

**State Vs. Pyloth**

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**Court :** Kerala

**Decided On :** Aug-27-1955

**Reported in :** 1956CriLJ114

**Judge :** Koshi, C.J. and; Menon, J.

**Appellant :** State

**Respondent :** Pyloth

**Judgement :**

Koshi, C.J.

1. This is a reference by the learned Sessions Judge of Anjikairnal asking this Court to transfer a case under Section 302, I.P.C. for trial to the Trichur Sessions Court on the ground that the Anjikaimal Sessions Court has no jurisdiction to try the case. The letter of reference (omitting the unnecessary portions) reads thus:

The above Sessions Case (S. C. No. X of 1955 came on for trial today before this Court, when it was discovered that the place of occurrence is.... Koratti Padinjarae Muri, within the jurisdiction of the Trichur Sessions Court. The offence with which the accused is charged is one of murder.

Immediately after receiving the stab wound, the victim died on the spot. So no part of the crime or any consequence thereof has ensued within the jurisdiction of this Court. The police charge-sheeted the accused before the Mukundapuram Second

Class Magistrate's Court (within Trichur Sessions Division).

From the records of the case it is seen that the case was transferred to Crangannore Magistrate's Court (within Anjikaimal Sessions Division) by the District Magistrate, Trichur, which Court has committed the accused for trial to this Court... whatever that be, unless this Court has jurisdiction over the place of occurrence, this Court cannot try this case,

This defect of jurisdiction having been brought to the notice of this Court before trial, the matter has to be referred, to the High Court for further orders as per the ruling in - 'Chacko Ulhannan v. State' AIR 1952 Trav-C 56 (A). In the circumstances, I request you (the Registrar, High Court) to place the matter before the High Court to obtain orders transferring this case for trial to the Trichur Sessions Court...

2. In the events that happened and set out above the procedure suggested by the learned Sessions Judge is in accord with that laid down in the decision referred to in the order of reference. However, when the case first came up for hearing it appeared to us that though that procedure was a convenient device to overcome an awkward situation it was opposed to certain well recognised legal principles. We therefore asked the learned Public Prosecutor to investigate the matter thoroughly and place the relevant authorities before us.

The accused, though produced in Court on the date of the hearing of the reference, was unrepresented by a lawyer and we, therefore, asked Sri. K. C.J.hn, Advocate to appear in the matter as amicus curias. Sri. C. M. Kuruvila, the learned Public Prosecutor and Sri. K. C.J.hn argued the matter elaborately and at the conclusion of the arguments we quashed the order of committal with a direction to the Magistrate to commit the case anew to the proper Court. Our order proceeded to state that the reasons therefor will be delivered later.

The present order embodies our reasons for quashing the order of committal and the direction to the Magistrate to pass a fresh order committing the case to the proper Court. Before we proceed to discuss the question we express our indebtedness to Sri. K. C.J.hn for the assistance he rendered to us as amicus

curiae.

3. Section 177, Criminal P.C. enacts that 'Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.' Section 206(1) provides inter alia that Magistrates belonging to the classes specified therein, may commit any person to the Court of Session.

Though the section does not specify that the committal should be to a Court of Session having territorial jurisdiction over the place where the crime is committed, in view of the language of Section 177 there can be no doubt that the Court of Session mentioned in Section 206 is the Court, which would have territorial jurisdiction over the scene of the crime.

As this position is clear from the sections themselves it is unnecessary to refer to decided cases on the point though some cases discussing the question will have to be referred to in the sequel. Section 193(1) states that

except as otherwise expressly provided by the 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 accused has been committed to it by a Magistrate duly empowered in that behalf.

To invest a Sessions Court with jurisdiction to try a case there must, therefore, be proper commitment by a Magistrate. Regard being had to the provisions so far referred to, a commitment to a Court of Session which has no territorial jurisdiction over the scene of the alleged occurrence cannot be considered as proper or valid. The question for determination, therefore, is whether it can be validated by any measure taken by this Court.

The decision in - 'Ulahannan v. State', (A), held that it can be transferred to the proper Court. That is a decision by a Single Judge where some of the accused persons who were committed for trial to a wrong Court applied for transfer of the case on grounds of convenience to the Court of Session which had jurisdiction over the local area of the crime and the question of the validity of the committal was incidentally raised and pronounced upon. The learned Judge's order shows

that there is considerable divergence of judicial opinion on the point as to whether a committal to a wrong Court can be so validated.

4. Under Section 531, Criminal P.C. the committal order passed by a Magistrate having no jurisdiction over the local area of the crime cannot be set aside unless it appears that such error has in fact occasioned a failure of justice. An order of committal made by a Magistrate who is not empowered in that behalf can under certain circumstances be accepted as valid- vide Section 532. There is, however, no provision in the Code to validate a committal to a wrong Court made by a Magistrate duly empowered and who has jurisdiction over the place of the alleged crime.

Chitaley in his Commentaries to Section 531 refers to the conflicting view of various High Courts as to what should be done under such circumstances -see the Code of Criminal Procedure by Chitaley and Annaji Rao, 4th (1950) Edition, Vol. III, pp. 2942-3. The relevant portion may usefully be quoted here:

Suppose, now, that an order of commitment is made to a Court of Session which has no jurisdiction over the offence. It is, of course, clear that where such Court of Session tries the case on such commitment, its finding, sentence or order would be cured by this section, if there has been no failure of justice. But if the defect is discovered before the trial begins, should the commitment be quashed? On this point there is a conflict of opinion.

The High Courts of Madras, Calcutta and Patna and the Judicial Commissioner's Court of Oudh have held that it should be quashed. The High Courts of Bombay and Allahabad have, on the other hand, held that in such cases the commitment need not be quashed, but that the case should be transferred to the Court to which it ought to have been committed.

In - 'Ulahannan v. State (A)', Govinda Pillai, J. preferred to follow the latter view. The decisions of the various Courts mentioned in the above extract from Chitaley are all referred to by Govinda Pillai, J. and it is unnecessary for us to refer to all of them here. While we appreciate that to transfer the case to the proper court will avoid large waste of time and labour we find it difficult to persuade ourselves to

hold that the view has firm legal basis.

5. In the - 'Assistant Sessions Judge, North Arcot v. Ramammal' 36 Mad 387 (B), the Madras High Court was confronted with a similar situation. A case which ought to have been committed to the Sessions Court of Salem was committed to the Sessions Court, North Arcot. Sundara Ayyar and Spencer JJ. before whom the question came up for decision held that although by virtue of Section 531, Criminal P.C. an order in an enquiry made by a Magistrate not having local jurisdiction will not be set aside unless there is in fact a failure of justice, yet when a committal is made by such a Magistrate to a Court of Session which was no jurisdiction to try the case under Section 177, Criminal P.C. such commitment was illegal and that the High Court had no power to transfer a case thus committed to a Court not having jurisdiction to another Court having jurisdiction.

The learned Judges accordingly quashed the order of committal. In their order they referred to the Bombay and Allahabad decisions relied upon by Govinda Pillai J. and said that in view of the Privy Council decision in - 'Ledgard v. Bull' 9 All 191 (PC) (C), they cannot follow those decisions. The relevant portion of the order may usefully be quoted here:

The Bombay High Court in - 'Queen Empress v. Thaku' 8 Bom 312 (D), held that the commitment should be to the court empowered to try the case under Section 177, Criminal P.C. The learned Judges in that case having to deal with a commitment made to a court not having such jurisdiction did not quash the commitment but directed the transfer of the case to the Court having jurisdiction.

But the Privy Council has pointed in 9 All 191 (PC) (C), that a transfer from a Court having no jurisdiction would not render the proceedings legal. The Allahabad High Court in - 'Queen Empress v. Ram Dai' 18 All 350 (E), followed a similar course, but - 'Ledgard v. Bull', (C), was apparently not brought to its notice. We do not therefore think that we would be justified in upholding the commitment and directing the transfer of the case to the Sessions Court of Salem. We must hold that the commitment is illegal and set aside the order of the Sub-Magistrate...

In - 'Ledgaird v. Bull', (C), their Lordships of the Privy Council held that an order for the transfer of a suit from one Court to another, under Section 25, Civil P.C. cannot be made unless the suit has been brought in a Court having jurisdiction.

There a suit relating to the infringement of patent which under the Patent Act (Act 15 of 1859) ought to have been instituted in the principal Court of original jurisdiction in civil cases (i.e. the District Court) within the local limits of whose jurisdiction the cause of action accrued or the defendant resided, was instituted in the Court of a Subordinate Judge and the suit was afterwards, on the joint application of the plaintiff and the defendant, transferred to the District Court.

In considering whether the transfer conferred jurisdiction on the District Court to try and dispose of the suit their Lordships said: the first and an essential step in the maintenance of a suit is its due institution. In the opinion of their Lordships, the transference of the suit to the District Court was equally incompetent. It was decided by the High Court of Calcutta on 10-6-1880 vide - 'Peary Lall v. Komal Kishore' 6 Cal 80 (F), that the superior Court cannot make an order of transfer of a case under Section 25, Civil P.C. unless the Court from which the transfer is sought to be made has jurisdiction to try it.

Having regard to the terms of Section 25, their Lordships entirely approve of that decision, Apart, therefore, from any question of estoppel affecting the defendant, there was no competent suit depending at the plaintiff's instance on 6-4-1882, when the defendant raised the plea of no jurisdiction in his written statement of defence.' Ultimately after finding that there was no estoppel for the defendant for raising the question of jurisdiction, their Lordships reversed the decree passed by the High Court in favour of the plaintiff and dismissed the suit with costs to the defendant, the ground of the decision being that the suit was not validly instituted.

In 6 Cal 30 (F)-which the Privy Council cited with approval in the extract quoted above, an appeal which ought to have been filed before the District Court of Pubna was filed in the District Court of Rungpore and a rule was obtained against the defendant to show cause why an order should not be made authorising the District Judge of Rungpore to try the appeal. In discharging the rule Morris and Prinsep, JJ. said: We can, under Section 25, Civil P.C. direct the transfer of an appeal only

from a Court having jurisdiction to receive and try it. We have no power to authorise any Court to assume jurisdiction to receive and hear an appeal contrary to the usual course prescribed by the Code. We, therefore, leave the appellant to take the necessary steps to place his appeal in the Pubna Court...

No doubt this decision and the Privy Council decision in - 'Ledgard v. Bull', (C), were concerned with transfer under Section 25, Civil P.C. We cannot find any justification to apply a different principle to a criminal case which stands committed to a wrong Sessions Court. Indeed in - 'the Assistant Sessions Judge, North Arcot v. Ramammal', (B), the Madras High Court applied the rule in - 'Ledgard v. Bull', (C), to such a case and quashed the committal.

6. The question whether the rule enunciated by the Calcutta High Court in - 'Peary Lall v. Komal Kishore', (F), can be applied to a criminal case (like the one in hand) was considered by Bird-wood J. in - 'Queen-Empress v. Mangal Tek-chand' 10 Bom 274 (G). In that case the First Class Magistrate for the island of Perim committed the accused to the Court of the Resident at Aden to be tried for an offence of murder.

Before the Court of the Resident the accused pleaded guilty and he was accordingly convicted and sentenced to death. The High Court of Bombay, however, annulled the conviction and sentence on the ground that the Court of the Resident at Aden had no jurisdiction over the island of Perim and that the Resident had never been appointed a Judge of a Court of Session for that island.

Subsequently Government issued the necessary notifications establishing a Court of Session for Perim and constituting the Resident at Aden as Sessions Judge for Perim as well. Later on in an application by the Crown under Section 526, Criminal P.C. for transferring the case to another Court of Session or to the High Court for trial, the question arose whether at that stage the transfer can be validly made and in discussing the matter Birdwood, J. said:

We have already found that the Resident's Court had no jurisdiction to try it. If jurisdiction has not been conferred on him by the notification, extending certain provisions of Act 2 of 1864 to Perim, the case is not properly before this Court; and

6 Cal 30 (F) is an authority for holding that a transfer of a case; can only be directed 'from Court having jurisdiction to receive and try it'.

That was a case under Section 25, Civil P.C. 14 of 1882 : but the principle of the decision would apply also to criminal cases. No doubt, in the case of 8 Bom 312 (D), West and Nanabhai JJ., actually ordered the transfer of a case which had been wrongly committed by a Magistrate, who had no territorial jurisdiction, to a Court of Session, which had no territorial jurisdiction, to another Court to which it ought to have been in the first instance committed by a Magistrate having jurisdiction; but the judgment of this Court contains no decision as to the legality of such a transfer; and the case was not argued; and, moreover, what was really ruled in that case was that, under Section 531, Criminal P.C. (10 of 1882), the order of commitment could not be set aside.

In the present case, the conviction recorded by the Resident has already been set aside; and, unless he is empowered by the recent notifications to resume the trial ab initio, the effect of our decision is to bar his cognizance of the case entirely, and to prevent our holding that it is before him in any sense at all.

The learned Judge then went on to discuss whether under the Government Notifications made after the High Court quashed the conviction and the sentence the case could be held to be properly pending before the Court of the Resident and therefore capable of being transferred to another Court and observed:

The commitment of the case of - 'Empress v. Mangal Tekchand', (G), by Captain Spell, on 26-8-1885, to the Court of Session was, therefore, also valid. There was, at that time, no Court of Session for Perim; but such a Court has now been established, and is, therefore, competent to accept any legal and subsisting commitment.

As soon as a Court of Session was established and a Sessions Judge appointed on the 10th February last, the commitment may be held to have been accepted; and the case being now properly before a Criminal Court subordinate, under the Code, to the authority of this Court, we can legally transfer it, under Section 525 of the Code, to any other such Criminal Court of equal or superior jurisdiction, or to

this Court.

I would order that the case be transferred to, and tried by, this Court.

Jardine J. the other learned Judge who. took part in decision of the case, did not agree with his colleague's view that after the notifications the case must be taken to be properly pending before the Court of the Resident, but at the same time he concurred to transfer the case to the High Court Sessions on the ground that when there was no proper Court to accept the commitment order the case remained in the Magistrate's Court and that under Section 525(3)(now Section 525(1)(iv)), the High Court had power to order that any particular criminal case or appeal be transferred to and tried before itself.

Both Birdwood and Jardine JJ. therefore, agreed with the principle enunciated in - 'Peary Lall v. Komal Kishore', (F), and that the High Court was competent to direct the transfer of a case only from a Court having jurisdiction to receive and try it and that the said principle applied to criminal cases as well.

7. This line of decisions and the principle underlying them have commended themselves to us as correct. We therefore decline to follow the Bombay and Allahabad decisions referred to by Chitale as enunciating the contrary view and followed by Govinda Pillai J. in - 'Ulhannan v. State', (A).

Before we refer to these cases it may be pointed out that the erstwhile High Court of Cochin had in two Full Bench decisions held that in circumstances similar to the present, the only course open to the High Court was to quash the committal and direct the Magistrate to make a fresh committal to the proper court see - 'Cochin Sirkar v. Kakkasseri Kunbi Mohammed' 25 Cochin LR 665 (H), and - 'Pallisseri Kuriappan v. Poulouse' 32 Cochin LR 107 (1).

The former case referred to the Madras, Bombay and Allahabad rulings bearing on the question and preferred to follow the Madras view enunciated in the - 'Assistant Sessions Judge, North Arcot v. Ramammal' (B). In Travancore it was at one time thought that when a Magistrate who by transfer of a case to him got seisin of it and had to commit that case to a Court of Session the committal should be made to

the Sessions Court having jurisdiction, over the place where he holds his Court-see Criminal Proceedings No. 184 of 1087 -3 Trav. LJ 76 (J).

This view, however, was held to be wrong by a Full Bench decision in Criminal Reference No. 19 of 1090-6 Trav. LJ 29 (K). The head-note to that latter case reads thus:

The ordinary rule as laid down by Section 160 (now Section 177), Criminal P.C. is that the forum of trial in criminal cases is determined by the scene of the alleged occurrence. Though Section 184 (now Section 206) does not specify the Sessions Court to which commitments have to be made by Magistrates, but simply says that 'any Magistrate may commit... to the Court of Session.... Etc.', there can be no doubt in view of the language of Section 160 (now Section 177) that the Court of Session mentioned in Section 184 (now Section 206) is the Court, which would have territorial jurisdiction over the place, where the offence is alleged to have been committed.

As the committal in that case was to the proper Court no question of transfer of the case arose there. We have said earlier that it is unnecessary to refer to the other decisions favouring the view we take and referred to by Govinda Pillai J., in his order but we may observe that a useful discussion of the question is to be found in - 'Emperor v. Sheo Dayal' AIR 1919 Oudh 69 (L). A later Oudh case - 'Mubarak Ali v. Abdul Haq' AIR 1925 Oudh 490 (M), declined to follow that ruling but the later case had nothing to do with an order of committal.

8. The two cases Govinda Pillai J. followed in his order are 8 Bom 312 (D), and 18 All 350 (E). As for the case in 8 Bom we have noticed the criticism Birdwood J, made about it in - 'Peary Lall v. Komal Kishore', (F). In the Bombay case no one appeared in the High Court either on behalf of the accused or the Crown and the question of the legality of the transfer was not raised or considered at all. The Allahabad case also contains no discussion concerning the legality of the transfer and it simply said:. nor are we prepared to follow the procedure which was acted on by this Court in - 'Empress v. Surja' 1883 All WN 164 (N). In our opinion the procedure followed by the Bombay High Court in 8 Bom 312 (D), is correct. We do not set aside the commitment, as in our opinion the decision in - 'Queen-Empress

v. James Ingle' 16 Bom 200 (O), and - 'Queen-Empress v. Abbi Reddi' 17 Mad 402 (P), are correct; but, following the procedure adopted by the High Court at Bombay in - 'Queen-Empress v. Thaku', (D), we transfer the trial of the persons accused in this case to the Court of Session of Moradabad.' In -'Queen-Empress v. James Ingle', (O), order could very well be supported as under the Letters Patent, the High Court had a final Criminal jurisdiction in the Presidency. In re, Ganapathy Chetty, AJR 1920 Madras 824 (Q), while referring to this case the Madras High Court has laid emphasis on that aspect, which aspect existed in the Madras case as well. Farren J., before whom James Ingle's case (O), came up for trial at the Bombay High Court Sessions, expressly stated in his order that in the event of a conviction, it may be desirable to reserve the point of the objection as to the committal for consideration of the Full Court.

It is, therefore, clear that the support which that decision gives to the view that found favour with the learned Judges in - 'Queen-Empress v. Ram Dai', (E), is not much. In 17 Mad 402 (P), the 3rd case relied upon by the learned Allahabad Judges, the question as to the validity of the commitment was being considered by a Court sitting in appeal against the conviction and sentence and the point of the objection was that committal Court had no territorial jurisdiction over the place where the alleged offence was committed.

The learned Judges held that the irregularity was cured by Sections 531 and 537, Criminal P.C., and that there was no ground to set aside the conviction and the sentence. That case has no bearing on the question, which arose for decision in - 'Queen-Empress v. Ram Dei', (E). In the present case and in - 'Queen-Empress v. Ram Dei', (E), the question was as to the competence of the Sessions Courts and in both that question was raised before the trial commenced.

9. While the true position of the three decisions relied upon in - 'Queen-Empress y. Ram Dei', (E), is as explained above, the decision in 1883 All WN 164 (N), which the learned Judges (in - 'Queen Empress v. Ram Dei', (E),) declined to follow happens to be a decision in point.

There Straight and Tyrell JJ. quashed a committal to a Court which had no local jurisdiction over the scene of the crime and directed fresh proceedings to be

started in the Court of a competent Magistrate. The Magistrate who committed the case had also no territorial jurisdiction to deal with the case.

10. We are not unaware that the decision, in - 'Queen-Empress v. Thaku', (D), has been followed in other cases also, but on a careful analysis, with respect to the eminent Judges who gave that decision and the decisions that followed it, we feel constrained not to accept their authority or follow them. The learned Judges in those cases no doubt transferred the cases before them to the proper Courts. Whether that was legal and proper has not been examined in any of those decisions. In - 'Ulahannan v. State', (A), Govinda Pillai, J. said:

It is more a matter of procedure than one affecting substantially the merits of the case.' We regret we cannot agree with this view. It is purely a question of jurisdiction of the High Court to transfer a case from a Court having no jurisdiction to receive and try it.

11. The foregoing discussion would explain why we declined to follow the decision in - 'Ulahannan v. State', (A), and quashed the order of committal in the case with the consequential direction to the learned Magistrate of Crangannore to pass a fresh order committing the case to the Trichur Sessions Court. The decision in - 'Ulahannan v, State', (A), is overruled.

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