

State Vs. Somasekhara Kurup

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Court : Kerala

Decided On : Mar-16-1981

Reported in : 1982CriLJ307

Judge : S.K. Kader, J.

Appellant : State

Respondent : Somasekhara Kurup

Judgement :

ORDER

S.K. Kader, J.

1. On the basis of a report made by the Court of Session, Alleppey, the learned Judge in charge of the District took up the matter referred by the learned Sessions Judge in suo motu revision. On the basis of a charge-sheet filed in Crime No. 69/79 of the Muhamma Police Station alleging that the accused committed an offence punishable Under Section 307, IPC the case against the accused was committed to the Court of Session by the Judicial Magistrate of II Class, Alleppey, Under Section 209, Cr. P. C. stating that the offence was one exclusively triable by the Court of Session.

2. The accused is alleged to have attempted to murder his wife by stabbing her with a knife several times and thereafter in the course of the same transaction he

attempted to commit suicide by inflicting injuries on the vital parts of his body with the same knife, an offence punishable Under Section 309, IPC On completion of investigation, instead of one charge-sheet, two separate charge-sheets were filed against the accused, one Under Section 307, 1. P. C. and the other Under Section 309, IPC Both the charge-sheets were filed before the same Magistrate. On receipt of the charge-sheet in the attempt to murder case, it was committed to the Court of Session. The charge-sheet in the attempt to commit suicide case was received only subsequently. Therefore the learned Magistrate finding that the latter case is one which ought to be tried with the former, committed the latter case also to the Court of Session. Both the cases were committed to the Court of Session Under Section 209, Cr. P. C.

3. The learned Sessions Judge after going through the records made a report to this Court stating that as the offence Under Section 309, IPC is triable by any Magistrate, the committal of the accused in C. C. No. 1307/79 is illegal and pointing out that as both the offences were alleged to have been committed in the course of the same transaction, the magistrate ought to have waited for the final report in both the cases and then committed both the offences for a single trial to the Court of Session. Alternatively it was submitted by the learned Sessions Judge that the committal order in C. C. No. 1307/79 may be vacated and the case may be sent back to the magistrate. The learned Judge in charge of the District took up the matter in suo motu revision for quashing the order of committal in the Calendar Case.

4. No doubt, a mere reading of Section 209, Cr. P. C. will show that under the section only if it appears to the magistrate that the offence is triable exclusively by the Court of Session, he can commit a case to the Court of Session. This section provides for commitment of a case to a Court of Session only when the offence is triable exclusively by it. But this section must be read along with Sections 322 and 323, Cr. P. C. Section 323 Cr. P. C. is supplementary to Section 209, Cr. P. C. Under Section 323, Cr. P. C, if in the course of an inquiry or trial into an offence, it appears to the magistrate at any stage of that proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions contained in Chapter XVI

governing the committal of cases to the Court of Session.. A magistrate is given under this section, in addition to his power Under Section 209, Cr. P. C, a power to commit a case which ought to be tried by Court of Session. On the facts available on records, although the offences alleged to have been committed by the accused are distinct and different, both the offences appear to have been committed in the course of the same transaction and as such these two offences could be tried together. But there is no legal bar for trying these offences separately. The general rule enunciated in Section 218, Cr. P. C. is that for every distinct offence of which any person is accused, there shall be a separate charge and that every such charge shall be tried separately. The exceptions to this rule are contained in Sections 219, 220, 221 and 223, Cr. P. C. In other words, separate trial is the rule and joint trial the exception. It is clear from the order of the magistrate that it was after being satisfied that C. C. No. 1307/79 was a connected case which ought to be tried by the Court of Session simultaneously with the main case that he happened to commit this case Under Section 209, Cr. P. C. The omission on the part of the magistrate to mention Section 323, Cr. P. C. in the order is of no serious consequence in the circumstances. Therefore the order of committal made by the magistrate cannot be said to be one without jurisdiction or illegal or irregular to warrant interference in revision.

This Criminal Revision Case is disposed of as above.