

Madras High Court

Gandi Appa Razu vs King-Emperor on 11 November, 1919

Equivalent citations: (1920) ILR 43 Mad 330

Author: Krishnan

Bench: Spencer, Krishnan

JUDGMENT Krishnan, J.

1. It is contended on behalf of the petitioner the first accused, that the learned Sessions Judge had no jurisdiction to order his committal to the Sessions on charges under Sections 147 and 304, Indian Penal Code, and that his order to that effect must be set aside.

2. As regards the charge under Section 147, Indian Penal Code, we think the contention is well-founded, as the accused was acquitted by the Sub-Magistrate on that charge, under Section 258, Criminal Procedure Code. So long as that order of acquittal stands, he cannot be again charged and tried for that offence on the same facts. Section 403, Criminal Procedure Code, is a bar to it. It was not open to the Sessions Judge to set aside that acquittal, or to treat it merely as an order of discharge as he seems to have done. His order so far as it refers to Section 147, Indian Penal Code, must therefore be set aside.

3. But the charge under Section 304, Indian Penal Code, stands on a different footing. Though the complaint alleged facts against this accused constituting an offence under Section 302, Indian Penal Code, the Sub-Magistrate disbelieved the evidence on the point, and did not frame any charge under Section 302, or 304, Indian Penal Code. His action amounted in law to an order of discharge on those counts, even though no express order of discharge was recorded by him. See Krishna Reddi v. Subbamma (1901) I.L.R., 24 Mad., 136. That being so, it was open to the Sessions Judge under Section 436, Criminal Procedure Code, to act suo motu and set aside the implied discharge and direct the committal of the accused to the Sessions on being satisfied that he had been improperly discharged, as the offence under Section 304, Indian Penal Code, is one exclusively triable by the Sessions Court.

4. But it is argued that the District Magistrate had passed a previous order, on an application by the complainant, refusing to set aside that discharge, and that that order prevents the Sessions Judge, who is a co-ordinate authority with the District Magistrate, from re-opening the matter, and reliance is placed on the ruling in Kalimuthu v. Emperor (1903) I.L.R., 26 Mad., 477. It was ruled in that case, that under Clause (4) of Section 435, Criminal Procedure Code, it was not competent to the District Magistrate to entertain an application to commit, when the Sessions Judge had already refused to pass such an order, and that the reason of the prohibition applied equally to cases in which the authorities acted suo motu. It would not of course matter whether the District Magistrate or the Sessions Judge acted in the first instance, as they are co-ordinate authorities under the section.

5. It seems to us however that this ruling is not applicable to the facts of the present case. What happened here was that as soon as the Sub-Magistrate framed charges under Sections 147, 323 and 325, Indian Penal Code, against the first accused and while the case was still pending before him,

the first prosecution witness put in an application to the District Magistrate under Section 435, Criminal Procedure Code, asking him to call for the records and direct a committal of the case to the Sessions. The prosecution was a police prosecution though it was on the information of prosecution witness No. 1. The District Magistrate sent the petition to the District Superintendent of Police recording on it that he was not inclined to stay proceedings or to call for the records; finally he rejected the petition on the ground that the police, in whose hands the case was, were satisfied with the procedure of the Magistrate. Now, it will be noticed that at the time the application was made, there was no express order of discharge as to Section 304, Indian Penal Code, nor could an order of discharge be implied under the authority of *Krishna Reddi v. Subbamma* (1901) I.L.R., 24 Mad., 136, above referred to, as the trial had not come to a close as in that case, and it was still open to the Sub-Magistrate to frame further charges' and commit under Section 347, Criminal Procedure Code, if he thought fit to do so. There was thus no order of discharge to revise, and the application cannot be looked upon as one for that purpose. The District Magistrate also seems to have treated it as an incompetent application, as he declined jurisdiction under Section 435, Criminal Procedure Code, and refused to call for the records on the ground that the police were the proper parties to apply and not prosecution witness No. 1. This case is therefore clearly distinguishable from the case quoted. Neither the application, nor the order of the District Magistrate who refused to entertain it and to consider it on the merits, can thus be properly treated in our opinion as a bar to the action taken suo motu by the Sessions Judge in this case. We may observe that, if we considered that there was any difficulty in upholding the Sessions Judge's order, we should have ourselves given notice to the accused and directed his committal to the Sessions under our revisional powers, if we considered it necessary in the ends of justice to do so, as the objection taken cannot apply in any case to our exercise of the powers vested in us. But, as the objection to the Sessions Judge's order so far as it refers to Section 304, Indian Penal Code, fails, it is not necessary to do so.

6. On the merits, there seems to be good reason for directing a trial of this accused in the Sessions Court. Both the Deputy Magistrate, to whom the case of the other accused was sent up for enhanced punishment by the Sub-Magistrate, and the Sessions Judge consider that the way in which the Sub-Magistrate dealt with the case was quite improper. There was a considerable body of evidence against this accused, and the Sub-Magistrate should have properly committed him to the Sessions, and not taken upon himself to discredit the case against him, on the ground of alibi, by giving him "the benefit of the doubt," as he did.

7. The order of committal by the Sessions Judge will therefore be confirmed, subject to Section 147, Indian Penal Code, being struck out of it.