

Juthge Chandra Prasad Vs. the State

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Court : Andhra Pradesh

Decided On : Aug-19-1998

Reported in : 1999(1)ALT(Cri)25; 1999CriLJ32

Judge : N.Y. Hanumanthappa and ;A.S. Bhate, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 16, 16(2), 17, 17(1), 19, 325, 360 and 374; Indian Penal Code (IPC) - Sections 498A

Appeal No. : Criminal Revn. Case Nos. 44 and 45 of 1996

Appellant : Juthge Chandra Prasad

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Nanda, Amicus Curiae

Disposition : Revision allowed

Judgement :

N.Y. Hanumanthappa, J.

1. Earlier, on 12-3-1998, this matter was heard by the Bench consisting one of us NYH, J. and Her Lordship Justice T. Meena Kumari. Before signing the said judgment, Her Lordship Justice T. Meena Kumari was transferred, as such, both

the sides moved the case to hear afresh. That is how. it is listed for fresh hearing before us.

2. This Criminal Revision Case is before us by way of reference by a learned single Judge of this Court.

3. At the request made by both the sides that this matter shall be heard by this Court as the same is pending since long time, the matter is heard. The facts leading to the present reference are as follows :

4. The petitioner was charged for an offence under Section 498-A, IPC. A case was instituted before the Judicial First Class Magistrate. Bhimavaram, West Godavari District. On a transfer petition moved by the de facto complainant to transfer the case from the file of the Judicial First Class Magistrate, Bhimavaram to some other Court situated in Hyderabad City, this Court directed the case to be entrusted to the Chief Metropolitan Magistrate, Hyderabad. At the relevant period, one Sri K. Veerapu Naidu, Additional District and Sessions Judge was also the Chief Metropolitan Magistrate, Hyderabad. The case was tried by him and the case resulted in conviction. Aggrieved by the same, the accused preferred an appeal before the Metropolitan Sessions Judge under Section 374, Cr. P.C. The learned Metropolitan Sessions Judge returned the papers to the appellant holding that against the order passed by the Chief Metropolitan Magistrate who is a District and Sessions Judge, appeal does not lie to Metropolitan Sessions Judge but only to High Court under Section 374, Cr. P.C. Accordingly, papers were returned. Aggrieved by the orders passed by the Metropolitan Sessions Judge in returning the papers or in other words, rejecting the appeal as not maintainable, the accused preferred this revision case.

5. When the revision case came up before the learned single Judge, he entertained a doubt as to the correctness of the notification in ROC. No. 257 SO/74-2, dated 28-3-1974 posting the District & Sessions Judge as the Presiding Officer of the First Metropolitan Magistrate's Court, Hyderabad to be the Metropolitan Magistrate, which is obviously an inferior post to. that of a District Judge i and conferring on him the powers of the Chief Metropolitan Magistrate. The learned single Judge observed as follows :

A reading of the aforesaid notification reveals that the District & Sessions Judge posted as Presiding Officer of the First Metropolitan Magistrate's Court, Hyderabad, was appointed as the Metropolitan Magistrate in the metropolitan area of Hyderabad with effect from 1-4-1974. The notification reproduced above appears to be defective in form, in that it purports to appoint the District & Sessions Judge as a Metropolitan Magistrate of the First Metropolitan Magistrate's Court, Hyderabad, because the Sessions Judge is a superior and appellate Court to the Metropolitan Magistrate and the Chief Metropolitan Magistrate and secondly because the Court of the First Metropolitan Magistrate, Hyderabad, was not in existence as on 28-3-1974 and, therefore, the question of posting of the District & Sessions Judge as the Presiding Officer of that Court on 28-3-1974 could not and did not arise. There is no material on record from which it can be gathered that Sri K. Veerapu Naidu was ever appointed as a Metropolitan Magistrate and he had been exercising the powers of a Metropolitan Magistrate on or before 1-4-1974 when the Code of Criminal Procedure, 1973 (Act 11 of 1974) had come into force.

12. In the case of *Gandi Pudapunaidu v. State of A.P.* 1961 (1) Cri LJ 461 Sri D. Subba Rao, the then Additional Sessions Judge-cum-Additional District Magistrate, had been appointed a Magistrate of the First Class and had been exercising magisterial powers.

13. It is true that, appeal against judgment of conviction and sentence passed by the Chief Metropolitan Magistrate lies to the Court of Sessions and the Court of the First Metropolitan Magistrate was established and was known as the Court of chief Metropolitan Magistrate, Hyderabad, and at the relevant time Sri K. Veerapu Naidu was functioning as the First Additional Sessions Judge as also the Chief Metropolitan Magistrate, Hyderabad, and the irregularity committed by him of signing the judgment as the Chief Metropolitan Magistrate-cum-First Additional Metropolitan Sessions Judge is curable and it is not the forum of the order that matters, but what matters most is the power to make the order. Thus, the question in this revision is whether the Notification No. II in Roc. No. 25/SO/74-2, dated 28-3-1974 is valid and conferred power on Sri K. Veerapu Naidu to act as the Chief Metropolitan Magistrate, Hyderabad?

6. Heard the learned counsel for the parties and also Mrs. Nanda appointed as Amicus Curiae by this Court.

7. In order to answer the reference, it is proper to understand the effect of Sections 16, 17, 19 and 374 of Code of Criminal Procedure including the Notifications issued by the High Court, which read as follows :

Section 16. Courts of Metropolitan Magistrates :-

(1) In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area.

17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate :-

(1) The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.

(2) The High court may appoint any Metro politan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

19. Subordination of Metropolitan magistrates :-

(1) The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.

(2) The High Court may, for the purposes of this Code, define the extent of the subordination, if any, of the, Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

(3) The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.

374. Appeals from convictions :- (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial may appeal to the High Court.

(3) Save as otherwise provided in Sub-section (2), any person :-

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate-of the first class, or of the second class, or

(b) sentenced under Section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate,

may appeal to the Court of Sessions.

Notification No. 1

In exercise of the powers conferred by Sub-section (2) of Section 16 of the Code of Criminal Procedure, 1973 (Central Act II of 1974), the High Court of Andhra Pradesh hereby appoints with effect from 1-4-1974 the District Munsifs posted as Presiding Officers of the Court of Metropolitan Magistrates in the ..metropolitan area of Hyderabad to be the Metropolitan Magistrates and confers on them all the

powers of a Metropolitan Magistrate under the said Code and under any other law for the time being in force.

Notification No. II

In exercise of the powers conferred by Sub-section (2) of Section 16 of the Code of Criminal Procedure, 1973 (Central Act II of 1974) the High Court of Andhra Pradesh hereby appoints with effect from 1-4-1974 the District & Sessions Judge posted as Presiding Officer of the First Metropolitan Magistrate's Court, Hyderabad to be a Metropolitan Magistrate in the metropolitan area of Hyderabad and confers on him all the powers of a Metropolitan Magistrate under the said code or under any other law for the time being in force.

Notification No. III

In exercise of the powers conferred under Sub-section (1) of Section 17 of the Code of Criminal Procedure, 1973 (Central Act II of 1974), the High Court of Andhra Pradesh hereby appoints with effect from 1-4-1974 the Metropolitan Magistrate of the First Metropolitan Magistrate's Court to be the Chief Metropolitan Magistrate in the metropolitan area of Hyderabad and confers on him all the powers of a Chief Metropolitan Magistrate under the said Code or under any other law for the time being in force.

8. A reading of Sections 16, 17 and 19 makes it clear that wherever the posts of Metropolitan Sessions Judge and Chief Metropolitan Magistrate are existing, the Chief Metropolitan Magistrate will be subordinate to the Metropolitan Sessions Judge. In case of appeal against the order passed by the Chief Metropolitan Magistrate, Sub-section (3) of Section 374 Cr. P.C. mandates that the same lies to the Metropolitan Sessions Judge.

9. It is not in dispute that in metropolitan cities, all the Magistrates are called as Metropolitan Magistrates, who constitute the lowermost category in the hierarchy of Judicial Officers on criminal side. The case was first instituted in [the Court of the Judicial First Class Magistrate. Bhimavaram, which had the jurisdiction. Later it was transferred to Hyderabad on the request of the dc facto complainant pursuant

to the order of this Court. By this transfer what has to be understood is that the transfer was made to the Chief Metropolitan Magistrate to dispose of the case as the one instituted before the competent Court which had the jurisdiction. Further, when a Judicial Officer, whatever rank he has, if appointed under the Code to work as Chief Metropolitan Magistrate, he ceases to be a Sessions Judge and he has no power to try the cases which are exclusively triable by Court of Sessions Judge. If aggrieved by the order passed by the Judicial First Class Magistrate, Bhimavaram, the aggrieved party would have preferred an appeal to the learned Sessions Judge of the District. What the Judicial First Class Magistrate was supposed to do, but, on transfer the same required to be done by the Chief Metropolitan Magistrate, Hyderabad.

10. It appears that the confusion started because the Sessions Judges were posted as Metropolitan Sessions Judge and Chief Metropolitan Magistrate where Metropolitan Magistrate Courts are existing. In some cases, the Sessions Judges were directed to act in dual capacity. We are not concerned with that aspect as the reference is to clarify as to whether against the order of the Chief Metropolitan Magistrate, appeal lies to the Metropolitan Sessions Judge or to the High Court. Considering the above legal position, it is ordered that against the order passed by the Chief Metropolitan Magistrate, appeal lies to the Metropolitan Sessions Judge. However, we do not wish to say anything on the propriety of the High Court in appointing District Judges as Metropolitan Sessions Judge or Chief Metropolitan Magistrate, at this stage.

11. In our view, against the order passed by the Chief Metropolitan Magistrate, appeal lies to the Metropolitan Sessions Judge, Hyderabad. Having answered thus, no purpose will be served by again sending back the petition to the learned single Judge since the question which has to be decided in the revision is a question of law and not a question of fact. Therefore, the Criminal Revision Case is allowed. The Metropolitan Sessions Judge, Hyderabad is directed to entertain the appeal filed by the petitioner, hear the parties on merits and pass appropriate orders as expeditiously as possible. The petitioner should represent the appeal within thirty days from this date.

12. The services rendered by Mrs. Nanda, junior member of the Bar as Amicus Curiae are appreciated and placed on record. Her fee is fixed at Rs. 2,000/- to be paid by the Government within fifteen days from the date of receipt of a copy of this order.

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