

# ORISSA HIGH COURT

State (Orissa)

Vs

Anadi Betankar

Criminal Ref. No. 39 of 1957

(R.L. Narasimham, C.J.)

13.12.1957

## ORDER

### **R.L. Narasimham, C.J.**

1. This is a reference by the Sessions Judge of Mayurbhanj recommending the quashing of a commitment order dated the 11th June 1957 passed by the Magistrate First Class, Champua, after framing a charge under Section 302/34 I. P. C. against the members of the opposite party.

2. The main ground in support of the reference is that the learned Magistrate committed the accused persons for trial before the Court of Session without examining the "witnesses to the actual commission of the offence as required by sub-section (4) of Section 207-A, Criminal Procedure Code (as recently amended). It appears that the learned Magistrate, after perusing the Police papers and hearing the parties, and examining the accused persons thought that a prima facie case was made out. He committed the accused for trial before the Court of Session after framing a charge under Section 302/34 I. P. C.

3. The order of the Magistrate is clearly unsupportable. Sub-section (4) of Section 207-A Criminal Procedure Code says that at the commencement of the enquiry the Magistrate shall 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. It is not denied that there are six or seven witnesses to the actual commission of the offence in the present case. The Magistrate should have examined them under Section 342 (Sic) Criminal Procedure Code Presumably the learned Magistrate thought that the use of the expressions 'if any' and 'as may be produced' in sub-section (4) of section 207-A/ would support the view that the examination of witnesses to the actual commission of the offence was entirely discretionary with him. In this view he is clearly wrong. If there are witnesses to the actual commission of the offence, he has no option but to examine them before commencing the enquiry. The learned Sessions Judge has rightly relied on *State v. Govindan Tampi*<sup>1</sup>, *State v. Ramratan Bhudan*<sup>2</sup>, and *M. Pavalappa v. State of Mysore*<sup>3</sup>, in support of this view.

4. Without examining any witnesses during the commitment enquiry the learned Magistrate

examined the accused persons under Section 342, Criminal Procedure Code Sub-Section (6) of section 207-A Criminal Procedure Code says that such examination of the accused should be made for the purpose of enabling him to explain the circumstances appearing in the evidence against him. A statement made before a Police officer during investigation is not evidence, and unless independent evidence is taken against him before the committing Magistrate, it would not be proper for the Magistrate to examine the accused under Section 342 Criminal Procedure Code and question him about the materials collected against him during Police investigation. The accused is bound to be prejudiced by such examination inasmuch as that statement would be used in the Court of Session as evidence against him, under section 287 Criminal Procedure Code

5. I have, therefore, no doubt that the Magistrate committed a serious illegality in not complying with the provisions of sub-section (4) of Section 207-A, Criminal Procedure Code The order of commitment dated the 11th June 1957, passed by the Magistrate is quashed and he is directed to commence the enquiry under Chapter XVIII of the Criminal Procedure Code, afresh and dispose of the case according to law.

6. This reference by the Sessions Judge was made when the sessions trial on the basis of the commitment was about to close. He should have carefully perused the order of commitment and noticed the illegality before the commencement of the trial itself and then recommended to this Court for quashing of the commitment order, instead of allowing the trial to reach such an advanced stage thereby causing unnecessary harassment to the parties. If and when a fresh commitment is received I hope the Sessions Judge will expedite the hearing of the Sessions case. Order accordingly.

#### Cases Referred.

<sup>1</sup> AIR 1957 Tra-Co. 29 (A)

<sup>2</sup> AIR 1957 Mad Bha 7 (B)

<sup>3</sup> AIR 1957 Mys 61