

**In Re: Gaffar Khan**

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**Court :** Chennai

**Decided On :** Feb-02-1953

**Reported in :** AIR1953Mad875; (1953)2MLJ96

**Judge :** Panchapakesa Ayyar, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 215 and 561A

**Appeal No. :** Criminal Appln. No. 2 of 1953

**Appellant :** In Re: Gaffar Khan

**Advocate for Pet/Ap. :** F.S. Vaz, Adv.

**Judgement :**

ORDER

**Panchapakesa Ayyar, J.**

1. This is a petition by the second accused in Sessions Case No. 8 of 1953 for quashing the order of committal regarding him. He prayed to the office for posting the petition today 'before me, for hearing and disposal before I began to hear the Sessions Case. The office has, in view of the decision in -- 'Emperor v. Huseinalli Vilayatalli', AIR 1942 Bom 212 (A), and other cases, felt a doubt whether a Judge of the High Court presiding over the High Court Criminal Sessions, having in that capacity no appellate or revisional jurisdiction, has jurisdiction to hear and dispose

of such a petition for quashing a committal like this. It thinks such a petition can only be moved on the appellate side of the High Court, and has referred Mr. Vaz, learned counsel for the 2nd accused, to move it in the Admission Court. At the instance of Mr. Vaz, it has posted the petition before me for final orders.

Mr. Vaz urges that this Court has jurisdiction, and relies on the ruling in -- *Tharindra Nath Mitra v. Emperor*, 36 Cal 48 (B), and the wording of Section 219 and Section 561A of the Criminal P. C. which is 'the High Court' and not 'the appellate or revisional side of the High Court' or 'the High Court in its appellate or revisional jurisdiction'. I am inclined to agree with him regarding this case, namely, that a High court Judge presiding over the Sessions and trying a case committed to this Sessions Court will have jurisdiction to hear and dispose of a petition for quashing 'that committal', if filed in time and if justified otherwise, though petitions for quashing committals of cases not before him for trial and disposal cannot be heard and determined by him but only by the Judge (usually on the appellate side) appointed by the Chief Justice to hear them. The 'practice' of the hearing of such cases by the learned Judge presiding over the 'Admission Court' is only 'a matter of convenience'. I do not think that anything in the law or the rules prevents the Hon'ble the Chief Justice from asking any Judge of the High Court to dispose of a petition for quashing a committal. As held by a Bench of this Court in -- '*In re Mathuraman Chettiar*', : AIR1953 Mad395 (C), 'All the Judges constitute members of the same Court, and both are parts of one and the same institution'. I agree with Mr. Vaz that the Judge, who presides over the sessions of the High Court and has to try and dispose of a case, and can, in his charge to the Jury, undoubtedly tell the Jury that no case has been made out 'in law' against the accused and 'direct them to acquit him', as a matter of law', has undoubtedly jurisdiction to hear and dispose of a petition for quashing the committal 'of a case before him', under Section 215, Criminal P. C., 'on a point of law', especially as, under Section 298, Criminal P. C., it is the duty of the Judge to decide 'all questions of law'.

The objection that my view may result in both the Admission Court (on the appellate side) and the Judge presiding over the High Court sessions (on the original side) having 'concurrent Jurisdiction', under Section 215, Criminal P. C., to quash committals regarding cases actually coming up for hearing before the Judge

presiding over the High Court Sessions does not oppress me. I have already held in a recent case that such concurrent jurisdiction does exist in some cases and that while a 'writ of mandamus' is usually to be filed on the appellate side, under Article 226 of the Constitution of India, a writ in the nature of 'mandamus' will also lie to the Original Side Judge, in Chambers, under Section 45 of the Specific Relief Act, in matters within its jurisdiction. So, I hold that this petition can be heard and disposed of by me.

2. But, after hearing Mr. Vas. I am not satisfied that there is any patent 'error of law' warranting the quashing of the committal. The many grounds relied on by him, like substituting a new and false charge-sheet, in the place of the original one, making this petitioner, a 'bete noire' of the police, the principal culprit in the place of one All Baksh, the man originally named as the principal culprit, the arrest of the petitioner two days before the date given 'now' by the ponce, his being kept in illegal police detention for two days, and the evidence being totally inadequate for convicting the petitioner, are matters of 'fact', and 'hotly disputed fact'. I am, therefore, of opinion that this is not a case for quashing the committal, on this belated and eleventh-hour application, but a case only fit for trial and disposal in the usual course. The case is ready for hearing today. The whole evidence can be heard today itself and the case disposed of tomorrow. So I dismiss this petition. Mr. Vaz will, of course, be free to urge every argument, in law and in fact, at the end of the trial which will now go on.

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