

State of Tamil Nadu

Vs

V. Krishnaswami Naidu and Another

Criminal Appeal No. 292 of 1976

(Syed M. Fazal Ali, P. S. Kailasam JJ)

03.05.1979

JUDGMENT

KAILASAM, J. -

1. The question that arises in this appeal is whether the Special Judge under the Criminal Law (Amendment) Act, 1952 can exercise the power conferred on a Magistrate under Section 167 of the Criminal Procedure Code to authorise detention of the accused in the custody of the police.
2. This appeal by certificate is preferred by the State of Tamil Nadu against an order of the Madras High Court in Cr. M.P. Nos. 1582 and 1605 of 1976 dated April 22, 1976.
3. The first respondent V. Krishnaswami Naidu is the son of the second respondent L. Venkataswami Naidu. The first respondent was the Gazetted Personal Assistant to the former Minister for Health, State of Tamil Nadu. He and the second respondent were arrested by the Vigilance and Anti-corruption unit of the Tamil Nadu Police on April 2, 1976 for alleged offence under the Prevention of Corruption Act. They were produced before the Special Judge on the next day i.e. April 3, 1976. The respondents moved Special Judge for enlargement of bail. The petition was dismissed. The Inspector of Police (Vigilance) moved the Special Judge for committing the respondents to police custody for a period of 15 days. That application was also rejected. In spite of the rejection of this application the police filed Cr. M.P. No. 617 of 1976 before the Special Judge for directing the respondents to be placed under police custody for a period of 15 days. The respondents moved before the High Court Cr. M.P. No. 1582 of 1976 for a direction that the respondent should be kept in judicial custody pending investigation of the crime. The respondents also filed another Cr. M.P. No. 1605 of 1976 for quashing the application Cr. M.P. No. 617 of 1976 before the Special Judge by the police for committing the respondents to police custody on the ground that the Special Judge is not a Magistrate as defined in the Criminal Procedure Code and as such not empowered to act under Section 167 of the Criminal Procedure Code and to place the accused in police custody.
4. In order to appreciate the contention raised in this appeal it is necessary to examine the relevant provisions of the Criminal Law Amendment Act of 1952 and the relevant provisions of the Criminal Procedure Code Act of 1974. The Criminal Law Amendment Act 66 of 1952 was enacted on July 28, 1952 to further amend the Indian Penal Code and the Criminal Procedure Code, 1898 and to provide for a more speedy trial of offences. It may be noted that the Act is in the nature of an Amending Act in respect of the Indian Penal Code and the Code of Criminal Procedure, 1898. Section 6 of the Act enables the State Government by notification in the official gazette to appoint as many Special Judges as may be necessary for such area or areas as may be specified in the

notification to try offences punishable under Sections 161, 162, 163, 164, 165 or 165A of the Indian Penal Code or Section 5 of the Prevention of Corruption Act, 1947, and also in conspiracy to commit or in attempt to commit or in abetment of any of the offences specified. The Special Judge thus appointed to try the offences mentioned shall not be qualified for appointment as a Special Judge under the Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898. Section 7 of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1898 or in any other law the offence specified in Section 1 of Section 6 shall be triable by a Special Judge only. By Section 7(1), therefore, the jurisdiction to try offences mentioned in Section 6(1) is conferred on the Special Judge only. Section 8 is important for the purpose of our discussion and may be extracted in full. The Special Judge is empowered under this section :

(i) to take cognizance of offence without the accused being committed to him for trial; and

(ii) in trying the accused persons he is required to follow the procedure prescribed by the Code of Criminal Procedure in the trial of warrant cases by Magistrates.

5. It may be noted that the Special Judge is not a Sessions Judge, Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure though no person can be appointed as a Special Judge unless he is or has been either a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge. The Special Judge is empowered to take cognizance of the offences without the accused being committed to him for trial. The jurisdiction to try the offence by a Sessions Judge is only after committal to him. Further the Sessions Judge does not follow the procedure for the trial of warrant cases by Magistrates. The Special Judge is deemed to be a Court of Sessions only for certain purposes as mentioned in Section 8(3) of the Act while the first part of sub-section 3 provides that except as provided in sub-sections (1) and (2) of Section 8 the provisions of the Code of Criminal Procedure, 1898 shall, so far as they are not inconsistent with this Act, apply to the proceedings before the Special Judge. The sub-section further provides that for the purpose of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a special judge shall be deemed to be a public prosecutor.

The deemed provision has to be confined for the purposes mentioned in the sub-section. Section 8(2) enables the Special Judge to tender a pardon to a person with a view to obtaining evidence supposed to have been concerned with the commission of an offence and the pardon so tendered was for the purposes of Section 339 and 339(a) of the Code of Criminal Procedure, 1898. This sub-section was enacted because Special Judge not being a Court to which a commitment has been made cannot tender pardon under the provisions of Section 338 and so this section is introduced to enable the Special Judge to tender a pardon. Sub-section 3(a) has made the provisions of Sections 350 and 549 applicable to proceedings before a Special Judge and for the purposes of the said provisions a Special Judge shall be deemed to be a Magistrate. Section 350 of the Code of Criminal Procedure enables a succeeding Special Judge to act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself. Section 549 empowers a Magistrate when any person is brought before him charged with an offence for which he is liable to be tried by a court to which this Code applies or by a court-martial, the Magistrate shall deliver him to the Commanding Officer of the Regiment for the purpose of being tried by the court-martial. This provision also is made specifically applicable to the Special Judge. Section 8(A) empowers the Special Judge to try certain offences in a summary way and the provisions of Sections 262 to 265 of

the Criminal Procedure Code is made applicable so far as they may apply.

6. It will be thus seen that Section 8(1) empowers the Special Judge to take cognizance of offence without committal and directs that in trying the accused persons it shall follow the procedure prescribed by the Code of Criminal Procedure. Sub-section 3 deems a Special Judge to be a Court of Session for certain purposes while sub-section (2) empowers the Special Judge to grant a tender of pardon. Sub-section 3(a) makes the provisions of Sections 350 and 549 of the Code of Criminal Procedure applicable to the Special Judge and for the purposes of those provisions the Judge is deemed to be a Magistrate. Under Section 8(A) the Special Judge is empowered to try cases summarily which are triable by the Magistrate. The Special Judge in the Criminal Law (Amendment) Act is thus for some purposes deemed to be a Sessions Judge and for some other purposes deemed to be a Magistrate and some powers exercised by the Magistrate are conferred on him. It is necessary to note that Special Judge is empowered to take cognizance without the accused being committed and in trying the accused persons he is required to follow the procedure for trial of warrant cases by a Magistrate. Under Section 8(3) except as regards the provisions in sub-sections (1) and (2) the provisions of Code of Criminal Procedure is made applicable insofar as they are not inconsistent with the Criminal Law (Amendment) Act. This taken along with the fact that the Criminal Law (Amendment) Act is an Amending Act so far as the Criminal Procedure Code and Indian Penal Code are concerned the provisions of CrPC should be considered to be in force unless there are certain provisions in the Criminal Law (Amendment) Act which is inconsistent with the provisions of the Criminal Procedure Code.

7. We will now examine the provisions of Section 167 of the Criminal Procedure Code. Section 167 of the Criminal Procedure Code requires that whenever any person is arrested and detained in custody and when it appears that the investigation cannot be completed within a period of 24 hours the police officer is required to forward the accused to the Magistrate. The Magistrate to whom the accused is forwarded if he is not the Magistrate having jurisdiction to try the case may authorise the detention of the accused in such custody as he thinks fit for a term not exceeding 15 days on the whole. If he has no jurisdiction to try the case and if he considers that further detention is necessary he may order the accused to be forwarded to any Magistrate having jurisdiction. The Magistrate having jurisdiction may authorise the detention of the accused person otherwise than in custody of the police beyond the period of 15 days but for a total period not exceeding 60 days. In the present case the accused were produced before the Special Judge who admittedly is the person who has jurisdiction to try the case. The contention which found favour with the High Court is that the words 'Magistrate having jurisdiction' cannot apply to a Special Judge having jurisdiction to try the case. No doubt the word 'Special Judge' is not mentioned in Section 167 but the question is whether that would exclude the Special Judge from being a Magistrate having jurisdiction to try the case. The provisions of Chapter XII CrPC relate to the information to the police and their powers of investigation. It is seen that there are certain sections which require the police to take directions from the Magistrate having jurisdiction to try the case. Section 155(2) requires that no police shall take up non-cognizable case without an order of the Magistrate having power to try such case or commit the case for trial. Again Section 157 requires that when the police officer has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report. Section 173 requires that on the completion of every investigation under the chapter the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence a police report as required in the form prescribed. Section 8 of the Criminal Law Amendment specifically empowers the Special Judge to take cognizance of the offence without the accused being committed to him. In taking cognizance of an offence without the

accused being committed to him he is not a Sessions Judge for Section 193 CrPC provides that no Court of Session Judge shall take cognizance for any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code. Strictly he is not a Magistrate for no Magistrate can take cognizance as a Court of Session without committal. The Criminal Law (Amendment) Act being an amending Act the provisions are intended to provide for a speedy trial of certain offences. The Criminal Law (Amendment) Act is not intended to be a complete Code relating to procedure. The provisions of the CrPC are not excluded unless they are inconsistent with the Criminal Law (Amendment) Act. Thus read there could be no difficulty in coming to the conclusion that the CrPC is applicable when there is no conflict with the provisions of Criminal Law (Amendment) Act. If a Special Judge who is empowered to take cognizance without committal is not empowered to exercise powers of remanding an accused person produced before him or release him on bail it will lead to an anomalous situation. A Magistrate other than a Magistrate having jurisdiction cannot keep him in custody for more than 15 days and after the expiry of the period if the Magistrate having jurisdiction to try the case does not include the Special Judge, it would mean that he would have no authority to extend the period of remand or to release him on bail. So also if the Special Judge is not held to be a Magistrate having jurisdiction, a charge-sheet under Section 173 cannot be submitted to him. It is relevant to note that the General Clauses Act, Section 32 defines a Magistrate as including every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force. Section 3 of the Criminal Procedure Code provides that any reference without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires in the manner stated in sub-sections. If the context otherwise requires the word 'Magistrate' may include Magistrates who are not specified in the section. Read along with the definition of the Magistrate in the General Clauses Act there can be no difficulty in construing the Special Judge as a Magistrate for the purposes of Section 167.

8. In coming to the conclusion that the Special Judge is not a Magistrate the High Court strongly relied on a decision of this Court in *Major E. G. Barsay v. State of Bombay* ((1962) 2 SCR 195 : AIR 1961 SC 1762 : (1961) 2 Cri LJ 828). This Court in construing Rule 3 made under Section 549 of the Criminal Procedure Code held that the rule was applicable to only a Magistrate and not to a Special Judge who is not a Magistrate within the meaning of Rule 3. Section 549 of the Code of Criminal Procedure empowers the Central Government to make rules as to cases to which persons subject to military, naval or air force shall be tried by the Court to which this Code applies, or by a court-martial. The Central Government made rules in exercise of the powers conferred on it under this section. Rule 3 which is considered by the Court runs as follows :

Where a person subject to military, naval or air force law is brought before a Magistrate and charged with an offence for which he is liable to be tried by a court-martial, such Magistrate shall not proceed to try such person or to inquire with a view to his commitment for trial by the Court of Session or the High Court for any offence triable by such Court, unless,

- (a) he is of opinion, for reasons to be recorded that he should so proceed without being moved thereto by competent military, naval or air force authority, or
- (b) he is moved thereto by such authority.

9. Rule 3, it will be seen, provides that the Magistrate shall not proceed to try such person or inquire with a view to his commitment for trial by the Court of Session Judge unless he is of opinion that he should so proceed without being moved thereto by such authority. The sub-section, therefore,

contemplates a Magistrate who can try the offence himself or inquire with a view to commitment. This part of the section is not applicable to a Special Judge as he cannot inquire with a view to his commitment. Therefore, the Magistrate referred to under Rule 3 cannot include a Special Judge. This Court observed that Section 549 is not one of the sections in Chapter 21 of the Code of Criminal Procedure and that it does not empower the Central Government to modify the warrant procedure and that Rule 3 would not be applicable and further it cannot be said that by reason of the procedure to be followed by a Special Judge he would be a Magistrate empowered to try such a person within the meaning of Rule 3. Relying on this decision the learned Judge held that the same ratio would govern the facts of the present case. The learned Judge was in error in applying the decision of this Court relating to Rule 3 which is framed under Section 549 to Section 167 of the CrPC. The Magistrate contemplated under Rule 3 is a Magistrate who is empowered to inquire with a view to committal which cannot apply to Special Judge.

10. In the result, on consideration of the relevant provisions of the Criminal Law (Amendment) Act and the CrPC we have no hesitation in coming to a conclusion that a Special Judge would be a Magistrate empowered to try a case under Section 167 of the CrPC. The Special Judge will proceed to exercise the powers that are conferred upon a Magistrate having jurisdiction to try the case. The appeal is allowed and the order of the High Court set aside.

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