

In Re: Pakkirisamy Pillai

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Court : Chennai

Decided On : Sep-18-1961

Reported in : AIR1962Mad142; (1962)1MLJ62

Judge : Veeraswami, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 251A(1), 251A(2) and 436

Appeal No. : Criminal Revn. Case No. 1267 of 1960, (Case Refd. No. 27 of 1960)

Appellant : In Re: Pakkirisamy Pillai

Advocate for Pet/Ap. : S. Mohan Kumaramangalam, Adv. for ;N. Shanmugham, Adv. and ;K. Ramachandran, Adv., ;V.V. Radhakrishnan, Adv. for ;Public Prosecutor;For Amicus Curiae: C.K. Venkatanarasimham, Adv.

Judgement :

ORDER

(1) This is areference from the District Magistrate, South Arcot at Cuddalore which raises a question of his jurisdiction under S. 436 o fthe Cri. P. C.to set aside an order of discharge made under S. 251-A of the code and remit the case for fresh disposal.

(2) On a police report, the respondent Pakkirisami Pillai was accused before the First Additional First Class Magistrate, Cuddalore, for an offence under S. 304A of

th Indian Penal code, in that it was alleged that he drove the car MSX. 11 rashly and negligently along Sethiathope. Kumbakonam road at about 10-30 a.m. on April 22, 1960, and caused the death of one Sellan of Enamangalam. Copies of the documents referred to in S. 173 of the Code were furnished to the accused. And when axamined, he pleaded not guilty. The Additional First Class Magistrate upon a consideration of the said documents and the denial by the accused of commision of the offence, found the charge to be groundless and discharged him under S. 251-A (2), Cr. P. C.

On appeal by the State, the District Magistrate, Cuddalore, differed form the Additional First Class Magistrate and was of the View that there was prima facie evidence to show that the accused was prima facie evidence to show that the accused was driving the car on the particular day and that the order of disharge was improper. But it was contended before him that the Districe Magistrate had no jurisdiction under Ss. 435 and 436 of the Code to direct the Additional First Class Magistrate to dispose of the case afresh, as the order of discharge, in effect, amounted to one of acqittal. If this view of th effect of the order of discharge under S. 251-A is correct, it is not disputed that the District Magistrate will have no power to order re-trail.

(3) The question, therefore, is whether when an order is made under sub-sec. (2) of S. 251-A, the proceeding upto that stage is in the nature of an inquiry or a trial. The answer will depend upon the construction to be placed upon the words 'at the commencement of the trial' in sub-s. (1) of S. 251-A. That sub-section states that in a case istituted on a police report, the Magistrate, when the accused appears or is brought before him at the commencement of the trial, shall satisfy himself that the documents referred to in S. 173 have been furnished to the accused, and if not, shall cause them to be so furnished. That next sub-section directs that if, on aconsideration of all the documents referred in Sec. 173 and making such examinations, if any, of the accused as the Magistrate thinks necessary, and after giving the prosecution and the accused an opportunity to be heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

Sub-section (3) is to the effect that if the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence, triable as a warrant case, and that he is competent to try it and adequately punish the accused, he shall frame a charge against the accused. The charge then shall be read out and explained to the accused and he be asked whether he is guilty or claims to be tried. If he pleads guilty, a conviction may follow.

If the accused claims to be tried, the Magistrate should, on the date fixed for the purpose, take all such evidence as may be produced in support of the prosecution which is subject to cross examination by or on behalf of the accused. The accused shall then enter upon his defence and produce his evidence. The accused is also given liberty to summon such witness, as he may like, for further cross-examination. If, after the evidence has been taken, the Magistrate finds the accused not guilty, he will record an order of acquittal. This in brief is the rest of the procedure indicated by sub-secs. (3) to (11) of S. 251-A. It may be remembered that this is one of the new sections introduced by Act XXVI of 1955 with the avowed object of simplifying and shortening the procedure with a view to expedition in procedure adopted by the amended provision for trial of warrant cases is that no evidence, unlike in a case arising out of a private complaint, is taken before a charge is framed.

This difference is evident from a comparison of sub-sec. (1) of S. 251-A with Sub-sec.(1) of S. 252 of the Code. If upon taking evidence under S. 252 (1) and examining the accused, the Magistrate finds that no case against the accused has been made out the Magistrate shall discharge him. In such a case, upto that stage, the proceedings is in the nature of an enquiry and not a trial. The trial shall, as apparent from a number of sections in the Code, commence with the framing of a charge and it is hardly necessary to cite authorities in support of the proposition. It has to be seen whether it is the intention of sub-sec. (1) of S. 251-A to depart from that principle and make the proceeding preceding a discharge under sub-sec. (2) partake the nature of a trial. The words 'at the commencement of the trial' in the sub-section suggest prima facie that a trial starts at the moment the accused appears or is brought before a Magistrate. But it seems to be that on a careful examination of the entire section, that is not the meaning intended by the words 'at

the commencement of the trial.'

(4) What actually transpires before a discharge is made, is only that the Magistrate makes sure that the documents contemplated by S. 173 are duly furnished to the accused and upon a consideration of those documents and examination of the accused, if necessary, he is to find whether there is ground to frame a charge. Looking at the substance of the matter, there is in this procedure very little in the nature of a trial.

In fact, the proceeding upto the stage of discharge under sub-sec (2) of Sec. 251-A is even narrower in nature, scope and content than the procedure upto the stage of discharge under S. 253 (1). Merely because the word 'trial' is used in sub-sec. (1) of S. 251-A, that in itself is not necessarily conclusive, as whether a proceeding amounts to an inquiry or a trial, is not merely one of nomenclature but one of substance depending upon the nature, scope, manner and content of the proceeding. The word 'trial' is of wide import and is actually used in the Code not in a uniform sense. The term has not been defined in the Code. Section 4(1)(k) only defines 'inquiry' as including every inquiry other than a trial conducted under the Code by a Magistrate or court. In *State of Bihar v. Ram Naresh*, : 1957 CriLJ567 , the Supreme Court observed,

'The word 'trial' is not defined in the Code. 'Trial' according to Stroud's Judicial Dictionary means ' the conclusion by a competent tribunal, of question in issue in legal proceedings, whether civil or criminal' (Stroud's Judicial Dictionary, 3rd Edn. Vol. 4, p. 3092) and according to Wharton's Law Lexicon means 'the hearing of a cause, civil or criminal. Before a Judge who has jurisdiction over it, according to the laws of the land' (Wharton's Law Lexicon, 14th Edn. P. 1011). The words 'trial' and 'trial' appear to have on fixed or universal meaning. No doubt in quite a number of sections in the code to which our attention has been drawn the words 'trial' and 'trial' have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with

regard to the particular context in which they are used and with regard to the scheme and purpose of the provisions under consideration.'

There is nothing in sub-ss. (1) and (2) of S. 251-A nor in the context thereof which, notwithstanding the fact that the proceeding contemplated therein involves no taking of evidence but only a consideration of the documents referred to in S. 173, and if necessary, an examination of the accused, compels the view that the proceedings though called a trial, is in fact and truth a trial in, what I may call, the orthodox sense. In my opinion, the word 'trial' has been used in sub-sec.(1) of S. 251-A in the sense of a proceeding of the nature of an 'enquiry' commencing from the appearance of the accused. This interpretation appears to be consistent with the scheme of the rest of the sub-sections. Sub-section (2) of S. 251-A speaks of a discharge following a consideration by the Magistrate of the particular documents and examination, if any, of the accused.

If, on the other hand, the Magistrate considers that there is ground for presuming that an accused has committed an offence triable as a warrant case, he is required by sub-section (3) to frame a charge. Sub-sections (4) to (10) provide for the plea of the accused on the charge, summoning of witnesses, their examination and cross-examination; in other words, for a trial on the charge framed. Sub-section (11) states that if after trial he finds that the charge is not true, he shall record an order of acquittal. The procedure prescribed by sub-ss. (3) to (11) of S. 251-A appears to be in marked contrast, if the substance is regarded, with the limited procedure envisaged by sub-sec. (1) and (2) of that section.

(5) In *Govindaswami v. State*, : AIR 1960 AP391, Krishna Rao, J. Of the Andhra High Court appears to have taken a different view of the nature of the proceeding under sub-secs. (1) and (2) of S. 251-A. With due respect, I am unable to share that view which apparently was based more on the use of the word 'trial' than the substance and nature of the proceeding. It may be that the provision for discharge under sub-sec. (2) of S. 251-A may not be decisive. What I consider to be more important in arriving at the nature of the proceeding under the first two sub-sections of S. 251-A is the scope and content of the proceeding which appears to be, as already indicated, of much narrower limits than even an inquiry under sub-

sec. (1) and (2) of S. 252. I hold, therefore, that the proceeding preceding an order of discharge under sub-sec (2) of S. 251-A is not a trial in the strict sense but is only in the nature of an inquiry.

(6) On that view it follows that the District Magistrate has jurisdiction under Ss. 435 and 436 of the Code of Criminal Procedure to set aside the order of discharge in the case and remit the case to the Additional First Class Magistrate or any other magistrate having jurisdiction in the matter to dispose it of afresh after framing a charge. The reference is accordingly returned to the District Magistrate with the observations contained in this judgment.

(7) Answer accordingly.