

Thomas and ors. Vs. State of Kerala

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Court : Kerala

Decided On : Dec-21-1960

Reported in : 1961CriLJ489

Judge : P. Govinda Menon, J.

Appellant : Thomas and ors.

Respondent : State of Kerala

Judgement :

ORDER

P. Govinda Menon, J.

1. This is an application under Section 561-A to modify an earlier order made by me in Crl. M. P. 166/60 and to direct the First Class Magistrate, Pattambi to proceed with the trial of the two cases C. C. Nos. 21 and 26 of 1960 on his file.

2. Section 526 of the Code of Criminal Procedure clearly empowers the High Court to order that an accused person be committed for trial to itself or to the court of session if such an order is expedient for the ends of justice. This jurisdiction covers both classes of cases. That is cases exclusively triable by a court of session and also cases not exclusively triable by such a court. So for the ends of justice a case of the latter description also may be ordered by the High Court to be committed to the court of session for trial. In a case and counter where the High

Court feels that in the interests of justice the two cases should be heard by one and the same Judge, it can order accordingly.

3. It was argued that merely because two cases are case and counter, they need not necessarily be committed, and various authorities for and against were cited. I need not elaborately go into all these decisions.

In Ramalcrishnayya v. State : AIR1954 Mad442 Ramaswamy, J., after an exhaustive discussion of the case law has observed:

The principles laid down in these Madras decisions have been adopted by the other High Courts and has now become a settled practice throughout India.

A Magistrate before whom such a case is charged by the police and a private complaint from the party whose case was referred, should hear both the cases together and commit both the cases to the session even if only one of them is exclusively triable by a court of session. If however, the Magistrate feels that there is no acceptable evidence in both the cases, he should discharge the accused. If, however, in one case a more serious offence like Section 148 I.P.C., is made out then in the interest of justice, both the cases should be sent to the First Class Magistrate for disposal and he may commit both the cases, or discharge the committal case and himself try the other or if he finds the committal case after recording evidence one triable by himself proceed to enquire into both and convict or discharge or acquit the accused in both the cases. The Sessions Judge should, if both the cases had been committed, hear them in succession with different assessors and come to independent conclusions keeping as far as possible evidence in the one case distinct from the other. If in respect of an occurrence, there is a variation in time, or place, or other circumstances warranting a reasonable inference that they are not parts of the same transaction, but that the earlier occurrence may even be a motive for the later one, then the two cases may be tried separately and the aforesaid rules of procedure need not be applied.

I am in respectful agreement with this view and that was why I ordered that both the cases should be tried by one and the same Judge. Apart from the question whether it is open to the petitioners to challenge the earlier order in this petition,

the learned counsel for the petitioners has not been able to convince me that the procedure suggested in the Madras decision is not the proper Or the correct procedure,

4. Another grievance made by the learned counsel was that no notice had been given to the petitioners before the transfer was ordered. The issue of notice is not mandatory though I must say it is desirable. Want of notice, however, does not amount to an illegality. The learned Public Prosecutor who appeared for the State was heard and it is unfortunate that he did not represent that notice may be issued to the petitioners. It was also not disputed that these cases were really case and counter.

5. But I am told that the learned Magistrate has only asked the petitioners to appear before the Sessions Court without actually committing the case for trial to the court of session. Section 193(1) Crl. P.C. says:

Except as otherwise expressly Provided by this 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.

There is no doubt that for a trial to proceed in the Sessions Court the accused must be committed to the sessions. Section 347 Crl. P.C. empowers the Magistrate to commit any case even though they may be cases not exclusively triable by the court of session if the Magistrate thinks that the case is one which ought to be tried by the court of session.

6. The accused is liable to be committed to the court of session only if there is *prima facie* evidence against him and in cases where there is no *prima facie* evidence against him he is always entitled to a discharge from the Magistrate himself. The accused should have also the opportunity of cross-examining the witness and leading defence evidence as contemplated under Section 208 Crl. P.C. The learned Magistrate has therefore gone wrong in not following the procedure laid down for the committal proceedings and merely asking the accused to appear before the Court of Session. Reference may be made to the recent decision of the

SuDreme Court in ChadamilaJ Jain v. State of Uttar Pradesh : 1960 CriLJ145 .

7. It is therefore ordered that proceedings in C. C. 21 and 26 of 1960 before the Munsiff-Magistrate, Pattambi shall be treated as proceed- togs under Chapter 18 of the CrI. P.C. and the learned Magistrate shall observe the procedure laid down therein and act accordingly, that is to say, commit the case to the court of session for trial unless he decides after hearing the evidence to exercise his powers under Section 209 and discharge the accused.

8. With this clarification of my previous order the petition is dismissed. The records in C. C. 21 and 26 of 1960 will be returned to the Munsiff-Magistrate. Sessions Case 15/60 on the file of the Assistant Sessions Judge of OttaPalam will stand stayed till final orders are passed by the learned Magistrate in C. C. Nos. 21 and 26 of 1960. If the cases are committed, then both the cases should be tried together as indicated above. If they are not committed the Assistant Sessions Judge will proceed with the Sessions Case 15 of 1960. Copy of this order will be communicated to the Magistrate and to the Assistant Sessions Judge. The Magistrate is directed to expedite the hearing.

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