

**Inder Mohan and ors. Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/685230](http://sooperkanoon.com/685230)

**Court :** Delhi

**Decided On :** Mar-03-1972

**Reported in :** 1972CriLJ1569; 8(1972)DLT213

**Judge :** M.R.A. Ansari, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 337(2)

**Appeal No. :** Criminal Revision Appeal No. 468 of 1971

**Appellant :** Inder Mohan and ors.

**Respondent :** The State

**Advocate for Pet/Ap. :** S.L. Chhibbar,; Amar Singh and; R.L. Mehta, Advs

**Judgement :**

**M.R.A. Ansari, J.**

(1) The petitioners along with 33 other persons are undergoing trial in the Court of Addl. Sessions Judge, Delhi for offences under sections 120-B, 420, 465 466, 467, 468 471 and 511 Indian Penal Code Petitioners 2 to 5 along with 34 others have been committed to the Court of Sessions by the Additional Chief Judicial Magistrate, Delhi by his order dated 12th September, 1968.. The first petitioner herein Inder Mohan was absconding at that time and was apprehended later and thereforee he was committed to the Court of Session by the learned Magistrate by

a separate order dated 3rd March, 1971. The trial of the accused already committed by the order dated 12th September, 1968 was proceeding and a number of witnesses had already been examined. After petitioner No. 1 Indar Mohan, was committed, the learned Additional Sessions Judge started a denovo trial of all the accused including the first petitioner and so far 106 prosecution witnesses had been examined. At this stage, the present petition has been filed under sections 215, 435, 439 and 561-A Cr. P. C. for quashing the commitment of the petitioners.

(2) The maintainability of the present application has been challenged by the learned counsel for the State on the ground that it is barred by limitation. According to the learned counsel, the present application is really one under section 435 Cr. P. C. and that the application ought to have been filed within 90 days from the date of the order of the Magistrate committing the first petitioner to trial namely, 3rd March, 1971, and that the petition having been filed on 6th December, 1971 is barred by limitation under Article 131 of the Limitation Act. But the present petition purports to have been filed not only under section 435 and 439 Cr. P. C. but also under section 561-A Cr. P. C. and Article 227 of the Constitution. The petitioners have challenged the jurisdiction of the trial Court to proceed with the trial of the accused on two grounds, namely,-

(i) that there was no proper sanction for the prosecution of the petitioners for some of the offences as required under section 196-A, Cr. P. C., and (ii) that the commitment of the accused itself was bad for the reason that the approver was not examined in the committal court at any stage.

In view of the grounds on which the proceedings in the trial Court have been challenged by the petitioners, it cannot be said that the present petition does not lie under section 561-A Cr. P. C. or under Article 227 of the Constitution. Article 131 of the Limitation Act does not apply to an application under Section 561-A Cr. P. C. or under Article 227 of the Constitution. The preliminary objection raised by the learned counsel for the State is, therefore, over-ruled.

(3) Tejwant Singh was one of the accused against whom the case had been registered. His statement was recorded on 29th October, 1963 under section 164 Criminal Procedure Code. Pardon was granted to him on 24th November, 1964

under section 337(1) Criminal Procedure Code and he was taken as an approver in the case and cited as a witness. He was, however, not examined in the committal Court either during the enquiry against petitioner's 2 to 5 and 33 other persons or during the enquiry against petitioner No 1. The question for consideration is what is the effect of the non-examination of the approver in the committal Court at any stage. Sub-section (2) of section 337 Criminal Procedure Code requires that-

'Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial if any.'

The effect of non-compliance with this provision was considered by a Full Bench of the Gujarat High Court in *Kalu Khoda and others v. State* and it was held that the committal proceedings and the order would be illegal if, in breach of sub-section (2) of section 337, the committing Magistrate committed an accused to the Court of Sessions without the prosecution examining the person who had been tendered pardon and who had accepted the same. It was further held that though section 207-A was enacted later than section 337(2) CrP.C., the former could not be said to have been superimposed on the latter and that therefore, the procedure laid down for committal proceedings in section 207-A must be read subject to the provision of sub-section (2) of section 337 Cr. P. C. It was also held that the breach of section 337(2) was not merely an irregularity curable under section 537 Cr. P. C. The reasons given for the above view were expressed in the following terms:- The tender of pardon is made on the footing that an approver shall make a full and frank disclosure at all stages of the case. That being so, the failure to examine him before the committing Magistrate would not only be in breach of the express provision of sub-section (2) of section 337 but would also be inconsistent with and in violation of the duty to make a full disclosure at all stages..... The intended benefit for an accused for which sub-section (2) of section 337 appears to have been enacted would seem to consist in. (i) that the approver would have to disclose his evidence at the preliminary stage before the committal order is passed, and (ii) that an accused thus not only knows that the evidence is against him but gets an opportunity to rely upon the deposition of an approver

before the committing Court for the purpose of proving the approver's evidence at the trial untrustworthy, if there are contradictions or improvements.

'THERE can be thus no question that if the approver is not examined at both the stages, as required by sub-section (2), the accused in the trial would lose this benefit and it cannot be gainsaid that he would be prejudiced if he were to lose the opportunity of showing the approver's evidence unreliable. It would be deprivation of an important and in some cases a vital right which would cause him prejudice resulting in failure of justice. Even if, therefore, the breach of sub-section (2) is not to be regarded as illegal, section 537 of the Code would not cure such an irregularity and that section cannot be invoked to cure any such irregularity.'

The learned Counsel for the State did not cite any authority before me to the effect that the contravention of the provisions of section 337(2) Cr. P. C. did not vitiate the committal proceedings. He, however, contended that the Court of Sessions Judge whom the trial of the petitioners was now pending had inherent jurisdiction to try the petitioners for the offences with which they are charged and his jurisdiction will in no way be affected by any irregularity in the committal proceedings. He also contended that as the approver had in fact been examined in the Court of Sessions before the first petitioner herein was also committed to take his trial and before the learned Additional Sessions Judge had ordered a *denovo* trial, the petitioners were in a position to know that the approver had stated in his evidence and would be able to make use of the approver's statement if they wanted to do so. I am unable to accept these contentions. If an objection had been raised by the petitioners immediately after the commitment of petitioner 2 to 5 and the others and before the trial against the petitioners had started, the commitment would have had to be quashed even though the Court of Sessions had inherent jurisdiction to try them. The position cannot be in any way different when the objection has been raised at a later stage. The examination of the approver in the Court of Sessions in the earlier trial would also not be a proper compliance with the provisions of section 337(2) Cr. P. C. The provisions of section 337(2) Cr. P. C. were meant as much for the benefit of the accused as for the benefit of the prosecution. For instance, if the approver had supported the prosecution case in the committal court but had turned hostile in the Court of Sessions, it would be

open to the prosecution to treat the approver's evidence given in the trial Court as substantive evidence under section 288 Cr. P. C. The prosecution cannot, however, treat the approver's evidence in the earlier trial as substantive evidence. So far as the accused are concerned. they would be deprived of two opportunities which the law gives them for cross-examining the approver. The first petitioner at least would have only one opportunity at this State of cross-examining the approver, since he was not present when the approver was examined at the first trial. The omission to examine the approver in the committal proceedings, therefore, vitiates the committal proceedings and there is no valid commitment of the petitioners to the court of Sessions. It is unfortunate that after the examination of 106 prosecution witnesses, the commitment has to be quashed. But I am told that in this case a large number of witnesses still remain to be examined and it is, therefore, desirable to quash the committal order at this stage before the remaining witnesses are examined.

(4) As regards the second objection that there has been no proper sanction as required under section 196-A Cr. P. C. the objection seems to be based upon a misapprehension. The learned counsel for the State has pointed out that sanction for the prosecution of the petitioners has been obtained as required under section 196-A Cr. P. C. and that a copy of the sanction order has also been supplied to the petitioners. There is, therefore, no substance in this objection. But in view of the contravention of the provisions of section 337(2) Cr. P.C. the trial of the petitioners cannot be allowed to proceed. The committal order of the petitioners is quashed with a direction that the learned Magistrate may make a fresh enquiry under Chapter xviii of the Code of Criminal Procedure. The revision petition is allowed.