

## MYSORE HIGH COURT

M. Pavalappa

Vs

State of Mysore

Criminal Revn. Petn. No. 237 of 1956

(Sreenivasa Rao and Hombe Gowda, JJ.)

10.10.1956

### JUDGMENT

**Sreenivasa Rao, J.**

1. In this petition the accused challenges the legality of his commitment under Section 207-A of the Code of Criminal Procedure for trial by the Court of Session for an offence under Section 333, I. P. C. The ground urged is that such a commitment without taking the evidence of persons alleged, to be witnesses to the actual commission of the offence is contrary to the provisions of Section 207-A (4). It is not disputed by the prosecution that there are such witnesses. It is seen that the prosecuting Inspector submitted to the Court that he did not intend to examine any eye-witnesses in the committal Court, that thereupon the accused filed an application that persons cited as eye-witnesses may be summoned and examined and that the Magistrate refused the request. The accused took up the order of the learned Magistrate refusing to summon the eye-witnesses in revision to this Court in Criminal R. P. 83/56 and this Court dismissed that petition on the ground that it was not necessary to express any opinion at that stage about the correctness of the course adopted by the learned Magistrate. Thereafter the learned Magistrate looked into the F. I. R. and other documents furnished by the prosecution and made the committal order which is now challenged. The learned Magistrate in rejecting the accused's application for calling the eye-witnesses took the view that if the prosecution did not produce the witnesses he could not compel them to do so. It is contended by the learned advocate for the accused that in an inquiry into cases triable by the Court of Session or High Court it is obligatory for the Magistrate under the above provision i.e., section 207-A, to examine eye-witnesses before he arrives at a conclusion whether the accused is to be discharged, tried before himself or some other Magistrate or committed for trial, in contrast to the procedure prescribed for the trial of warrant cases in regard to which under Section 251-A it is not necessary to examine any witnesses before a charge is framed. The learned Advocate has relied upon certain observations in the order of this Court in *Krishna v. State of Mysore*<sup>1</sup>, which read as follows :

"It was contended by the learned Counsel for the petitioners that if this should

<sup>1</sup> Cr. R.P. 245/56 : AIR 1957 Mys 5

be the view, then no difference exists between Section 207-A and Section 251-A. It is not

correct to say that there is no difference between the procedures laid down in these two sections. Section 207-A deals with an enquiry before a Magistrate where the case is triable exclusively by a Court of Session or High Court, and Section 251-A relates to the procedure to be followed in the trial of warrant cases instituted on police reports.

Under Section 251-A it is not obligatory on the part of the Magistrate to record any evidence either of witnesses to the actual commission of the offence or otherwise and he can frame a charge solely depending upon the documents produced on the side of the prosecution and referred to in Section 173 of the Criminal Procedure Code, whereas under Section 207-A (4) it is incumbent on the Court to examine witnesses as to the actual commission of the offence. This is the main difference between the two sections. Therefore it is futile to contend that there is no difference between the procedures laid down in the two Sections 207-A and 251-A." Those observations however have to be read in the context of that case. No eye-witnesses were cited for the prosecution in that case. The accused contended that nevertheless it was obligatory for the Committing Magistrate to record evidence before he committed the accused. This Court contrasted Sections 207-A and 251-A in considering that question and indicated that the examination of eye-witnesses was contemplated under Section 207-A while it was not contemplated under Section 251-A. There was no occasion to express any opinion on the point that has arisen for consideration now.

2. The view taken by the learned Magistrate that he could not compel the prosecution to examine eye-witnesses appears to be based upon the words in Section 207-A (4) viz.,

"The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged." He seems to think that it is entirely open for the prosecution to produce or not to produce such witnesses for giving evidence. Though there is some warrant for this view in a strictly grammatical construction of the wording, it appears to us that such cannot be the intention of that provision. It would mean that even though the prosecution itself stated in its report or charge-sheet that there were eye-witnesses the Magistrate, in the event of the prosecution deciding not to examine such witnesses, would be compelled to arrive at a decision on the material made available to him by the prosecution under Section 173, Criminal P. C., whether the accused should be committed, tried before himself or some other Magistrate or discharged. This may lead to an anomalous situation. If the Magistrate felt that the documents placed before him without further elucidation by way of evidence of the eye-witnesses would not enable him to commit the accused or put him on trial before the Magistrate he would have no option but to discharge the accused.

It is seen that the latter part of Section 207-A (4) provides that after taking the evidence of such eye-witnesses if any as may be produced by the prosecution the Magistrate if he is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution he may take such evidence also before coming to a decision whether the accused should be committed, tried by himself or some other Magistrate or discharged. This would mean that while the Magistrate could if he thought it necessary, compel

the production of witnesses other than eye-witnesses, he could not call upon the prosecution to produce eye-witnesses themselves. This obviously is an illogical position. It is no doubt true that the object of the amendments to the Code of Criminal Procedure including those under Section 207-A is to simplify and expedite the proceedings. But the Legislature has naturally introduced different degrees of simplification having regard to the gravity and nature of the trial. In regard to inquiries which might lead to commitment the Legislature has thought it necessary that before the Magistrate decides to commit the accused for trial he should satisfy himself by examination of eye-witnesses that there was a prima facie case against the accused. We must therefore uphold the contention of the learned Advocate for the accused.

3. The revision petition purports to be under Sections 435 and 215 of the Code of Criminal Procedure. In the context in which Section 215 stood prior to the recent amendment, a commitment whether in any proceedings instituted on a Police report or in any proceeding instituted otherwise than on a Police report could be quashed by this Court. That is because Section 213 covered all cases of commitment. But now commitment in a proceeding instituted on a police report is to be made under Section 207-A. The addition of the words "in any proceeding instituted otherwise than on a Police report" at the beginning of Section 208 (1) and the sequence of the succeeding sections seem to confine a commitment under Section 213 only to that resulting from a proceeding instituted otherwise than on a Police report. It would therefore appear that on a literal construction a commitment under Section 207-A cannot be quashed by this Court under Section 215. It is difficult to say whether it could have been the intention of the Legislature to take away the power of this Court under Section 215 to quash a commitment in proceedings instituted on a Police report. We do not however think it necessary to go further into this question since we feel satisfied that if Section 215 is strictly inapplicable we must in this case exercise our powers under Section 561-A of the Code of Criminal Procedure.

4. We accordingly allow this revision petition, set aside the committal of the accused and direct the learned Magistrate to examine such persons as have been cited by the prosecution as witnesses to the actual commission of the offence alleged and proceed with the case according to law.

Revision petition allowed.