

State Vs. Said Mohd.

State Vs. Said Mohd.

SooperKanoon Citation : sooperkanoon.com/901227

Court : Jammu and Kashmir

Decided On : Nov-05-2007

Reported in : 2008(1)JKJ476

Judge : J.P. Singh, J.

Appellant : State

Respondent : Said Mohd.

Disposition : Petition dismissed

Judgement :

J.P. Singh, J.

1. Learned Sessions Judge, Poonch has made this reference for quashing the proceedings and its order taking cognizance in case State v. Said Mohd. Under Section 4/5 Explosives Substances Act, 1908, without its having been committed to it.

2. Learned Sessions Judge says that taking of cognizance by the Court, without its having been committed to it by the Magistrate, was an error of law and jurisdiction which according to him, would vitiate the trial.

3. I am not impressed by the view taken by the learned Sessions Judge when he, at the fag end of the trial, suo moto records the finding that the proceedings held

by him in the case, without its having been committed to it for trial by the competent Magistrate, stood vitiated.

Learned Sessions Judge appears to have taken this view without taking into account the provisions of Section 537 of the Code of Criminal Procedure.

4. Section 537 of the Code, is reproduced hereunder for facility of reference:

537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXV11 or on appeal revision on account,-

(a) of any error, omission or irregularity in the complaint, summons, warrant, proclamation order, judgment or other proceedings before or during trial or is any inquiry or other proceedings under this Code; or

(b) of any error, omission or irregularity in the charge, including any misjoinder of charge,

Unless such error, omission or irregularity has in fact occasioned a failure of justice.

Explanation.--In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

5. In view of the provisions of Section 537, any error, omission or irregularity in the trial of a case would not vitiate the proceedings unless such error, omission or irregularity had occasioned failure of justice.

Although a Sessions Judge may not entertain a case exclusively triable by it unless it had been committed to it by a Magistrate in terms of Section 205D of the Code, yet the lapse, would not vitiate the proceedings unless failure of justice was

demonstrated by the accused.

6. In the present case, the accused had not at any stage of the trial, objected to the trial of the case or to the lack of jurisdiction of the Court to try the case in the absence of the committal order, yet the learned Sessions Judge, on his own, had observed that the proceedings of the trial would stand vitiated. He had done so, without recording any finding that the error had occasioned failure of justice. No such finding could have even otherwise been recorded because neither was any such objection taken by the accused nor was there any material on records on the basis whereof such a finding of any prejudice to the accused could have been recorded.

7. The order of Learned Sessions Judge thus becomes unsustainable.

8. I am supported in taking this view by a judgment of Hon'ble Supreme Court of India in State of M.P v. Bhooraji : 2001 CriLJ4228 , where their Lordships had held as follows:

20. The question considered in that decision was whether an investigation conducted by a police officer, who is not competent to do it, vitiated the entire trial held on the basis of the report of such investigation. Their Lordships held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or procedure relating to cognizance or trial. The observations extracted above were therefore meant to apply to the said context and it is obviously not meant for holding that a court of competent jurisdiction otherwise would cease to be so for the simple reason that the case was not committed to it....

21. The expression 'a court of competent jurisdiction' envisaged in Section 465 is to denote a validly constituted court conferred with jurisdiction to try the offence of offences. Such a court will not get denuded of its competence to try the case on account of any procedural lapse and the competence would remain unaffected by the non-compliance of the procedural requirement. The inability to take cognizance of an offence without a committal order does not mean that a duly constituted court became an incompetent court for all purposes. If objection was

raised in that court at the earliest occasion on the ground that the case should have been committed by a magistrate, the same specified court has to exercise a jurisdiction either for sending the records to a magistrate for adopting committal proceedings or return the police report to the Public Prosecutor or the police for presentation before the magistrate. Even this could be done only because the court has competence to deal with the case. Sometimes that court may have to hear arguments to decide that preliminary issue. Hence the argument advanced by the learned Counsel on the strength of the aforesaid decisions is of no avail.

9. For all what has been said above, the reference made by learned Sessions Judge, turns out to be misconceived. It is, accordingly, rejected.

10. Learned Sessions Judge is directed to conclude the trial of the case expeditiously, in accordance with law. Registrar Judicial to send back the trial court's records forthwith.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com