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State of M.P. Vs. Kadore

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Court : Madhya Pradesh

Decided On : Jun-03-1959

Reported in : AIR1960MP180; 1960CriLJ914

Judge : K.L. Pandey, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 30; Amending Act, 1955 - Sections 116

Appeal No. : Criminal Revn. No. 125 of 1958

Appellant : State of M.P.

Respondent : Kadore

Judgement :
ORDER

K.L. Pandey, J.

1. This reference made by the Additional Sessions Judge, Damoh, under Section 438 Criminal Procedure Code is directed against an order of Magistrate First Class, Damoh, dated 29-1-1958 by which he held that, in virtue of the powers conferred on him under Section 30 of the Code of Criminal Procedure prior to its amendment by Section 6 of the Cede of Criminal Procedure Amendment Act, 1955 (26 of 1955), he was competent to exorcise those powers in relation to a

criminal case instituted after the amendment came into force. The Additional Sessions Judge, Damoh, is of the view that the powers conferred under the un-amended Section 30 of the. Code of Criminal procedure cannot be exercised under the new section.

2 Section 30 of the Code of Criminal Procedure as it stood before it was amended by Act 20 of 1935 was as follows:

'In East Punjab, Delhi, Oudh, the Central Provinces, Coorg and Assam, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Provincial Government may, notwithstanding anything contained in Section 29, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death.'

The new section is as under:

'Notwithstanding anything contained in Section 28 or Section 29, the State Government may, in consultation with the High Court, invest any District Magistrate, Presidency Magistrate or Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years:Provided that no District Magistrate, Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class.'

The new section has introduced two changes. A Magistrate empowered under Section 30 of the Code cannot now try offences punishable with imprisonment for life or with imprisonment for a term exceeding seven years. Further, the powers under Section 30 of the Code cannot now be conferred on a District Magistrates, Presidency Magistrate or Magistrate of the first class unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class.

3. The Additional Sessions Judge has relied upon the following provisions of Section 116 of Act 20 of 1955 for the view taken by him:

'Notwithstanding that all or any of the provisions of this Act have come into forte in any State.

(a) the provisions of Section 14 or Section 30 or Section 345 or Section 146 of the principal Act shall not apply to or affect, any trial or other proceeding which, on the date of such commencement, is pending before any Magistrate, and every such trial or other proceeding shall be continued and disposed of as if this Act had not been passed;

(b) ....

(c) ....

(d) ....

but, save as aforesaid, the provisions of this Act and the amendments made thereby shall apply to all proceedings instituted after the commencement of this Act and also to all proceedings pending in any Criminal Court on the date of such) commencement.'

Reading together Clause (a) and the last part of Section 116 ibid it would appear that the new Section 36 applies to all proceedings instituted alter the commencement of Act 26 of 1935. This means that in all such proceedings, the powers to be exercised under Section 30 must be limited to those provided by the new section. In other words, a Magistrate empowered under Section 30 cannot, unlike under the old Section 30, now try offences punishable with imprisonment for life or with imprisonment for a term exceeding seven years.

4. There is, however, a distinction between the eligibility for powers conferrable under Section 39 of the Code and exercise of those powers in relation to trials and other proceedings. Clause (a) and the last part of Section 116 of Act 26 of 1955 deal with exercise of those powers in relation to trial and other proceedings pending on the date at coming into force of the new section find those to be

instituted thereafter. So far as the eligibility for conferral of powers under the new Section 30 is concerned, in the absence of a different intention appearing in the Act, the section has to be regarded as prospective in operation. Indeed, the very words of the proviso to the new section shall be invested with such powers' are significant. The repeal of the old Section 30 attracts Section 6 of the General Clauses Act, 1897 (X of 1897), which provides inter alia that the repeal shall not affect the previous operation of the repealed enactment or anything duly done thereunder. In this view, the powers conferred under the repealed Section 30 remained unaffected by the commencement of Act 26 of 1955, and can be exercised in proceedings instituted after such commencement.

5. The reference is rejected.

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