

In Re: Sekharan

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Court : Chennai

Decided On : Feb-26-1968

Reported in : AIR1969Mad320; 1969CriLJ1056

Judge : Krishnaswamy Reddy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 226 and 227

Appeal No. : Criminal Revn. Case No. 146 of 1968 and Criminal Revn. Petn. No. 144 of 1968

Appellant : In Re: Sekharan

Advocate for Def. : Asstt. Public Prosecutor

Advocate for Pet/Ap. : P.N. George, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Krishnaswamy Reddy, J.

1. The point that arises in this revision petition is whether a Sessions Judge has got power to alter or add to the charge framed by the Committal Court before the commencement of the trial.

2. What the petitioner did in this case was, he filed an application before the Additional Sessions Judge, Madras requesting him to alter a charge under Section 307 I. P. C. under which the committal was made, to one under Section 326 I. P. C. The learned Additional Sessions Judge held that he had no jurisdiction to drop a charge under Section 307 I. P. C. and frame a charge under Section 326 instead. He cited a case in Kantilal Keshavlal v. Prabhed-chandra, 1964 2 CrL LJ 87 (Guj) and also a decision of the Supreme Court in Ban-wari v. State of U. P., : AIR 1962 SC1198 . as far as I could see there is no reference to either Section 226 or Section 227 CrL. P. C. in the Supreme Court decision In .the earlier decision a single Judge of the Orissa (Gujarat?) High Court held that altering a charge under Section 307 I. P. C, to one under Section 324 I. P. C. would amount to quashing, of the earlier charge and that that could, be done only by a High Court under S. 561 CrL. P. C. and that a Sessions Judge, before the commencement of the trial, could not alter the charge. With great respect I am unable to agree with the wide observations made by the learned Judges of the Orissa (Gujarat?), High Court. Section 226 CrL. P. C. reads thus--'When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the court, or, in the case of a High Court, the clerk of the State may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges'.

Section 227 CrL. P. C. is as follows--

'(1) Any court may alter or add to any charge at any time before judgment is pronounced or in the case of trials by Jury before the Court of Sessions or High Court, before the verdict of the jury is returned...'. In either of these sections there is no basis for making a discrimination between the charges framed before the commencement of the trial and after the commencement of the trial. The charges are normally framed by the Sessions Judge before the trial begins. If it is brought to the notice of the Sessions Court that the charges are erroneously framed not warranted by the facts of the case or the charges are imperfect, the Sessions Judge could satisfy himself, in these circumstances, from the records and other materials available, whether there is a case for altering or adding to the charge. It is very clear from both the provisions mentioned above that a Sessions Judge

cannot altogether omit a charge which has been framed by the committal court and on which the trial has to take place. The Sessions Judge in such a case must proceed with the charge and ultimately may acquit if the charge could not be sustained. There cannot be any objection at all on the same set of facts to alter the charge under Section 307 to an allied charge or to an inferior charge, if the records warrant any such alteration. It will not amount to an omission.

3. A Division Bench of this Court in *In re Subburatnam*, AIR 1949 Mad 663 in dealing with the scope of Section 226 and Section 227 Cr. P. C. observed in the following words, with which I am bound and respectfully agree--

'A trial Judge at Sessions is not bound by the charges framed in the committing Court and he has ample power to revise and alter them not only at the commencement of the trial under Section 226 Cr. P. C. but under Section 227 Cr. P. C. at any stage of the trial before the verdict of the Jury is returned or the opinions of the assessors are recorded.'

The petition is allowed. The learned Sessions Judge may consider, if necessary, bearing in his mind the principles laid down in this order, whether there is any necessity to alter the charge under Section 307 to one under Section 326 Cr. P. C. The petitioner is permitted to file a fresh application and adduce any evidence if he thinks fit in support of the application.

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