Macherla Hanumantha Raoand Others vs The State Of Andhra Pradesh(With ... on 17 September, 1957

Equivalent citations: 1957 AIR 927, 1958 SCR 396, AIR 1957 SUPREME COURT 927, 1958 BLJR 398, 1958 MADLJ(CRI) 117, 1958 S C J 129, 1956 SCJ 129

Author: Bhuvneshwar P. Sinha

Bench: Bhuvneshwar P. Sinha, J.L. Kapur, A.K. Sarkar

PETITIONER:
MACHERLA HANUMANTHA RAOAND OTHERS

Vs.

RESPONDENT:
THE STATE OF ANDHRA PRADESH(with connected petition)

DATE OF JUDGMENT:
17/09/1957

BENCH:
SINHA, BHUVNESHWAR P.
BENCH:
SINHA, BHUVNESHWAR P.
DAS, SUDHI RANJAN (CJ)
AIYYAR, T.L. VENKATARAMA
KAPUR, J.L.
SARKAR, A.K.

CITATION:
1957 AIR 927 1958 SCR 396

ACT:
Sessions Trial-Commitment Proceeding instituted on Police report-Procedure, if makes for inequality before law-Code of Criminal Procedure (Act V of 1898) as amended by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), ss. 207, 207A-Constitution of India, Art. 14.

HEADNOTE:
The point in controversy in this appeal was whether SS. 207 and 207A inserted into the Code of Criminal Procedure by the amending Act 26 of 1955, violated the provision of Art. 14 of the Constitution and were, therefore, invalid in law.

The appellants were committed for trial to the Court of Session by the inquiring
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Magistrate in a proceeding instituted against them on a Police report and he followed the procedure laid down in s. 207A of the Code as required by s. 207 Of the Code. The appellants moved the High Court for quashing the order of commitment on the ground that the provisions of S. 207A introduced discrimination as against accused persons against whom proceedings were' instituted on Police report and were unconstitutional in character. The High Court held against them. The contention was reiterated in this Court and it was sought to be made out that the provisions Of S. 207A of the Code, in comparison and contrast to other provisions of Ch. XVIII of the Code, prescribed a less advantageous procedure for the accused persons in a proceeding started on Police report than the procedure prescribed for other cases in the succeeding sections of the chapter.

Held, that ss. 207 and 207A of the Code were not discriminatory and did not contravene Art. 14 of the Constitution and their constitutional validity was beyond question.

Although there can be no doubt that the impugned sections introduced substantial difference in the procedure relating to commitment proceedings applicable to the two classes of cases, they did not in any way affect the procedure at the trial, and the true test of the constitutional validity of the classification they made, was whether it was reasonable and pertinent to the object the Legislature had in view, namely, a speedy trial of offences with the least possible delay.

So judged there could be no doubt that the Legislature in prescribing the two different procedures at the commitment stage, one for proceedings instituted on Police report and the other for those that were not, had acted on a consideration that was reasonable and connected with the object it had in view.

Budhan Choudhry v. The State of Bihar, (1955) S.C.R. 1045, applied.

Matajog Dobey v. H. C. Bhari, (1955) 2 S.C.R. 925, Chiranjit Lal Chowdhuri v. The Union of India, (1950) S.C.R. 869, The State of Bombay v. F. N. Balsara, (1951) S.C.R. 682, The State of West Bengal v. Anwar Ali Sarkar, (1952) S.C.R. 284, Kathi Raning Rawat v. The State of Saurashtra, (1952) S.C.R. 435, Lachmandas Kewalram Ahuja v. The State of Bombay, (1952) S.C.R. 710, Qasim Razvi v. The State of Hyderabad, (1953) S.C.R. 581, Habeeb Mohamad v. The State of Hyderabad, (1953) S.C.R. 661 and The State of Punjab v. Ajaib Singh, (1953) S.C.R. 254, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 57 of 1957 and Criminal Misc. Petition No. 294 of 1957. Appeal from the judgment and order dated September 28, 1956, of the former Andhra High Court at Guntur in Criminal Revision Case No. 241 of 1956.

T. V. Sarma, K. Ramaseshayya Chaudhury and T. S. Venkataraman, for the appellants.

T. V. R. Tatachari and T. M. Sen, for the respondent. C. K. Daphtary, Solicitor-General of India and T. M. Sen, for the Intervener (Union of India).

1957. September 17. The following Judgment of the Court was delivered by SINHA J.-The only question that arises for determination in this appeal on a certificate granted by the High Court of Andhra Pradesh at Hyderabad, under Art. 134(1)(c) of the Constitution, is the constitutionality of the provisions of ss. 207 and 207A, Code of Criminal Procedure (hereinafter referred to as the Code), which, read together, were introduced into the Code by Act XXVI of 1955. The 26 appellants have been committed to the Court of Session, Guntur Division, to take their trial for offences punishable under ss. 147, 148, 323, 324 and 302, read with ss. 34 and 149, Indian Penal Code. They impleaded the State of Andhra Pradesh as the sole respondent. The Union of India has been allowed to intervene on an application made in that behalf in view of the fact that the provisions of the Central Act have been impugned as unconstitutional.

For the purposes of this appeal, it is only necessary to state the following relevant facts. The local police took cognizance of a serious occurrence of rioting with murder on December 22, 1955. The local police investigated the case, and after recording such evidence as it could collect in respect of the occurrence, submitted a charge-sheet under the aforesaid sections of the Indian Penal Code, to the magistrate having jurisdiction to entertain the case. The magistrate, following the procedure laid down in s. 207 A of the Code committed the persons shown in the chargesheet as the accused persons, to take their trial before the Court of Session. A number of applications in revision, under ss. 435 and 439 of the Code, were made on behalf of the accused persons, to the High Court of Andhra Pradesh, to quash the order of commitment, chiefly on the ground that the said order having been passed under the provisions of s. 207A of the Code(was void, as those provisions were unconstitutional for the reason that they introduced discrimination as against accused persons in respect of whom a police charge-sheet had been submitted. The revisional applications were heard by Krishna Rao J. who dismissed them, holding that the provisions impugned were not unconstitutional and that, therefore, the order of commitment was valid in law. The appellants applied for and obtained the necessary certificate under Art. 134(1)(c) of the Constitution that the case was a fit one for appeal to this Court.

The arguments addressed to the High Court have been repeated in this Court and are to the effect that ss. 207 and 207A, as they now stand, provide for two separate procedures in the committing court, namely, (1) in respect of a case instituted on a police report for which the procedure specified in s. 207 A is prescribed, and (2) in respect of any other proceeding, the procedure laid down in other provisions of Chapter XV111 is prescribed. The argument is that a comparison and contrast of the two different procedures prescribed in respect of the two classes of cases, when examined in their details, show that the procedure in respect of a case instituted on a police report is less

advantageous to the accused than the other procedure. Thus, it is further argued, in the sections following s. 207A in Chapter XVIII of the Code, the accused have been granted facilities which are not available to them in the procedure laid down in s. 207A. By way of illustration, it was urged that under s. 208(3), it is open to an accused person to apply to the magistrate to issue process to compel the attendance of any witness or the production of any document, but sub-s. (2) of s. 207A, which corresponds to the provisions of s. 208(3), speaks only of the prosecution and not of the accused. Again, it is pointed out that sub-s. (4) of s. 207A, makes reference only to the prosecution evidence, whereas the corresponding s. 208(1) makes reference to the evidence that may be produced in support of the prosecution or on behalf of the accused. Similarly, it has been pointed out that there are no 'provisions in s. 207A corresponding to those of s. 209(2), and s. 213(2), empowering the magistrate to discharge the accused; nor is there any provision in the impugned s. 207A corresponding to s. 215 relating to quashing of commitments. Further, it was pointed out that whereas s. 209(1) contains the words " not sufficient grounds for committing the accused person", sub-s. (6) of s. 207A has the words " no grounds for committing the accused". It has further been argued that in the new procedure adopted in the impugned s. 207A, the accused person has been deprived of the benefits under ss. 162 and 215 of the Code, and under ss. 27, 101 to 106 and 114-1ll. (g) of the Evidence Act. It has, thus, been sought to be made out that the procedure laid down in s. 207A in the matter of commitment is less advantageous to the accused persons than the one prescribed in the succeeding sections of Chapter XVIII.

We shall assume for the purpose of examining the constitutionality of the impugned provisions of the amended Code that there are differences in the two kinds of procedure envisaged in Chapter XVIII of the Code, relating to commitment proceedings, but it is by no means clear that the changes introduced by the amending Act XXVI of 1955 are always to the disadvantage or prejudice of an accused person. It is a well-known fact that the amending Act aforesaid introduced changes into the old Code with a view to simplifying and expediting procedure relating to trial of offences and to inquiries preceding such trials. It has also to be remembered that the Code has always prescribed different procedures for trial of offences varying with the gravity of the offences charged, or with the power of the court before which an accused person is placed on trial. Generally speaking, minor offences have been made triable summarily, or the same accused person in respect of an offence triable summarily, may be so tried by a magistrate specially empowered in that behalf, or may be tried according to the ordinary procedure by a magistrate not so empowered. Less serious offences are triable by magistrates and more serious offences are triable by a Court of Session or by a High Court after there has been a preliminary in- quiry and investigation by a police officer, or an inquiry by a magistrate, commonly described as commitment proceed- ings, or, after inquiry by a Civil or Revenue Court, in connection with certain specified offences committed in the course of or in relation to judicial proceedings or in' respect of proceedings affecting the administration of justice. The Code has further classified offences triable by magistrates of any class or by magistrates of higher classes. There is, again, a cross-division of cases into warrant cases and summons cases. With reference to the powers of police officers, offences have been classified as cognizable offences and non-cognizable offences. Thus, the principle of classification of offences and of different categories of cases relating to the trial of offences is a well-establisbed rule of criminal procedure. It is true that for the first time, the impugned sections have pre- scribed two different procedures in respect of commitment proceedings as already indicated, but we have to remember that there is absolutely no

difference in the procedure at the trial in contra-distinction to the procedure relating to the enquiry leading up to commitment of an accused person to a Court of Session or a High Court in cases triable exclu- sively by such a Court. It must also be remembered that every case involving a serious offence comes under the category of 'cognizable case' in respect of which a police officer may arrest a person named as an accused person without warrant and investigate the case without any order of a magistrate in that behalf Hence, ordinarily speaking, as soon as information of the commission of a cognizable offence has been laid before a police officer in-charge of a police station, it becomes his duty to record the first information; and even in the absence of such a first infor- mation if such an officer receives information reading to a suspicion that a cognizable offence has been committed, he has to investigate the case and take all steps necessary for the apprehension and arrest of the persons alleged to have been concerned with the crime. Even in cases which are not, in the first in- stance, of cognizable nature, it becomes the duty of a police officer to investigate such a case if he is so or- dered by a competent magistrate, taking cognizance of the offence under s. 190 of the Code. In all such cases, it becomes the duty of a police officer in-charge of a police station, or of a superior officer if deputed to investigate a case, to follow the procedure laid down .in Chapter XIV of the Code. Under s. 169 of the Code, if, as a result of the investigation under Chapter XIV, the police officer making the investigation, comes to the conclusion that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate, he has to release the accused person if in custody. If, on the other hand, on such an investigation, it appears to the investigating officer that there is sufficient evidence or reasonable ground of suspicion, it becomes his duty to forward the accused to a competent magistrate to try the accused or to commit him for trial. Section 173 of the Code requires the investigation to be concluded without any unnecessary delay and the submission of a report containing the result of the investigation, to a competent magistrate. After the submission of the police report, the police offi- cer in-charge of a police station, before the commencement of the inquiry or trial by a magistrate, has to furnish to the accused, free of cost, a copy of the report aforesaid, of the first information report and of all other documents or relevant extracts thereof, on which prosecution proposes to rely, including statements and confessions, if any, recorded under s. 164, and the statements recorded under sub-s. 3 of s. 161, of all persons whom the prosecution proposes to examine as witnesses.

On receipt of the police report and the documents aforesaid, under s. 173 of the Code, the magistrate concerned has to make up his mind whether the case has to be tried by him or by some other competent magistrate or by a Court of Session or a High Court. If the magistrate finds that the case is triable exclusively by a Court of Session or a High Court, he has to follow the new procedure laid down in s. 207A At the commencement of the inquiry before the magistrate, when the accused appears before him, the magistrate has to satisfy himself that the documents referred to in s. 173 have been furnished to the accused and to have them furnished if the police officer has not done his duty. The magistrate then has to record the evidence of such witnesses as figure as eyewitnesses to the occurrence.- and are produced before him. 'He has also the power, in the interest of justice, to record such other evidence of the prosecution as he may think necessary, but he is not obliged to 'record any evi- dence. Without recording any evidence but after considering all the documents referred to in s. 173 and after examining the accused person and after hearing the parties, it is open to the magistrate to discharge the accused person after recording his reasons that no ground for committing the accused for trial has been made out, unless he decides to try the accused himself or

to send him for trial by another magistrate. If, on the other hand, he finds that the ac- cused should be committed for trial,, he is required to frame a charge disclosing the offence with which the accused is charged. The accused is then required to submit a list of persons whom he wishes to be summoned, to give evidence at his trial. After all this, the case is placed before the Court of Session or the High Court for trial in accordance with the procedure laid down by the Code.

But if the investigating police officer, instead of submit- ting a charge-sheet as required by a. 173, submits what is popularly called the "final report" to the effect that there was no evidence in support of the prosecution case and that it was not a fit case for a trial either by a magistrate or by a Court of Session or High Court, the matter may not end there. It is open to the first informant or any other person interested in prosecuting the accused person, to make a regular petition of complaint before a competent magis- trate under s. 190 of the Code. The magistrate, upon taking cognizance under that section, may start an inquiry of his own, notwithstanding the fact that the police has refused to prosecute the case. The magistrate, in a case triable exclusively by a Court of Session or by a High Court, has to follow the procedure laid down in s. 208 and subsequent sections of Chapter XVIII. The magistrate natu- rally has to make a record of the evidence given by the complainant and such other witnesses as may have been pro- duced in support of the prosecution or on behalf of the accused if the accused chooses to adduce any evidence at that stage. Ordinarily, an accused person does not choose to do so for the fear that he might disclose his defence too early. After recording the evidence adduced on behalf of the prosecution as also on behalf of the accused, if ad- duced, and examining the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, the magistrate may either discharge the accused person if he finds that there is no sufficient ground for committing him for trial after recording his reasons, or direct him to be tried by himself or some other magistrate. The order of discharge may be made by the magistrate even at an earlier stage if he records the reasons for considering the charge to be groundless, or, he may commit the accused for trial after framing a charge declaring the offence with which the accused has been charged. It is also open to an accused person, if the magistrate in his discretion allows him to do so, to examine more witnesses. If after examining those additional witnesses, the magistrate is satisfied that there are no sufficient grounds for committing the accused, he may cancel the charge and discharge the accused. It will, thus, be seen that where the magistrate conducts commitment proceeding as on a complaint, the accused has the advantage of three stages at which he may be discharged. It has, therefore,. been contended on behalf of the appellants that the procedure under s. 207A is less advantageous to the accused than the other procedure. The answer to this con- tention is that the Legislature, in its wisdom, has proceed- ed on the basis that it is primarily the function of the State through its police officers who are charged with the duty of preventing the commission of crime and of bringing offenders to justice, to prosecute criminals or alleged criminals' in serious cases, that is to say, cases involving not only personal injury to the complainant but also public peace and order. Such police officers have been enjoined by law to see to it that all persons alleged to have been concerned in a crime of that character, should be speedily brought to justice. Chapter XIV of the Code, as stated above, lays down the procedure which police officers have to follow. Hence, the Code has provided that all cases involv- ing public peace and order, should be investigated by public servants who are expected to be vigilant in bringing all offenders to justice without any avoidable delay. If the police have not thought it necessary or feasible to do so after following the procedure laid down in Chapter XIV, the private

party may figure before the magistrate as complain- ant The magistrate has got, therefore, to be more vigilant in seeing that private vendetta and considerations other than those of vindicating justice, are not allowed to inter- fere with the administration of public justice. Hence, the procedure laid down in section 208 and the sections follow- ing that section, naturally gives greater facilities to persons accused of an offence, to vindicate their character. As indicated above, there is no doubt that there are materi- al differences in the two procedures relating to commitment according as the case has been investigated by a competent police officer who has submitted a charge-sheet and a report under section 173 of the Code, or, a competent magistrate has taken cognizance of an offence on a complaint. In the latter case, the procedure before the committing magistrate is more elaborate. But is it always to the advantage of an accused person that there should be an elaborate procedure before such a magistrate and not a summary one? It is the avowed policy of the Legislature and there can be no doubt that it is in the general interest of administration of justice, that crimes should be investigated and criminals brought to justice as expeditiously as circumstances of the case would permit. That must also be in the interest of an accused person himself if he claims not to be guilty of any offence. Generally speaking, therefore, only a real offender would be interested in prolonging the inquiry or trial so as to postpone the day of judgment. If a person has been falsely or wrongly accused of an offence, it is in his interest that he should get himself declared innocent by a competent court as early as possible. In view of these considerations, there cannot be the least doubt that the Legislature has been well-advised to amend the procedure relating to commit- ment proceedings in cases which have been investigated by a competent police officer. The Legislature has rightly retained the old elaborate .procedure only in those cases which have not been investigated by such a public officer, or, after investigation, have been declared not to be fit to be proceeded with in public interest.

Having found that there are substantial differences intro- duced by the impugned provisions, we have to consider the question of the constitutionality of those provisions. At the threshold, it is pertinent to observe that these provi- sions have not in any way affected the procedure at the trial. After a case has been committed to a Court of Ses- sion, the procedure for the trial of offences in either class of cases, remains the same. Hence, all those cases which came up to this Court in which it was laid down that the law introduced substantial changes in the procedure at the trial, to the disadvantage of an accused person, have absolutely no relevance to the present case. The main attack on the constitutionality of those provisions is based on Art. 14 of the Constitution. This Court had to consider the provisions of that article in a series of cases, namely, Chiranjit Lal Chowdhuri v. The Union of India (1), The State of Bombay v. F. N. Balsara (2), The, State of West Bengal v. Anwar Ali Sarkar (3), Kathi Raning Rawat v. The State of Saurashtra(4), Lachmandas (1) [1950] S.C.R. 869. (3) [1952] S.C.R. 284. (2) [1951]S.C.R. 682. (4) [1952] S.C.R. 435.

Kewalram Ahuja v. The State of Bombay (1), Qasim Razvi v. The State of Hyderabad(2), Habeeb Mohamad v. The State of Hyderabad(3) The State of Punjab v. Ajaib Singh(4), which were all referred to in the case of Budhan Choudhry v. The State of Bihar(5), which is the nearest case to the case now before us, with this distinction that in that case, there was a difference at the trial stage itself. In that case, the same accused person in respect of the same of- fence, could be tried under section 30 of the Code by a magistrate empowered under that section, and by a Court of Session, if the offence happened to have taken place in a jurisdiction to which section 30 had not been applied.

In that case, this Court upheld the constitutionality of that section of the Code, and repelled the Contention that the provisions of that section infringed the fundamental right to equality guaranteed by art. 14 of the Constitution. In the course of his judgment, Das J. (as he then was) made the following observations which apply to the case in hand with full force :

> "..... It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (1) that the classifi- cation must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (II) that that differ- entia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under considera- tion. It is also well-established by the decisions of this Court that article 14 condemns (1) [1952] S.C.R..710.
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> (2) [I953] S.C.R. 581.
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> (3)[1953] S.C.R. 661.
>
> (4) [1953] S.C.R. 254.
>
> (5) [1955] 1 S.C. R. 1045, 1049.

discrimination not only by a substantive law but also by a law of procedure."

The later case before this Court dealing with. the question of discrimination in respect of provisions of the Code is the one reported in Matajog Dobey v. H.C. Bhari(1). In that case, the constitutionality of section 197 of the Code, was questioned. The contention raised in that case was that the section vested arbitrary power in the Government to grant or withhold sanction which could be withheld or granted at the sweet will of the Executive. This Court overruled that contention and held that a discretionary power is not neces- sarily discriminatory.

Applying the principles laid down by this Court to the case in hand to judge whether or not there has been objectionable discrimination, there could not be the least doubt that the Legislature has provided for a clear classification between the two kinds of proceedings at the commitment stage based upon a very relevant consideration, namely, whether or not there has been a previous inquiry by a responsible public servant whose duty it is to discover crime and to bring criminals to speedy justice. This basis of classification is clearly connected with the underlying principle of admin- istration of justice that an alleged criminal should be placed on his trial as soon after the commission of the crime as circumstances of the case would permit. This classification cannot be said to be unreasonable and not to have any relation to the object of the legislation, namely, a more

speedy trial of offences without any avoidable delay. For the reasons given above, it must be held that there is no discrimination and that the provisions of Art. 14 of the Constitution have not been contravened. The provisions of the Code, impugned in this case, must, therefore, be held to be constitutional. The appeal is, accordingly, dismissed. Appeal dismissed.

(1) 1955] 2 S.C.R. 925.