

Crown Prosecutor Vs. Bhagavathi

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Court : Chennai

Decided On : Aug-23-1918

Reported in : 48Ind.Cas.337

Judge : Sadasiva Aiyar and ;Napier, JJ.

Appellant : Crown Prosecutor

Respondent : Bhagavathi

Judgement :

Sadasiva Aiyar, J.

1. This is an application by the Crown Prosecutor for quashing the commitment made by the 3rd Presidency Magistrate, George Town, Madras, to the High Court Sessions of a case falling under Section 304 (a) of the Indian Penal Code punishable with 2 years' imprisonment of either description or fine (of unlimited amount) or both and triable by a Court of Session or a Presidency Magistrate or a Magistrate of the First Class. The ground on which we are asked to quash the commitment is, that under Section 254 of the Criminal Procedure Code, a Magistrate ought to try a case himself till it ends either in a conviction or acquittal before him (see Section 258), unless he thinks that the offence could not be adequately punished by him, and that in this case it was impossible for the Magistrate to entertain such an opinion because he had powers under the Code to inflict imprisonment of either description up to 2 years, which is the maximum

punishment provided for the offence. This argument, in the first place, ignores the fact that the offence is also punishable with fine of unlimited extent, whereas the Presidency Magistrate's powers of fining are limited to the amount of Rs. 1,000 [see Section 32, Criminal Procedure Code, Clause (a)] and oases are conceivable where a rich man guilty under Section 304 (a) could more appropriately be sentenced to a fine of Rs. 5,000 by a Sessions Court than by a Presidency Magistrate with imprisonment and a fine of Rs. 1,000. However, this is a minor point. The important question is, whether Section 254 does make it imperative on the Magistrate, if the offence could be adequately punished by him, to try the case till the end and whether it imperatively forbids him from committing the case to the Sessions. So far as the words of Section 254 go, that section only directs the Magistrate to frame a charge against the accused. What the Magistrate has' to do after framing the charge must depend upon the provisions contained in the succeeding sections of the Code dealing with the further proceedings in the trials of warrant oases. In Chapter XXIV containing general provisions as to enquiries and trials, we have got 3 sections--sections 346, 347 and 349--which we were invited in the arguments to consider in this connection. Section 346 relates to the procedure of a Magistrate other than a Presidency Magistrate in certain contingencies. That section may, therefore, be ruled out. As regards Section 349 it relates to the procedure of a Magistrate of a 2nd or a 3rd Class under certain circumstances. That also has, therefore, no material bearing in the consideration of the question before us. Then we have got Section 347, which gives very wide powers to a Magistrate. In any trial or proceeding before him and at any stage he can, even just before signing judgment, commit a case before him to a Court of Session or the High Court, (provided, of course, he is empowered to commit oases to that Court) if it appears to him that the case is one which ought to be tried by a Court of Session or the High Court. It does not restrict the grounds on which he should arrive at his opinion to want of jurisdiction in himself or to his inability, in his own opinion, to sentence the accused adequately. If he considers, for instance, that a complicated question of law arises or that some connected matter is already before the Court of Session or that the facts are such that trial with the aid of a Jury or with the aid of Assessors (who may be chosen from experts in the particular matters involved in the case) would be a more satisfactory procedure. I

see nothing in Section 347 to prevent a Magistrate from committing the case to a Court of Session. Section 347 does not say that the Magistrate is bound to put his reasons on record for entertaining the opinion that the case is one which ought to be tried by the Court of Session or the High Court. No doubt, the decision of the Bench in *Queen- Empress v. Kayemullah Mandal* 1 C.W.N. 414 and the decisions of Single Judges of the Allahabad High Court reported as *King-Emperor v. Dharam Singh* 1 M.L.T. 61 : (1906) A.W.N. 28 : 3 Cri.L.J. 94 and *Emperor v. Jagmohan* 4 Ind. Cas. 812 do support the contention of the Crown Prosecutor that unless the Magistrate thinks that he is unable to punish the accused adequately he ought not to commit the accused to the Court of Session. There are, however, two decisions, one in *Empress v. Kudrutoollah* 2 C.L.R. 2 : 1 Ind. Dec. 899 and the other (of a Full Bench of this Court) *Chinnimarigadu, In the matter of* 2 Weir 425, where there are observations which, in my opinion, indicate that the committal by a competent Magistrate on the ground that in the Magistrate's opinion the case is a fit one to be tried by a Court of Session,, cannot be interfered with by the High Court. And I think that the 24 Calcutta case [*Queen-Empress v. Kayemullah Mandal* 1 C.W.N. 414 and the two Allahabad cases [*King-Emperor v. Dharam Singh* 1 M.L.T. 61. 3 A.L.J. 14 and *Emperor v. Jagmohan* 4 Ind. Cas. 812 have given much wider effect to the language of Section 254 than that language could properly support. That section makes it imperative on the Magistrate only to frame a charge and not to complete the trial to conviction or acquittal. I would, therefore, dismiss, this petition.

Napier, J.

2. I entirely agree. We are asked to exercise our powers under Section 215 of the Criminal Procedure Code and quash a commitment to the High Court made by the Presidency Magistrate. We can, of course, only do so on a point of law and we are, therefore, not concerned with the reasons given by the Magistrate for making the commitment.

3. But it has been argued before us by the Crown Prosecutor that the commitment is bad in law in that the Magistrate has not certified that he cannot adequately punish the accused who is put up before him for trial and that even if he had done

so, his reason would have been bad, because he has in fact power to inflict the maximum punishment. The offence for which the accused has been committed is Section 304 (a), Indian Penal Code. Now, offences under this section are specifically stated in the 2nd Schedule of the Code to be triable by a Court of Session, a Presidency Magistrate or a Magistrate of the First Class. Therefore, at the outset this suggestion of the Crown Prosecutor leads to a somewhat extraordinary position, that a Court of Session which is specifically empowered under the section cannot try the case because it cannot be committed to it by a First Class Magistrate.

4. It is suggested, however, by the Crown Prosecutor that Schedule II, where it speaks of a Court of Session, had in mind that) although the commitment for offences is not one of the ordinary powers of the Magistrate of a 2nd and 3rd Class, still those Courts can be empowered under Section 206,, and, therefore, that the trial by a Court of Session provided for in the 8th paragraph of the 2nd Schedule would arise in cases where the accused had been committed by a 2nd or 3rd Class Magistrate empowered in that behalf. It is a somewhat strained application of the provision. A more reasonable hypothesis seems to me to be that this allocation of this offence to the Court of Session as well as a Magistrate of the First Class is an indication that in some circumstances a Court of Session would be the proper tribunal to try the case.

5. Passing from that, we have to consider what are the powers possessed by Magistrates with regard to warrant cases. The Crown Prosecutor has suggested to us and, indeed this is the basis of the whole of his argument, that Section 254 of the Criminal Procedure Code is exhaustive and that there is no power in a Magistrate to commit a case for trial where he is competent to try it and it can be adequately punished by him. This is a somewhat startling proposition because, as my learned brother has pointed out, it is a frequent practice of Magistrates in this country to commit cases for trial to the Court of Session for other reasons, namely, convenience, complexity of facts or other matters. The Crown Prosecutor would have us hold that the whole of this procedure is wrong. Now, the whole of this argument hinges on the word 'shall' which is to be found in Section 254. The Crown Prosecutor argues that the section requires that he shall frame in writing a

charge against the accused and carries with it a further requirement that, having done so, he shall proceed under the remaining sections of that Chapter. I should have some difficulty in appreciating this argument were it not that it has found favour with a Bench of the High Court of Calcutta in a case reported as *Queen-Empress v. Kayem-ullah Mandal* 1 C.W.N. 414. But with reference to the learned Judges, it seems to me that, in that decision, they ignore the very wide powers given by the Code to a Magistrate under sections 207 and 347. Section 207 provides the procedure on enquiry in cases which are exclusively triable by a Court of Session or the High Court, or, in the opinion of the Magistrate, ought to be tried by such Court. There are, therefore, a class of cases which are not triable exclusively by a Court of Session but which ought to be so tried. If we turn to Section 347, which is in the Chapter containing general provisions as to enquiries and trials, we find a wide and general power given to Magistrates with regard to cases coming before them for trial. The words are: 'If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop farther proceedings and commit the accused under the provisions hereinbefore contained.' If he is not empowered to commit for trial, he should proceed under Section 346. That section says that if it appears to the Magistrate that the case is one which should be tried or committed for trial by some other Magistrate, he shall stay proceedings and submit the case with a brief report to any Magistrate, to whom he is subordinate or to such other Magistrate having jurisdiction as the District Magistrate directs. That is to say, whether the Magistrate has power to commit or not, if he thinks that the case is one which ought, in his opinion, to be tried by a Court of Session, he has absolute power to stop any further proceedings in the trial by himself. If he can commit, he may, If he cannot himself commit he may send to a Magistrate who will commit. It seems to me to be impossible to argue successfully that a specific provision like this in Section 347, read together with Section 207 which lays down the procedure in enquiries in such cases, can be limited because Section 254 says that the Magistrate trying a warrant case shall frame a charge. Even if those words which are to be found in Section 254 had been repeated in sections 255 and 256, I should still be of opinion

that they were no bar to the exercise by a Magistrate of his power to commit a case. That section simply lays down the procedure for the trial of warrant cases where the Magistrate considers it proper and right for himself to go on with the trial, and is in no way a limitation of the right of a Magistrate given to him under Section 347 to commit a case for trial if he thinks that he should do so.

6. The Crown Prosecutor has been unable to refer us to any section authorising a Magistrate to commit for trial where he cannot inflict a proper sentence which, according to him is the proper course, whereas there is a distinct provision for submission to a higher class Magistrate in such cases to be found in Section 349. I am at a loss, therefore, to comprehend, why the wide words of Section 347 should be curtailed by reference to Section 254 when there is a specific section, namely, Section 349, which deals with circumstances referred to in Section 254. My learned brother has referred to one case of this Court, Chinnimarigadu, In the matter of 2 Weir 425 and it seems to me to be conclusive on the point, for it lays down as axiomatic that it is competent to a Magistrate to say whether from the gravity of the matter or for any other sufficient reason the Sessions Court is the proper tribunal for the disposal of the case.

7. To sum up, the powers of the Magistrate, who has taken a warrant case on his file for trial, are as follows: He may try it through himself if he has jurisdiction; he may, if he thinks he cannot inflict a proper sentence, act under Section 346 or Section 349 and send it to a higher Magistrate, or he may, if he thinks that it is a proper case for Sessions, commit the accused under Section 347 or if he has not power to commit send it to another Magistrate to commit under Section 346. This being my view of the law, I am of opinion that we have no jurisdiction to quash- the committal in this case and that the trial before the Judge sitting in Session must go on.