

In Re: Bogi Reddi Ankamma and ors.

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Court : Chennai

Decided On : Sep-02-1932

Reported in : AIR1933Mad247; (1933)65MLJ6

Appellant : In Re: Bogi Reddi Ankamma and ors.

Judgement :

ORDER

Bardswell, J.

1. The five petitioners come in revision against the order of the Sessions Judge of Guntur, directing that they stand their trial at the Sessions on a charge of murder in addition to a charge under Section 201, I.P. Code, already framed by the Committing Magistrate. They ask on various points of law that the commitment on the charge of murder may be quashed.

2. A charge sheet was put in against them and sixteen others by the Station House Officer, Bapatla, the offences stated being those punishable under Sections 302 and 201, I.P. Code. In the charge sheet the petitioners figured as accused 3, 4, 5, 8 and 16. The Stationary Sub-Magistrate, Guntur, who held the preliminary enquiry, discharged sixteen of the accused, including all the petitioners, in respect of both offences and, while discharging the first accused (Ankamma) before him in respect of the offence of murder, framed a charge against him under Section 201 and committed him to the Sessions to stand his trial on that charge. The Sessions

Judge, on reading the committal order, issued, on his own motion on 25th July, 1932, notice to (1) accused 1, 4, 6, 7, 9 to 15 and 17 to show cause why they should not be committed on a charge of murder; (2) accused 2, 3, 5, 8 and 16, the present petitioners, to show cause why they should not be committed for offences punishable under Sections 302 and 201, I.P. Code.

3. After hearing the petition the learned Judge, in his Criminal Revision Proceedings No. 22 of 1932, of the same date, passed orders that accused 2 should be committed to the Sessions on a charge of murder and that the petitioners should be committed to the Sessions for the offence under Section 201, I.P. Code. The Sub-Magistrate committed these several persons to the Sessions accordingly. This also was on 26th July, 1932. On 8th August, 1932, the Public Prosecutor made an application to the Sessions Judge under Section 338, Cr.P. Code, in which he represented the expediency of tendering a conditional pardon to Ankamma (accused 1) in order that he might be examined as witness against the other accused, whether for the prosecution or on behalf of the Court.

4. The learned Judge then tendered a pardon to Ankamma, and adjourned the case (S.C. No. 24 of 1932) against him sine die, and directed that he should be heard as a witness, though not as a prosecution witness, as the right of the prosecution to summon an additional witness, was, to use his own words, 'exhausted under Section 219, Cr.P. Code.' In another order, however, of the same date, he adjourned the case (S.C. No. 36 of 1932) against the petitioners to 4 P.M. the next day, in order to enable the prosecution to summon Ankamma before the Committing Magistrate under that very Section 219. His reasons for adjourning the case were that, if Ankamma repeated his version, the interests of justice would require that some or all of the petitioners and others should be tried for murder and that some or all of those others should be tried for the offence under Section 201, I.P. Code. On the following day, 9th August, 1932, after Ankamma had been examined as a witness by the Committing Magistrate, he passed an order that the charges against the petitioners were to be under Section 302 as well as under Section 201, I.P. Code.

5. One ground on which this order is attacked in revision is that it was a review, such as was not within his competence, by the Sessions Judge of his revisional order of 26th July, 1932. It is not disputed that a Court cannot revise its own revisional order. Even a High Court cannot do this: Ranga Rao, In re : (1912)23MLJ371 . The learned Judge, however, has tried to show that in his order of 9th August, 1932, he was not revising his earlier order, dated 26th July, 1932, but only interpreting it; but the learned Public Prosecutor does not try to support a great part of the reasoning by which he tries to show this, nor, indeed, can it be supported. He sets out that, in his order of 26th July, 1932, he should have said merely that he had directed the Committing Magistrate to commit accused 3, 4, 5, 8 and 16 (petitioners) for trial and that, when he said further that the trial was to be 'for the offence under Section 201, I.P. Code' those additional words were mere surplusage. At least this is what he clearly means, though he has only underlined the words 'Section 201' as being by way of surplusage. That he should have so expressed himself is most astonishing. By the terms of Section 437, Cr.P. Code, under which the order of 26th July, 1932, must be taken to have been passed, the Sessions Judge may order that a person, who has been improperly discharged by an inferior Court in a case triable exclusively by the Court of Session, be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge, improperly discharged. Obviously the order cannot be confined to a bare direction that the person is to be committed, but must state the matter in respect of which the commitment is to be made. It is true that Section 437 does not say that the commitment is to be on a specific charge, but the very sections in Ch. XVIII on which the learned Judge relies in support of his view show that a Magistrate, in committing any person to the Sessions, has to frame against him a charge showing with what offence he is charged. It was under Ch. XVIII that the Magistrate had to make the commitment. Indeed, I cannot follow the line of argument of the Sessions Judge in this connection, nor has any attempt been made to explain it. He says, with a strange confusion of tenses, 'the Committing Magistrate framed a charge under Section 210 and he cancels it under Section 213(2), Cr.P. Code, but when he commits under Section 213(1), Cr.P. Code, he merely commits the accused for trial without being under any obligation to commit accused for trial for any particular offence. If he refers to any particular offence,

with reference to his committal, the reference is surplusage'. Why he should have at all dragged in Section 213(2) is past my imagining. The Magistrate in this case has not cancelled any charge and, had he done so, under the provisions of Section 213(2), there would, of course, have remained nothing left on which the petitioners could be committed. It almost seems as if the learned Judge thought that, because Section 218 comes later than Section 213(2), it is somehow affected by it, so that for the purposes of applying Section 218, the Magistrate's action in framing a charge as required by Section 210 is washed out. It is only by taking it that he had some such idea in his head that I can understand his making the further remark that 'the distinction between the framing of a charge by the Committing Magistrate and the committal made by him may be seen in Form No. 33 of the Criminal Rules of Practice,' though what he means by this is beyond me. Section 210 provides that, when the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged, while in Form 33, which is the form to be used when applying Section 218, there have to be stated the offence in respect of which there is a charge against the accused; and Section 218 itself is even more explicit. By it when an accused is committed for trial a notification has to be sent by the Magistrate to the person appointed by the Local Government on that behalf, in which the offence is to be stated in the same form as the charge, and the charge together with the record of enquiry is to be sent to the Court of Session. The word 'charge' in this section can only mean the charge framed as provided by Section 243. It is clear, then, that the Magistrate in committing the petitioners had to frame a charge showing of what offence they were accused, and this is what he has, in fact, done in framing a charge against them under Section 201, Indian Penal Code, in accordance with the Sessions Judge's revisional order of 26th July, 1932.

6. Mr. Bewes tries to support that part of the learned Judge's order under review in which it is stated 'I must find that I did not accept the discharge of the present accused 1 to 6 (petitioners) by the Committing Magistrate as regards Section 302 as final, on grounds other than those on which the Judge has himself based his finding.' Mr. Bewes points out that there was a notice issued to the petitioners to show cause why they should not be committed to the Sessions for offences under

both Sections 201 and 302, Indian Penal Code, and argues that as the order of 26th July, 1932, while directing this committal under Section 201, Indian Penal Code, did not specifically discharge the notice as against them in respect of Section 302, there was not a definite disposal of that notice as regards the charge of murder. Even however, assuming, without allowing, that it was open to the learned Judge to make such a reservation while passing what was on the face of it a final order, and that he did, in fact, make such a reservation, I cannot find that that in any way justifies his order of 9th August, 1932, against the petitioners. An order under Section 437 has to be passed on an examination of the record of any case; and so any order passed by the learned Judge, in pursuance of his notice to the petitioners to show cause, could only be with reference to the record as it stood at the time when he took it up for consideration. The evidence of Ankamma, recorded under Section 219, was a later addition by way of supplement to that record and by no means a part of it. I understand the learned Public Prosecutor to concede, at least, that there would have been no committal of the petitioners for murder without the evidence of Ankamma, and that such is the case is, indeed, plain from what the learned Judge has stated in his earlier revisional order. He doubted very seriously whether certain statements made by Ankamma as an accused party could be used in evidence against his fellow accused, and found that the evidence of P.Ws. 10, 13 and 14, the only other witnesses against the petitioners, justified a charge against them only under Section 201, Indian Penal Code. It is evident, then, from his order now under review that it was because of the additional evidence of Ankamma that he directed that the petitioners should be charged with murder. That order, then, was not based on the record as it stood before him either when he initiated proceedings under Section 435, Criminal Procedure Code, or at the time of his passing the order itself under Section 437, and it is therefore unsustainable. The learned Judge has given, as another reason for holding that his order of 26th July, 1932, against the petitioners was not final, that he wound up the order thus:

I hope that eventually further investigation will disclose who the offenders beside the accused 2 are in respect of the charge of murder.

7. But the taking from Ankamma on oath of a statement in consonance with what he had previously stated, without being-sworn to it, as an accused, can hardly be regarded as a further investigation, while anything that came out in a further investigation could not be part of the record as it then stood before the Sessions Judge. Investigation, too, I may note, normally means investigation by the police. My conclusion, then, is that the order of the learned Judge now under review cannot be upheld, as far as it is considered as having been passed under Section 437, Criminal Procedure Code.

8. I have next to consider whether the framing of the additional charge of murder can be justified under the terms of Section 226, Criminal Procedure Code. By that section, when any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court may frame a charge, or add to or otherwise alter the charge, as maybe, having regard to the rules contained in the Code as to the form of charges. The learned Judge has referred to this section also and has observed that, once the Sessions Court has seisin by virtue of the committal, it can frame any charge that arises on the evidence adduced in the Committing Magistrate's Court. Now, in the present case, the petitioners have certainly not been committed for trial without a charge, neither can it be said, with reference to the evidence, to which I have already alluded, that was available at the time of the committal, that they were committed with an imperfect or erroneous charge. The absence of any such defect is clearer here than in *Queen-Empress v. Kharga* I.L.R. (1886) All. 665, which has been brought to my notice. Reference has also to be made to *Rama Varma Raja v. The Queen* I.L.R. (1881) 3 Mad. 351.

9. In that decision it is pointed out that a Court of Session has power, when the accused has been committed without a charge at all, or upon a charge which the Court, upon a reference to the proceedings before the Committing Magistrate, considers improper, to draw up a charge for any offence which it considers proved by the evidence taken before the Committing Magistrate. A charge which was added by the Sessions Court and which could not be supported by the evidence taken by the Magistrate was found to have been framed *ultra vires*. It is true that in the same case it was found that there was no evidence taken by the Magistrate which would have supported the charge that was framed, whereas here, after the

examination of Ankamma under Section 219, there is evidence, taken by the Magistrate, on which the charge of murder might be supported. But in the circumstances of that case the evidence taken by the Magistrate could only have been the evidence taken up to the time of committal, as the additional witness on the strength of whose evidence the conviction on the added charge could alone be sustained, was not at all examined by the Magistrate, but only at the Sessions. The decision does not deal with Section 219, because, in the circumstances, it had no occasion to do so, but so far as it goes it does not, as I read it, encourage the idea that Section 226 can be applied with reference to additional evidence taken under Section 219. I may note that the additional charge in that case was framed before the additional witness was examined and so it was added, or purported to be added, under Section 226. Section 227, which has to be read with Section 237, can only apply after some evidence has been taken at the trial in the Sessions Court. I have not now to consider the applicability of that section as the stage for applying it, if it can be applied at all, has not been reached. There appears to be no decision as to the effect upon Section 226 of additional evidence recorded under Section 219; but, without any authority, it seems clear enough that, as contended by Mr. Jayarama Aiyar, its effect upon that section must be nil.

10. Section 226 has to do with a charge that is imperfect or erroneous when any person is committed for trial, and this, I take it, can only mean that, for it to apply, the charge must be imperfect or erroneous at the time of commitment. Section 219 provides for the taking of supplementary evidence after commitment but before the trial, and there is no provision that the charges can be altered or a fresh committal order made by the Magistrate of his own motion, after the taking of such evidence. And so, though the additional evidence may be, and in this case has been, recorded by the Committing Magistrate, it forms no part of the record upon which the accused has been, or could have been, committed for trial. Though it has no bearing upon the effect of Section 219, I may here refer, for the purpose of showing the general principle, to *Birendra Lal Bhaduri v. Emperor* I.L.R. (1904) 32 Cal. 22, in which it is pointed out that 'the Sessions Court is not a Court of original jurisdiction and, though vested with large powers for amending and adding to charges, can only do so with reference to the immediate subject of the prosecution and committal and not with regard to matter not covered by the indictment'.

11. This statement of principle has been quoted with approval in *Muthu Goundan v. Emperor* 1920 M.W.N. 149. I must hold that the learned Sessions Judge was not authorised under Section 226 in framing the additional charge of murder against the petitioners, in that the charge against them at the time of their commitment was neither imperfect nor erroneous. As I have remarked above, the question of whether the additional charge of murder can be framed, later on, on the strength of Section 227, is not a matter with which I have now to deal. I do not, therefore, discuss some rulings bearing on that section which have been quoted in the course of the argument on the petition.

12. Another point that has been taken for the petitioners is that the Committing Magistrate was not warranted in law in recording the evidence of Ankamma under Section 219, and that the Sessions Judge should not have ordered him to take it. I do not, however, find that the learned Judge ordered the Magistrate to record this evidence. What he did was to allow time to the prosecution to examine Ankamma before the Committing Magistrate. I must take it that the Magistrate was asked to record the evidence of Ankamma and that he recorded it because he thought fit to do so. This would be in accordance with Section 219 and as I see no reason to think that the provisions of that section were not complied with, the petitioners fail on the point. As, however, they have succeeded on the other points, I quash the charge against them under Section 302, leaving open the matter of whether that charge can be added later on under Section 227.

13. Cr.M.P. No. 783 of 1932 is an application for the transfer of the case against the counter-petitioners to the file of some other Sessions Court. The learned Sessions Judge, in his revisional order of 26th July, 1932, has said of Ankamma that his statement appeared to be intrinsically true in broad outlines and that, therefore, he need not be tried for the offence of murder. He has also taken him as a witness and suspended sine die even the case against him under Section 201. I do not suppose for a moment that the learned Judge is prepared blindly to accept anything that Ankamma may say, especially when tested by cross-examination, but I do think that what he has said and the line which he has taken are sufficient to raise a reasonable apprehension in the minds of the petitioners, that he is inclined in advance to take a view of the case which is to their prejudice. In such

circumstances I think that a transfer of the case is advisable. I transfer it to the file of the Sessions Judge, Nellore.

14. In conclusion I would observe that Rama Varma Raja v. The Queen (1881) I.L.R. 3 Mad. 351 suggests a procedure which might have been adopted in this case. It might, perhaps, be allowed even now.

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