

In Re: Natesan Servai and ors.

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Court : Chennai

Decided On : Aug-02-1950

Reported in : AIR1951Mad529; (1950)IIMLJ545

Judge : Govinda Menon and ;Basheer Ahmed Sayeed, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 192 and 192(1)

Appeal No. : Criminal Revn. No. 782 and Cri. Revn. Petn. No. 720 of 1949

Appellant : In Re: Natesan Servai and ors.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K.S. Jayarama Aiyar, Adv. for ;C.K. Venkatanarasimham, Adv.

Disposition : Conviction set aside

Judgement :

Govinda Menon, J.

1. The four petitioners who were accused 1 to 3 and 7 in the Court of the Stationary Sub-Magistrate, Sirkali, were convicted by that Court, petitioners 1 to 3 of an offence under Section 324, Penal Code, and petitioner 4 of an offence under Section 324 read with Section 511, Penal Code. Petitioners 1 to 8 were sentenced

to pay a fine of Rs. 200 each or in default to suffer rigorous imprisonment for six weeks and petitioner 4 was sentenced to a fine of Rs. 100 or in default to suffer rigorous imprisonment for one month. Along with them seven others also were charge-sheeted but before the case came to the Sub-Magistrate, Sir-kali, and while it was before the Sub-Divisional Magistrate, Mayavaram, they were discharged under Section 253 (1), Criminal P. C. Against their conviction, the petitioners preferred Cri. App. No. 60 of 1948 and that was heard by the Sub-Divisional Magistrate of Tanjore who confirmed the convictions and sentences. Hence this revision petition.

2. The only point raised by Mr. K. S. Jaya-rama Aiyar for the petitioners is one of pure law and hence it is unnecessary for us to go into the facts at all, which we would not have done even otherwise, this being a revision petition. Originally eleven accused were charge-sheeted before the Sub-Divisional Magistrate of Mayuram for offences under Sections 147, 148, 323, 324, Penal Code, etc. After the prosecution evidence was let in before that Court, the Sub-Divisional Magistrate found that there was no prima facie case proved against seven of them and as stated already they were discharged. He framed charges against the first three accused of an offence under Section 324, Penal Code, and against accused 7 of an offence under Section 324 read with Section 511, Penal Code. After framing the charge, the Sub-Divisional Magistrate transferred the case for disposal to the Sub-Magistrate of Sirkali on the footing that as the offences of which the accused were charged were triable ordinarily by a Magistrate exercising second class powers it would be in the interests of justice to have a second class Magistrate to try the case. Accordingly the Court to which it was transferred, viz., the Stationary Sub-Magistrate, Sirkali, took up the case on file, heard the evidence and convicted the accused as stated by us above. In the appeal to the Sub-Divisional Magistrate the said convictions and sentences were confirmed.

3. What is contended for the petitioners before us is that Section 192, Criminal P. C., which relates to transfer of cases by Magistrates cannot have any application to the facts of the present case because the transfer contemplated by Section 192 (1), Criminal P. C., is a transfer 'for enquiry or trial to any Magistrate subordinate to him' by a Chief Presidency Magistrate, District Magistrate or Sub-Divisional

Magistrate who has taken cognizance of the case. In the present case the Sub-Divisional Magistrate Mayuram, who had examined the witnesses, discharged some of the accused and framed charges against the other accused cannot, according to the contentions raised by the learned counsel for the petitioners, transfer the case at that stage but should himself have tried it to the end.

4. It is, therefore, necessary to examine the provisions of the Code regarding transfers. Sub-section (1) of Section 192, Criminal P. C., positively states that the three classes of Magistrates may transfer any case of which they have taken cognizance of, for enquiry or trial to any Magistrate subordinate to them. Especially since Section 192, Criminal P. C., appears in Chap. 15 which relates to the jurisdiction of the criminal Courts in inquiries and trials, and lays down the procedure to be followed when a Court is requested to take cognizance of a complaint and has taken cognizance of it, it must be presumed Section 192, Criminal P. C., must be intended to contemplate a case which has not reached the stage of enquiry or trial. But when once the proceedings have reached the stage of enquiry or trial, wholly or partially, it cannot be said that Sub-section (1) of Section 192, Criminal P. C., can be availed of for transfer by the Magistrate who has taken cognizance of the case. The other section relating to the transfer is Section 528, Sub-section (2) which is to the effect that any Chief Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, may withdraw any case from or recall any case which he has made over to any Magistrate subordinate to him and may enquire into or try such case himself or refer it for inquiry or trial to any other such Magistrate competent to enquire into or try the same. This again contemplates a situation where the superior Magistrate recalls a case which he had transferred to a subordinate Magistrate and either tries it himself or sends it to some inferior Magistrate competent to enquire or try the same. The learned Public Prosecutor does not contend that Sub-section (2) of Section 628, can be availed of in this case. Section 3 to which our attention was invited is Section 346, which deals with cases where, in the course of an inquiry or a trial before a Magistrate in a mofussil place, the evidence appears to the Magistrate to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate, the Magistrate before whom the case is pending shall stay the proceedings and submit the case with a brief report explaining its nature, to any Magistrate to

whom he is subordinate or to such other Magistrate having jurisdiction, as the District Magistrate directs. This illustrates a converse case where a subordinate Magistrate who during the enquiry or trial, finds that he cannot try the offence which is disclosed in the evidence, is empowered to send up the papers to a superior Magistrate for such legal-action as is necessary in the circumstances of the case. It cannot also be said that this section can have any application to the facts of the present case. But the learned Public Prosecutor contends that since under Sub-section (1) of Section 192, the transfer to a subordinate Magistrate is for 'enquiry or trial', it should be presumed that since the word 'trial' has been used and in common parlance it is understood that a trial begins only after the charge is framed the transfer after the framing of the charge is legal. In *Sriramulu v. Veerasalingam*, 38 Mad. 685 : A. I. R. 1916 Mad. 23 : 15 Cr. L. J. 678, there are observations to the effect that until a charge is framed in a warrant case, the proceedings are in the nature of an enquiry, with the result that it is only after the charge is framed that they partake of the nature of a trial. At p. 587 there is this observation:

'As far as this Court is concerned, it is settled law that the proceedings before a Magistrate in a warrant case under Chap. 21, Criminal P. C., are only an 'enquiry' until the charge is framed; and on charge being framed become a trial (vide *Palaniyandi Goundan v. Emperor*, 32 Mad. 218 : 9 Cr. L. J. 146 and *Narayanaswami Naidu v. Emperor*, 32 Mad. 220: 9 Cr. L. J. 192))'.

From these observations it is contended that when Sub-section (1) of Section 192 speaks of the transfer for trial, it should be understood that the transfer can be effected in a warrant case after the charge is framed. It is not necessary for us in the present case to canvass the correctness of the observations contained in *Sriramulu v. Veerasalingam*, 38 Mad. 585 : A. I. R. 1915 Mad. 23 : 15 Cr. L. J. 673 supported as it is by the earlier decisions of this Court. But what we have to find out is whether the Legislature contemplated in Section 192 (1), the transfer of a charge, simply because the word 'trial' is used in that section. Now it will be useful to compare a few other sections of the Code where the word 'trial' has been used, For example, in summons cases it has to be admitted that there is no procedure like the framing of a charge and a further cross-examination and all the other

complex procedure usually found in a warrant case. Chapter 20 deals with the trial of summons cases by Magistrates. So whenever a Magistrate is asked to take evidence and decide whether a person against whom a complaint of a summons case has been made is guilty or not, his proceedings have to be considered to be 'trial of summons cases.' Similarly the heading of chap. 21 is 'of the trial of warrant cases by Magistrates.' The Code nowhere makes any distinction between an enquiry in a warrant case preceding the stage of the framing of a charge and the subsequent stage when it gets transformed into a trial after the charge is framed. Similarly if we look at the heading of chap. 18, it will be found that where an offence is exclusively triable by a Court of Session, then the initial stage of finding out whether there is a prima facie case for being committed to the Court of Session is designated 'Inquiry into cases triable by a Court of Session or High Court.' So, one thing is certain and that is that if an accused has to be committed for trial by a Court of Session or a High Court, the preceding stage of the commitment is certainly an enquiry. We may also refer to the heading of chap. 22 which deals with 'summary trials.' Therefore even where an offence is triable summarily, the proceedings are designated 'trials'. It seems to us, therefore, that when the Code in Sub-section (1) of Section 192, speaks of the words 'enquiry or trial' especially since the section appears at this stage of the Code which relates to the place of enquiry or trial or the initial stages of the hearing it is not intended to mean that Sub-section (1) of Section 192, could give a superior Magistrate, who has heard the case in part, power to transfer the case to a subordinate Magistrate to hear the rest of it. We are fortified in this conclusion by early decision of this Court reported in *Re Tota Venkanna*, 2 Weir 152. C. A. White C. J. and Moore J. have held therein that a Magistrate who has taken cognizance of a case, having tried it partly finds that an offence which a subordinate Magistrate is competent to try has been committed, has no power to transfer the case to a subordinate Magistrate but must himself dispose of it. This case has stood the test of time for nearly 34 years until a dissenting note was sounded by Bardswell J. in *Public Prosecutor v. Shanmuga Nadar* : AIR1934 Mad435 . The learned Judge there held that the decision in *Re Tota Venkanna*, 2 Weir 152, cannot be held to be any longer law because Sub-section (3) to Section 350 had been enacted in the Code later on. What the learned Judge says is that the point of illegality referred to in *Re*

Tota Venkanna, 2 Weirs 152, was under the law as it was then understood in this Court, it was the duty of the Sub-Magistrate when a case was transferred to him, to take evidence afresh. That is no longer the law in view of Sub-section (3) to Section 350, and therefore according to the learned Judge the decision in Re Tota Venkanna, 2 Weir 152, cannot be an authority in point. We are of opinion that the learned Judge has not given sufficient importance to the other provisions of the Code as well as to the place in which Section 192 comes in when he gave his opinion. According to the learned Judge it is permissible for a Magistrate empowered under Sub-section (1) of Section 192, to transfer a case even at a later stage because in a warrant case the stage of trial is not reached until the charge is framed. It seems to us that the decision of Bardswell J. runs counter to the Bench decision in Re Tota Venkanna, 2 Weir 152, and in our opinion the Bench decision lays down the law correctly. We are, therefore, of opinion that the transfer of the case at the stage at which it had reached before the Sub-Divisional Magistrate of Mayu-ram is illegal. The convictions of the petitioners by the Stationary Sub-Magistrate of Sirkali are therefore illegal. We set aside the convictions and sentences of the petitioners. Since the offence took place more than two years ago, we feel that a retrial of the petitioners is not necessary and the petitioners are acquitted.

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