to have presented, when the accused arrested and on his confessional statement the police recovered one lungi and one under-wear from the house of the accused after identifying them. PW13 is the Sub-Inspector of Police, Chandragiri, who had spoken about the receipt of Ex. P-1 report from PW-1, registering the same as Crime No. 168 of 1996 under Ex. P-10, taking up investigation, examining witnesses and recording the evidence and the other details that is made into investigation. PW-14 is the Inspector of Police, Chandragiri, who deposed that on 13-09-1996 he forwarded the material objects 2, 5 and 6 and two cardboard boxes preserved by PW-11 to Forensic Science Laboratory and after receipt Ex. P-9 chemical analyst report, he filed charge sheet in this case. PW-15 is the Medical Officer, who deposed that on 20-08-1997 he examined PW-1 for determination of her age and forwarded PW-1 to Radiologist and Dentist under Exs. P-12 and P-13 and after receipt of their opinion he gave a final report stating that PW-1 is aged above 18 years as on 21-08-1997.

7. As already referred to supra, PWs2 to 5, 9 and 10 are the residents of one colony i.e., Akkagarla Colony and it is the case of the prosecution that PW-1 was involved in a theft and the accused taking advantage of the same had taken her to a dilapidated hut and committed the offence with which the accused had been charged. Except the testimony of P.W.1, there is no other evidence available on record. It is no doubt true that contentions were advanced on the strength of the medical evidence that the medical evidence corroborates the evidence of P.W.1 in this regard and inasmuch as the testimony of PW-1 alone would be sufficient, the findings have to be confirmed. Apart from this aspect of the matter, it is not in controversy that the Special Sessions Judge-IV Additional District and Sessions

Judge, Chittor at Tirupathi, before whom the charge sheet was filed on 11-04-1997 had straightway entertained the same and taken cognizance on 22-05-1997 without an order of committal.

8. Sections 193 and 209 of Cr.P.C. read as hereunder:

'193. Cognizance of offences by Courts of Session:- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

209. Commitment of case to Court of Session when offence is triable, exclusively by it:- When in a case instituted on a police report or otherwise the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall

(a) commit, after complying with the provisions of Section 207 or Section 208 as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment had been made.

(b) Subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) Send to that Court the record of the case and the documents and articles, if any, which, are to be produced in evidence;

(d) Notify the Public Prosecutor of the commitment of the case to the Court of Session.'

9. The object of committal appears to be that where a person is charged with grave offences, a preliminary enquiry which affords him an opportunity of being acquainted with the facts and circumstances of those offences and to effectively enable him to make his defence.

10. In *Sanjay Gandhi Vs . Union of India*, : 1978 CriLJ642 the Apex Court while dealing with the Power of Committing Magistrate and the Scope held that under the new Code in cases where offence is triable exclusively by the Court of Session, the Committing Magistrate has no power to discharge the accused.

11. In *H.N. Rishbud Vs . State of Delhi*, : 1955 CriLJ526 the Apex Court while dealing with the scope and ambit of Sections 190, 193, 195 - 199 and 537 of Cr.P.C., observed that:

'A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report, which results from an investigation is provided in Section 190 of Cr.P.C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of Cr.P.C. is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e., Sections 193 and 195 - 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b) of Section 190(1) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of Cr.P.C. is attracted.

If, therefore, cognizance is in fact taken on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled.'

12. The learned Additional Public Prosecutor had no doubt made an attempt to justify that especially in the light of the object of committal proceedings under the present Cr.P.C, it may not touched, the very route of the jurisdiction of the Courts to deal with the matter and unless the prejudice is shown for want of committal order, the whole trial cannot be vitiated. In the alternative, no doubt submissions were made that if the appeal is to be allowed and the conviction and sentence are to be set aside on such ground, that would result in grave injustice and in such a case the better course would be to send the matter back.

13. While dealing with the Criminal Law Amendment Act, 1952, in *State Vs . Shankar*, : AIR1959 Bom437 , the Division Bench of Bombay High Court in the light of specific provisions arrived at a conclusion that the Special Judge is empowered to take cognizance of certain offences without accused being committed. The same view was expressed in *P.S. Sadagopachari Vs . State*, : AIR1966 Mad432 and also in *Pancham Singh Vs . State*, : AIR1967 Pat416 .

14. There cannot be any controversy in relation thereto since the learned Judges, who had decided those cases had taken into consideration the specific provision and arrived at a conclusion that the non-committal of the case would not vitiate the trial.

15. As far as the present case is concerned, the Division Bench of this Court in *Referring Officer v. Shekar Nair*, 1999(1) ALT (Crl.) 689 (D.B.)(A.P.) while dealing with the Section 14 of the Act, arrived at a conclusion that where charge sheet was filed directly in Special Court (Sessions Court) without committal proceedings and in Reference to quash the proceedings in the Sessions Case, the High Court answered the Reference holding that the committal proceedings are necessary. This question now is well settled by the Apex Court and it is beyond any controversy.

16. The Apex Court in *Gangula Ashok v. State of Andhra Pradesh*, 2000 CRI.L.J. 819, overruling the view expressed in *Hareendran Vs.Sarada*, 1995 AIHC 4542 (Kerala) (FB) by the full bench of Kerala High Court, held that a Special Court under the Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the

provisions of the Criminal Procedure Code. In other words, a complaint or a charge sheet cannot straightway be laid before the Special Court under the Act. After committal of the case it is for the Special Court to decide regarding the action to be taken next, after hearing both sides as provided in Section 227 of the Code. In *Moly Vs . State of Kerala*, : 2004 CriLJ1812 following the view expressed above and also the view expressed in *Vidyadharan v. State of Kerala*, 2003 AIR SCW 6511, it was held that a Special Court under the Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge sheet cannot straightway be laid down before the Special Court under the Act.

17. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 made in exercise of powers conferred by sub section (1) of Section 23 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) came into force from 01-04-1995.

18. Rule 7 of the said Rules dealing with the 'Investigating Officer' reads as hereunder:

'Investigating Officer:-- (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State government Director General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

2) the investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the Officer-in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of

all investigations done by the investigating officer.'

19. Rule 7(1) specifies that an offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government Director General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

20. It is brought to my notice that in the present case the investigation was done by the Sub-Inspector of Police and Circle Inspector of Police and the incident is said to have taken place after rules coming into force. There cannot be any doubt or controversy that the Circle Inspector of Police and Sub-Inspector of Police are not competent to conduct the investigation. In *E. Sessaiah v. State of A.P.*, 2000 (2) ALT (Cri.) 91 A.P. while dealing with Rule 7, this Court in paras 7 and 8 held as follows:

'7. It may be mentioned that Rule 7 of the Rules has made provision for appointment of Special Investigating officers for investigating into the offences under the Act. Rule 7 of the Rules contemplates, firstly that an offence committed under the Act shall be investigated by a police officer not below the rank of the Deputy Superintendent of Police. It does not rest here. It further provides that the Investigating Officer shall be appointed by the State Government, Director General of Police, Superintendent of Police after taking into account his past experience, his sense of justice and his ability to perceive the implications of the case.

8. Thus, Rule 7 of the Rules prescribes criteria for appointing Special Investigating Officers for investigating into the offences under this Act. Sub-rule (2) of Rule 7 of the Rules contemplates that such Investigating Officer so appointed under sub-rule (i) shall complete investigation on top priority within 30 days and shall submit report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government. Thus, the rule also contemplates that not only an offence under the Act shall be investigated by the specially qualified Investigating Officer of the rank not below the Deputy Superintendent of Police but the investigation shall also be supervised and

scrutinized by the Superintendent of Police and Director General of Police. Thus, appointing of the Investigating Officer under Rule 7 of the rules is not a routine formality but has specific purpose. Investigating done by the officer not appointed under the provisions of Rule 7 of the Rules must, therefore, be held to be in violation of the statutory provisions and would certainly vitiate the trial.'

21. There cannot be any doubt that for non-compliance of Rule-7, inasmuch as the investigation was carried by the officers who are not competent to conduct the investigation in the light of Rule 7, investigation was also defective and on that ground also the appellant-accused is entitled for acquittal in relation to the charges with which he had been charged. There cannot be any doubt or controversy that in the light of settled position in this regard, the whole trial conducted by the learned Special Judge in the present case is vitiated for non-committal.

22. The next question would be whether the matter is to be sent back or whether appeal is to be allowed on this ground. As per the version of the prosecution, the offence is alleged to have been committed on 01-02-1996 and the gap as of now is of about 8 years. Now it would be highly unjust and improper to send the matter back again and put the accused on trial. Inasmuch as the illegality committed in the present case touches the very jurisdiction of the Court, this Court is of the considered opinion that the entire trial is vitiated and accordingly the conviction and sentence imposed by the learned Special Judge are hereby set aside.

23. The Criminal Appeal is accordingly allowed and the appellant-accused shall be set at liberty if not required in any other case. The bail bonds of the appellant-accused shall stand cancelled.