

In Re: Ramasamy and ors.

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Court : Chennai

Decided On : Aug-26-1975

Reported in : 1976CriLJ770

Judge : Ratnavel Pandian, J.

Appellant : In Re: Ramasamy and ors.

Judgement :

ORDER

Ratnavel Pandian, J.

1. This is a reference under Section 395(2), Crl. P. C, by the learned Sessions Judge, Tiruchirapalli, for consideration of the point whether the order of committal without examination of an approver is violative of the mandatory provisions of Section 306, sub-sees. (4) and (5) of the Code, and hence illegal, and whether the said order has to be quashed and the case remanded to the committal Court for complying with the provisions of the said section.

2. Mrs. Sheila Rajendran, appearing for the Public Prosecutor submits that the order of committal is in violation of the mandatory provisions of Section 306, sub-sees. (4) and (5), and as such the order of committal should be quashed.

3. Before going into the illegality, if any, committed by the learned Magistrate, now I shall discuss the comparative position of law under the old and the new Code

with regard to committal proceedings.

4. Under Section 207-A subsection (4), in Chapter 18 of the old Code, the Magistrate had to take the evidence of such persons, if any, as might be produced by the prosecution as the witnesses to the actual commission of the offence alleged and if the Magistrate was of the opinion that it was necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he might take such evidence also and the accused was at liberty to cross-examine the said witnesses. Therefore, there was a primary duty on the part of the Magistrate to take evidence before applying Sub-section (6) or (7). As per Sub-section (7), if the Magistrate, after taking such evidence, was of the opinion that the accused should be committed for trial he should do so. Thus, under the old Code, the Magistrate had no discretion to dispense with the examination of any one of the witnesses to the actual commission of the offence alleged, as produced by the prosecution. But, under the second part of Sub-section (4), it was purely within the discretion of the Magistrate to take the evidence of any one or more of the other witnesses of the prosecution in the interests of justice. So far as the examination of the approver is concerned, subsection (2) of Section 337 of the old Code would say that every person accepting a tender under that section shall be examined as a witness in the court of the Magistrate taking cognisance of the offence and in the subsequent trial, if any. The main object of the examination of an approver is to obtain the evidence of such person or persons supposed to have been directly or indirectly concerned in or privy to the offence. Therefore, necessarily all the witnesses to the actual occurrence, including the approver, were being examined under Section 207-A of the old Code.

5. Section 209 of the present Code deals with commitment of cases to the Court of Session when the offence is triable exclusively by it. Section 306 is the corresponding provision to Section 337 of the old Code. Clauses (a) and (b) of Sub-section

(4) of Section 306 of the present Code, correspond to Sub-sections

(2) and

(3) of Section 337 of the old Code, whereas Sub-section

(5) of the present Section 306 corresponds to Sections 2 (a) and 2(b) of the old Section

337. Under sub-s.

(4) (a), the approver must be examined as a witness in the court of the Magistrate taking cognisance of the offence and in the subsequent trial, if any. Sub-section

(5) of Section 306 of the new Code reads that where a person has accepted a tender of pardon made under Sub-section

(1) and has been examined under Sub-section (4). the Magistrate taking cognisance of the offence shall, without making any further enquiry in the case, commit it for trial to any one of the courts indicated in Sub-section (5), Clause (a). Under Section 209 of the present Code, the examination of the witnesses to the actual commission of the offence alleged and also the examination of the other witnesses, as contemplated under Section 207-A, of the old Code, have been completely dispensed with. What the present section says is that when in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by a Court of Session, he shall commit the case to the Court of Session. In other words, the preliminary enquiries by the Magistrate in cases exclusively triable by the Court of Session as contemplated under the old Code are now dispensed with. However, when there is an approver, he shall be examined as a witness in the Court of the Magistrate taking cognisance of the offence and in the subsequent trial, if any. Therefore, whether the case is to be committed or made over, it is mandatory that the_Magistrate taking cognisance of 'the offence shall Examine the person accepting a tender of pardon made under Sub-section (1), viz., the approver, as a witness. In other words, the examination of the approver is a condition precedent for the committal. Therefore, Section 306 should be read in conjunction with Section

209. Any violation of the mandatory provisions of Section 306, sub-sees.

(4) and (5), by the Magistrate taking cognisance of the offence, clearly amounts to an illegality which would vitiate the entire committal proceedings.

6. In the case under reference, four persons were charge-sheeted for an offence under, Section 289 (A to D) read with Section ~ 120-B, IP.C. in crime No. 733/71 of Karur Police Station, by the Crime Branch, C. I. D. Madras. One of the persons said to have been involved in the offence had been taken as an approver and cited as the first witness in the charge-sheet. The learned Magistrate committed the case to the Court of Session without examining the approver. Hence, this reference has been made by the learned Sessions Judge since he has no power to quash the committal order.

7. As pointed out by me above, the action of the Sub Magistrate in committing the case to the Court of Session without examining the approver is a clear violation of the mandatory provisions of Section 306 of sub-ss. (4) and (5) of the new Code and as such he has committed an illegality. Therefore, I quash the committal order and direct the Magistrate to comply with the provisions of Section 306 by examining the approver and then pass an order of committal if called for.

8. In the result, the reference is accepted.

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