

In Re: Kunjan Raghavan and ors.

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Court : Kerala

Decided On : Jan-24-1957

Reported in : AIR1957Ker32; 1957CriLJ634

Judge : Sankaran and; M.S. Menon, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 207A

Appeal No. : Criminal Ref. No. 10 of 1956

Appellant : In Re: Kunjan Raghavan and ors.

Advocate for Pet/Ap. : C.M. Kuruvilla, Govt. Pleader

Judgement :

M.S. Menon, J.

1. The First Class Magistrate of Sherthallai made an order on 10-7-1956 committing the six persons charged in P. E. No. 2 of 1938 for trial by the Court of Sessions at Alleppey. The concluding portion of the order reads as follows :

'I, therefore, find that there is a prima facie case against A. 1 for offences under Ss. 341, 323 and 302. I. P. C. and against the others under Ss. 341, 323/114 and 302/114, I. P. C. Formal charge was framed against the accused under these sections, read put to them and explained. They are committed to the Sessions Court, Alleppey, to stand their trial. The existing bail bonds are cancelled'.

2. The Additional Sessions Judge of Alleppey. has stated in a report under Section 438 of the Code of Criminal Procedure, 1898, dated 10-12-1956;

'The order of committal passed by the learned Magistrate has to be quashed on account of this failure to comply with the provisions of Sub-section 4 of Section 207-A, Cr. P. C. It is seen from the records of the case that the Prosecution is depending upon the evidence of seven witnesses to the actual commission of the offence and all of them were produced before Court on 9-7-56. when the case first came up for enquiry before the lower Court.

But the Court examined only three of them. A petition put in by the second accused on that day praying to examine all the occurrence witnesses produced by the Prosecution, was rejected, and the accused have been committed as stated above.'

3. There is no doubt that the learned Additional Sessions Judge is right and that there has been a non-compliance with a mandatory provision of law. Section 207-A was inserted into the Code of Criminal Procedure, 1898, by Act 26 of 1955 and deals with the procedure to be adopted in proceedings instituted on police reports. Sub-section(3) of Section 207-A, says:

'At the commencement of the inquiry the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in Section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.'

and Sub-section (4):

'The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the Prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also.'

4. The wording of Sub-section (4) gives no room for doubt that the Magistrate conducting the inquiry should take the evidence of all the persons produced by the prosecution as witnesses to the actual commission of the offence alleged and that he has no discretion to dispense with the examination of any one of them. This is the view that has been adopted in State v. Govindan Thampi Bhaskaran, 1956 Ker LT 550:(S) MR 1957 Trav-C 29 (A). (See also State v. Ramralan Bhudhan, (S) AIR 1957 Madh-B 7 (B) and Krishna v. State of Mysore, (S) AIR 1957 Mys 5 (C) .

The First Class Magistrate of Sherthallai was clearly in error in not taking the evidence of all the seven witnesses to the actual commission of the offence alleged, who were produced before him by the prosecution on 9-7-1956, and we cannot but quash the order of commitment made in P. E. No. 2 of 1958 and send the case back to him for fresh inquiry and further action according to law.

5. Order accordingly.

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