Rex Vs. Matoley and ors.

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Court : Allahabad

Decided On : Jul-28-1948

Reported in : 1949CriLJ59

Judge : Waliullah, ; Sankar Saran and ; Raghubar Dayal, JJ.

Appellant : Rex

Respondent : Matoley and ors.

Judgement :

Waliullah, J.

1. This is a reference by the learned Sessions Judge of Orai, recommending that an order of commitment made by a Magistrate of the first class be quashed and that the Magistrate be directed to proceed with the trial of the case. This case came up before one of us but in view of the importance of the questions involved in it, and further in view of conflicting authorities on these questions it has been referred to a Full Bench.

2. It appears that on 13th November 1945, in the after-noon at about 3 P. M. a fight occur, red between two sets of villagers of village Umrar, P. Section Orai, District Jalaun. As a result of injuries received in the fight one Lalloo Ahir lost his life. One Shyam Behari filed a complaint against four brothers viz., Matoley, Lalloo, Hira Lal and Har Dayal under Section 323, Penal Code, read with Section 24, Cattle Trespass Act. Under; orders of a Magistrate police investigation followed as a result of which a case against Matoley, Hira Lal, Lalloo and others under Section 323, Penal Code, read with Section 24, Cattle Trespass Act, was sent up to the Court of the Magistrate for trial. There was also a cross-case against Shyam Behari and Ors., under 3. 304, Penal Code, in respect of the death of Lalloo. The learned Magistrate committed Shyam Behari and Ors. to the Court of session, to stand their trial for an offence under Section 304, Penal Code. Subsequently on 4th June 1946, the learned Magistrate committed Matoley, Hira Lai and Har Dayal, the accused in the cross-case also, to the Court of Session, to stand their trial under Section 323, read with Section 24, Cattle Trespass Act. The only reason for committing Matoley and others to the Court of Session, was that it was a cross-case to the case under Section 304, Penal Code, against Shyam Behari and others which had already been committed to the Court of Session.

3. Following a decision by a learned single Judge of this Court as well as a similar decision:by a learned Judge of the Madras High Court, the learned Sessions Judge has expressed the view that the commitment of Matoley and others to the Court or Session, was bad in law. He has referred the case to this Court with the recommendations mentioned above.

4. The main question which we have to decide is whether the order of commitment of Matoley, Hira Lal and Har Dayal to the Court of Session in the circumstances of the present case is a valid order. At the very outset it must be observed that the question is not free from difficulty and there is a serious conflict of judicial opinion on the point.

5. First of all I proceed to examine the cases decided by this Court which have been cited before us.

6. (i) The first case to be noticed is the ease of Empress v. Behari and Ors., 1886 A. W. N. 256. It was a reference by the Sessions Judge recommending that the commitment of Behari and others to the Court of Session for trial on a charge under Section 143, Penal Code, be quashed, and the Magistrate be directed to try the case himself, There were two cross-cases- one under Section 147 and Section 304, Penal Code. This was committed to the Court of Session. The cross-case was one under Section 143, Penal Code, only. The learned Magistrate professing to exercise the discretion vested in him by Section 207, Criminal- P. C, expressed the opinion that the case under Section 143, Penal Code, ought to be tried by the Court of Session.

7. Dealing with the reference Edge C. J. expressed himself thus:

A Magistrate should not Bend up for trial by the Court of Session oases which the Magistrate has jurisdiction to dispose of, unless there be some good cause for sending such oases to the Court of Session, as for instance, if the Magistrate considers the punishment which he can award would be inadequate.

He went on to observe that a Magistrate had a discretion under Section 207, Criminal P. C, and such discretions, when exercised by him, are not lightly to be interfered with by him. Eventually as there was no point of law involved in the case, the commitment was not quashed under Section 215, Criminal P. C.

8. (ii) King-Emperor v. Bharam Singh, 3 A. G. E. 14 : 1906-3 A. L. J. p. 14: 8 Cr. L. J. 94). In this case an affray, or riot, occurred between a zamindar's party on one side and a tenant's party on the other. The police sent up be to parties for trial. The Magistrate committed for trial four of the zamindar's party under Sections 304 and 325, Penal Code, on the ground that they had exceeded their right of private defence. He also committed for trial Dharam Singh, one of the tenants on charges under Sections 352 and 447, Penal Code, as he considered it desirable to have be to cases tried together by the Sessions. The Sessions Judge made recommendation for the quashing of the commitment of Dharam Singh under Sections 352 and 447, Penal Code, on the ground that neither charge was triable by the Court of Session, and the maximum punishment be to of imprisonment and of fine, was within the powers of a Magistrate of the first class.

9. Knox J. ordered that the commitment should be quashed, firstly, because there was no warrant for the commitment of such cases, it being a summons case, and secondly, because the Magistrate could adequately punish the offender. After referring to Section 254, Criminal P. C, the learned Judge went on to observe:

The law therefore requires that cases of this kind be tried by a Magistrate and not be committed to a Court of Session, I hold that the commitment of Dharan Singh is wrong on a point of law.

10. It must be observed that in this case the learned Judge considered only two aspects of the case : i) that the case before him was a summons case which had been dealt with according to the procedure contained in chap. 20 of Criminal P. C, where there is no provision either for framing a charge against the accused person or for committing him to the Court of Session; (ii) he referred to Section 254, Criminal P. C. which occurs in the chapter giving the procedure for the trial of warrant cases. There is no reference to any other section of the Code.

11. (iii) King-Emperor v. Jagmohan and Ors., 6 A. L. J. E. 989 : 11 Cr. L. J. 54). In this case the accused Jagmohan and Ram Bharose had been committed to the Court of Session for trial for an offence under Section 211, Penal Code. The learned Sessions Judge recommended that the commitment of the case be quashed. In dealing with the reference Tudball J. held that the charge against the accused was one that was well within the jurisdiction of the Magistrate The only ground for commitment given by the Magistrate was that the offence fell within para. 2 of B, 211, Penal Code, and in that respect the learned Magistrate had clearly committed an error of law. On this ground the commitment was quashed and it was observed that it would be sheer waste of time if such cases were committed to the Court of Session-. It seems to me that no particular principle of general applicability was laid down by the learned Judge.

12. (iv) Emperor v. Bindeshri Goshain and Anr., 41 all. 454 : A.I. R. (6) 1919 all. 366: 20 Cr. L. J. 273). In this case the commitment of Bindeshri Goshain and Bindeshri Ahir, the accused persons, was quashed on the ground that the commitment was bad in law and the Magistrate did not say in his order of commitment that the sentence which he could impose, would not be adequate to meet the ends of justice. A reference was made to Section 254, Criminal P. G., and it was said that the Magistrate should have tried the case himself unless he considered that he could not punish the offence adequately. It seems to me that the decision in this case does not throw any light on the real question which has to be decided in this case.

13. (v) Emperor v. Ram Jatan, (1923) 21 A.L.J. E. p 420 : A.I.R. (11) 1924 ALL. 185: 25 Cr. L. j. 666.) In this case, a man, Ram Jatan, had been charged under Section 894, Penal Code. The learned Magistrate of the first class, who committed the accused to the Court of Session, stated as his reason for commitment that he himself was a witness to the identification proceedings. The Sessions Judge recommended for the quashing of the commitment, on the ground that it was a petty case. The learned Sessions Judge after referring to Section 254, Criminal P. C, expressed the view that the Magistrate himself was competent to try the case and that he (the Magistrate) could have committed the case to sessions only in case he considered he could not pass adequate sentence which in this case evidently he did not think. Ryves J. in a very brief judgment accepted the reference and quashed the commitment for the reasons given by the learned Sessions Judge.

14. (vi) Criminal Appeal No. 398 of 1942, Bam 'Lai Singh and Ors. v. King-Emperor (decided on 14-10-42). In this case no steps appear to have been taken for getting the commitment to the Court of Session quashed. After commitment the trial actually took place and it resulted in the conviction of the accused persons. At the hearing of the appeal against the order of conviction, a point of law was raised to the effect that the charge against the accused being under Sections 147, 852, Penal Code, only, there was no case triable by the Court of Session and hence the commitment to that Court by the learned Magistrate was illegal. This contention was repelled by Mulla J.

who in this connection referred to Sections 28, 206 and 207, Criminal P. 0. It was argued in that case that the learned Magistrate should have followed the procedure prescribed for the trial of warrant cases in Chap. 21, Criminal P. C, and Should not have committed the accused to the Court of Session. The learned Judge in dealing with this part of the case observed that the arguments of the learned Counsel ignored certain other provisions of the law which gave a discretionary power to the Magistrate to commit a case to the Court of Session which, in his opinion, ought to be tried by the Sessions Judge. Referring to Section 206, Criminal P. C, the learned Judge observed:

This section also gives a very wide discretion to the Magistrate and it shows beyond any doubt that a case involving an offence which is not exclusively triable by the Court of Session may yet be committed for trial to that Court if the Magistrate is of the opinion that it ought to be so tried.

15. (vii) Criminal Appeal No. 408 of 1944, Basdeo and Ors. v. King Emperor : AIR1945All340 . This was a case relating to an offence under Sections 147 and 323 read with Section 149, Penal Coda. It appears that there were two cross-cases, one under Section 304, Penal Code, which was committed to the Court of Session. Later the other case under Sections 323 and 147, Penal Code, read with Section 149, Penal Code, out of which the appeal arose, was also committed to the Court of Session, and the reason for commitment was that the cross-case had already been committed. After that the casa under Sections 147 and 323 read with Section 149, Penal Code, was tried and resulted in a conviction. At the hearing of the appeal by this Court before Braund J., it was contended that the commitment of this case was illegal. The learned Judge appears to have followed the case of Dharam Singh v. King-Emperor (3 A. L J. 14:3 Cr. L. J. 94) and held that Section 254, Criminal P. C, made it obligatory on the Magistrate but he distinguished the case of Dharam Singh, (3 A.L.J. 14: 3 Cr. D. J. 94) as well as the case of Bam Jattan, (A.I.R. (11) 1924 ALL, 185: 25 Cr. L. J. 665) on the ground that they were oases in which committal orders were quashed at the stage of commitment before they had proceeded to trial in the Court of Session. The learned Judge held that there was a mere irregularity in the commitment proceeding which was condoned by Section 537, Criminal P. C.

16. (viii) King-Emperor through Bachan Lal v. Subedar Singh and Ors. : AIR1946All365 . This is the most recent case of this Court in which the preceding case-law of this Court as well as of some other Courts has been ' considered at length by a Bench of two learned Judges of this Court, Yorke and Bennet, JJ. It appears that there were two cross cases and in one a charge was framed under Section 307, Penal Code. That case had, therefore, to be committed for trial to the Court of Session. In the cross, case the offences under Sections 147 and 323 read with Section 149, Penal Code, and Section 22, Cattle Trespass Act, were involved. All of these offences were triable by a Magistrate of the first class. The learned Magistrate, however, committed the accused for trial to the Court of Session on the ground that as he had committed the cross case to the Court of Session, the interest of justice demanded that this case should also be committed to that Court. On a reference made by the Assistant Sessions Judge, a Bench of two learned Judges of this Court, Yorke and Bennet JJ., held that the commitment of the accused in the latter case was illegal. Yorke J., who delivered the principal judgment, has re. viewed the authorities of this Court as also of some other High Courts on this question. The view expressed by Mulla J., in the criminal appeal of Bam Lai Singh and Ors. v. King Emperor (Cri. App. No, 898 of 1942 dated 14-10-1942) was dissented from in this case and learned Judges, in this

connection, expressed their opinion that:

In the light of the provisions of Section 254 of the Code and the previous decisions of this Court, the view expressed be Mulla J. in the unreported case ought not to by followed.

17. In this opinion Yorke J., adhered in criminal Appeal No. 37S of 1946 decided on 7-10-1946. On the other hand Mulla J,, in another case which is unreported, King-Emperor v. Jahangira and Anr., Cri. Ref. No. 186 of 1946, decided on 11-9.1946, re-affirmed the view held by him prior to the Bench decision in King Emperor through Bachan Lai v. Subedar Singh and Ors. : AIR1946All365 and expressed himself thus:

With respect to the' learned Judges of this Court I must record that I am unable to agree with the interpretation put by them upon Sections 254 and 207 and I find myself, on the other hand, in entire agreement with the view taken by the Madras High Court.

18. So far I have briefly noticed all the cases decided by this Court, whether reported or unreported, to which our attention has, been invited in the course of the hearing of this case. Broadly speaking the position is this: In a large number of cases decided by this Court reference has been made to the provisions of Section 254, Criminal P. C, and it has been held that that section makes it obligatory for the Magistrate of the first class to frame a charge and to . proceed with the trial of the case unless he be of opinion either that he was not competent to try the case or that he cannot adequately punish the offender. It is only in the Bench decision given in the case of King-Emperor through Bachan Lai v. Subedar Singh and Ors. : AIR1946All365 that there is a reference to some other sections as well, e.g., Sections 28, 206, 207 and 347, Criminal P. C; but, here again the judgment rests on the interpretation of Section 254, Criminal P.O., alone for at p. 142 Yorke J. observes thus:

As I understand it, the clear implication of the words of Section 254 is that in any case shown in the second schedule as triable by a Magistrate which has been begun as a warrant case the Magistrate is be und by Section 254 to proceed to frame a charge and dispose of the trial himself unless the offence is one which in his opinion could not be adequately punished by him, Section 207, as it seems to me, covers those cases in which ab initio the Magistrate is able by consideration of the complaint or the police charge-sheet to form an opinion that the case though not exclusively triable by the Court of Session is one which ought to be tried by that Court because he will be unable to inflict adequate sentence if the caae results in conviction.

19. Dealing with SB. 207 and 347, Criminal P. C, the learned Judge expressed himself thus:

In my judgment, neither Section 207 nor Section 34? should be read as giving a Magistrate an absolute discretion in the matter, subject only to his forming the opinion on some ground or other that the case ought to be tried by the Court of Session (S. 207) or it is apparent to him that the case is one which ought to be tried by a Court of Session (S. 347).

20. On the other hand, Edge C. J,, in Empress v. Behari, (1886) A. w. N. 256, expressed the view that a Magistrate had a wide discretion under Section 207, Criminal P. C,, and could therefore commit a case to the Court' of Session for any

good reason. Further in the unreported cases referred to above, Mulla J. has sounded a note of dissent from the view which appears to have been consistently held in a large number of cases decided by this Court and he has preferred to follow the view expressed by the Madras High Court on this point.

21. Next I come to cages decided by other High Courts. The first case that I should like to notice is that of Queen-Empress v. Kayemullah Mandal and Ors., 24 cal, 429:(I. C. W. N. 414), decided by two learned Judges of the Calcutta High Court, Eampini and Stevens JJ. The order of commitment in this ease related to an offence under Section 147, Penal Code, It was held that although the offence was exclusively triable by a Magistrate its commitment to the Court of Session was not necessarily illegal. It was further held that there is nothing in Section 254, Criminal P. C, which prevents a Magistrate from committing a case under Section 147, Penal Code, to the Court of Session provided he finds that the accused has committed an offence which, in his opinion, cannot be adequately punished by him, This-case is not very helpful on the crucial question that we have to decide in this case.

22. Next reference may be made to the case of Emperor v. Ali and Ors. A.I.R. (4) 1917 Lah. 251 : 18 cr. L, J. 524), decided by Chevis J. In this case the Magistrate committed certain persons to the Court of Session for trial for an offence under Section 147, Penal Code. The offence was obviously triable by a Magistrate but he committed the accused to the Court of Session simply because the opposite party of rioters had been committed to the Sessions Court as they were charged with offences under Sections 304, 325 and U8, Penal Code. The learned Sessions Judge made a reference to the High Court suggesting that commitment was illegal and recommending that it be quashed. Reliance was placed by the Sessions Judge upon Queen Empress v. Kayemullah Mandal, 24 cal. 429 : 1 c, w. n. 414), Emperor v. Dharam Singh, 3 A. L. j. 14 : a Cr. L. J. 94), King-Emperor v. Pema Ranchhod, 4 Bom. L, E. 85. Chevis J. while recognising that the cases referred to by the learned Sessions Judge seemed to hold that the only good reason for commitment of a case to the Court of Session is that the Magistrate is not compe- tent to try the case or to pass an adequate sentence, pointed out that the Magistrate was be und to frame a charge even in proceedings under chap. 18 unless he discharges the accused. The view that Section 251 lays down imperatively that the Magistrate shall frame a charge was Hot accepted by the learned Judge as a good reason for holding that the power of commitment was thereby excluded; the learned Judge pointed out, it seems to me very rightly, that even in proceedings under chap. 18 the Magistrate is be und unless he discharges the accused to frame a charge in writing. Further the learned Judge pointed out, and it seems to me very properly, that the words 'ought to be tried' occurring in Sections 207 and 347 of the Code were very significant. If the Legislature intended to lay down that the Magistrate should never commit a case to sessions except when he found that the offence was beyond his jurisdictional powers of trial or punishment, it would not have used the words 'ought to be tried' in Sections 207 and 847 of the Code. These words were quite wide and seemed to cover all adequate reasons for commitment. The learned Judge was fully alive to the current of authority against his view but, as he put it, he claimed the support of one ruling at least, viz,, Empress v. Bihari, (1886) 4 A.W.N. 256. It was therefore held:

The commitment of a case to the Court of Session which can adequately be dealt with by the Magistrate himself in, in the total absence of any cause for commitment, illegal, but where there is any good cause why the case should be tried by the Court of Session the commitment should be made and that such cause is not always limited

to incompetency of the Magistrate to try the case or to pass an adequate sentence.

23. Next, reference may be made to the case of Crown Prosecutor v. Bhagavathi, 42 Mad. 83 : A.I.R. (6) 1919 Mad. 907: 19 Cr. L.. J. 997) decided by two learned Judges - Sadasiva Ayyar and Napier JJ. of that Court. In this case the learned Judges had to consider the important question whether Section 254 made it imperative for the Magistrate, if the offence could be adequately punished by him, to try the case till the end and whether it imperatively forbade him from committing the case to the sessions. The learned Judges after considering various provisions contained in the Code of Criminal Procedure came to record their opinion thus:

The terms of Section 347, Criminal P. C, are general and give a Magistrate who is empowered to commit a discretion in committing cases for trial which is not limited by Section 2S4 so as to make it obligatory on him to try every case which he can adequately punish.

In this case the Madras High Court did not follow the views expressed 'by the Calcutta High Court, in the case of King-Emperor v. Kaye-mullah Mandal and Ors. : 24 cal. 429: l c. w. N. 414), nor those expressed by this Court in King Emperor v. Dharam Singh : 3 A. L. J. Rule 14: 3 Cr. L. J. 94) and King-Emperor v. Jagmohan : 6 A. L. j, B. 989: 11 Cr. L. J. 54) (ubi supra), on the ground that those cases had given much wider effect to the language of Section 254, Criminal P. C, than that language could properly support. They preferred to follow the observations made in the case of Empress v. Kudrutoolah, (1878) 3 cal. 495 : 2 0. L. E. 2) and in a Full Bench decision of their own Court in the matter of Chinnamari-gadu, (1876) 1 Mad. 289 : 2 weir 425 (F.B,), to the effect that the committal by a competent Magistrate on the ground that in the Magistrate's opinion the case is a fit one to be tried by a Court of Session, cannot be interfered with by the High Court.

24. At page 88 (of 42 Mad.), Napier J. observed thus with reference to the decision of Calcutta High Court in the case of Queen-Empress v. Kayemullah Mandal and Ors. (24 cal. 429:1 C.W.N. 414).

With deference to the learned Judges, it seems to me that in that decision they ignore the very wide powers given by the Code to a Magistrate under Sections 207 and 347.

Again at p. 89 Napier J. observed thus with reference to the ease, In the matter of Chinnamarigadu : 1876 1 Mad. 289: 2 Weir 425 (F. B.).

It seems to me to be conclusive on the point, for, it lays down as axiomatic that it is competent to a Magistrate to say whether from the gravity of the matter or for any other sufficient reasons the Sessions Court is the proper tribunal for the disposal of the case.

25. Next, I may refer to the case of Emperor v. Deo Narain Mullick: A.I.R. (15) 1928 pat. 551 : 29 cr. L.J. 612) decided by Jwala Prasad J. At p. 552 the learned Judge observed thus:

Under Section 207, a Magistrate can commit an accused to the Court of Session where the case is triable exclusively by that Court, or where in his opinion the case ought to be tried by the Court of Session. The offence in this case is not exclusively triable by the Court of Session. Therefore, the Magistrate could only commit the

accused to the Court of Session if he had been of opinion that the case ought to be tried by that Court. He must give reasons for his entertaining that opinion, for the order of commitment is judicial order.

26. Next, I may refer to a case, King-Emperor v. Ishahat and Anr., A 1. R, (12) 1925 Rang. 207: 3 Bang. 42 : 26 Cr. L. J. 1389) in which it was laid down that Section 347 gives the Magistrate very wide powers of commitment. There is no suggestion that the only possible reason for a competent Magistrate to commit a case is that he will not be able to pass a sufficiently severe sentence. It was further stated there that the discretion vested in the Magistrate could not be clearly limited by the provisions of Section 254, Criminal P. C.

27. In King-Emperor v. Maung Chit Sein, 10 Rang. 495 : A.I.R. (19) 1932 Bang. 193 ; 34 Cr. L. J. 187), Page C. J. dealt with a case in which the Magistrate who held the trial had framed a charge under Section 324, Penal Code, where, as the facts necessitated a charge under Section 307, Penal Code. At page 497 the learned Judge made some very salutary observations in regard to the function of a Magistrate in dealing with a case which might either be tried by a Magistrate or by a Court of Session. It was held that:

If the Magistrate is of opinion that a prima facie case has not been made out against the accused such as would justify the acoused being put on his trial he must at once discharge him, If the evidence necessitates the framing of a charge the Magistrate should exercise his discretion carefully as to whether he ought to try the case himself or to commit it to the Sessions notwithstanding that the offence is triable by him. A Magistrate's function is . to dispose of petty oases himself and cases of a complicated or Serious nature should be committed to the sessions.

28. Next, reference may be made to the case of Krishnaji Prabhakar Khadilkar v. Emperor A.I.R. (16) 1929Bom. 318 : 53 bom. 611: 80 Cr. L. J. 1090) decided by two learned Judges of the Bombay High Court, Mirza and Patkar J J. In this case the editor of a Marathi daily called the Nava Kal which had a wide circulation, was prosecuted for an offence under Section 124A, Penal Code, in respect of an article published in the Nava Kal. At the commencement of the hearing before the Chief Presidency Magistrate, the accused applied that his case may be inquired into on the footing of its eventual committal by the Magistrate to the High Court Criminal Sessions. On an objection by the Crown, the application was refused. The Magistrate gave a two fold reason for disallowing the application : 1) that there was congestion of work in the High Court Criminal Session; and (2) that the Magistrate himself was competent adequately to deal with the case. Against the order of the Magistrate the accused went up in revision to the High Court. The learned Judges after a comprehensive review of relevant case-law of their own Court as well as of other High Courts, recorded a finding that there was a conflict of judicial opinion on the question as to whether inability to pass an adequate sentence is the sole criterion in deciding the question as to Whether the case Should be committed to a Court of Session or whether the Magistrate should not consider the other circumstances such as the gravity of the offence, the special difficulties in the case and other matters including the wish of the parties. The trend of opinion as disclosed in the later decisions is in the direction of not unduly restricting the discretion of the Magistrate in committing a case to the Court of Session. Each case, however, is to be decided on its own merits. In effect it was laid down that the Magistrate should commit if an overriding reason is made out which makes it desirable that the case should be tried before the ' Sessions

Court and not before the Chief Presidency Magistrate, although he would be competent to try the case. The learned Judges followed the views expressed by the Rangoon High Court in the case, King Emperor v. Ishahat, (A.I.R.. (12) 1925 Rang. 207: 3 Bang. 42: 26 Cr. L. J. 1389) and by the Madras High Court in the case, Grown Prosecutor v. Bhagwathi, (42 Mad. 83: A.I.R. (6) 1919 Mad. 907: s 19 Cr. L. J. 997) and of their own Court in (Emperor v. Bhimji Venkaji, 42 bom. 172 : A.I.R. (4) 1917 -Bom. 33: 19 Cr. L. J. 342).

29. In Emperor v. Bhimaji, 42 be m, 172 : A.I.R. (4) 1917 bom. 33: 19 Cr. L. J, 342), Heaton J. observed:

It appears to me that when a Magistrate comes to consider whether he shall or shall not commit a case, he has to consider the gravity of the offence, the punishment with which in his opinion it ought to be met and the section under which he charges the accused person. He may no doubt properly consider any special difficulties in the case or that it is a matter of some peculiar public importance, and no doubt other matters also might enter into his consideration, such as the wish of the parties.

They declined to follow the reasoning of cases like Queen-Empress v. Kayemullah, 24 cal. 429 : I C. W. N, 414) and Emperor v. Bindeshri Goshain, 41 ALL. 454 : A.I.R. (6) 1919 ALL. 366: 20 Cr.L. J. 273) which proceeded on a somewhat broad ground that Sections 207 and 347 are con-trolled by Section 254, Criminal P. C, and that it is a matter largely within the discretion of the Magistrate to decide whether he should commit a case to the Court of Session, and in coming to that conclusion he is to be guided solely by the question whether he could pass an adequate sentence. In the result, the Chief Presidency Magistrate was directed to hold proceedings for commitment of the case to the High Court Criminal Sessions.

30. To the same effect is the decision in the case of Hari Moreshwar Joshi v. Emperor A.I.R. (19) 1932 bom. 63 : 33 Cr. L. J. 262) decided by Beaumont C. J. and Barlee J. At p. 63, Beaumont C. J. has observed:

Now, it seems to me that under the Criminal Procedure Code, the Magistrate has a discretion to decide in what way the case shall be tried having regard to the alternatives given by the schedule. No doubt that discretion must be exercised in a judicial manner. The Magistrate must have regard lo the importance of the case and to the fact that the maximum penalty under the section is transportation for life.

31. Next, reference may be made to the case of Emperor v. Qhulam Husain A.I.R. (30) 1943 Sind 112 : 44 Cr. L. J. 631) decided by Davis 0. J. In this case the facts were that a reference was made by the Additional Sessions Judge who recommended that the order of commitment passed by a Magistrate of the first class of seven accused persons charged with offences under Sections 147, 323 read with Section 149, Penal Code, and tinder Section 24, Cattle Trespass Act, should be quashed on the ground that the offences were Such as the Magistrate himself was empowered to try and which he could adequately punish. The Magistrate committed the case because it was a counter-case to another, of offences under 83. 149, 436, 323 and 324, Penal Code, read with Section 149, Penal Code, which had been rightly committed to the Court of Session. The Sessions Judge in referring the case to the Chief Court expressed the opinion that the discretion of the Magistrate in the matter of committal was limited by the provisions of Section 234, Criminal P. C, And that a Magistrate can only properly commit to the Court of Session when the offence is exclusively triable by a

Court of Session or it is an offence which a Magistrate cannot himself adequately punish. On a comprehensive review of the case-law and a discussion of the relevant sections of Criminal Procedure Code, the learned Judge arrived at these conclusions : i) Section 251 is not exhaustive and does not control the pro-visions of Section 347. (ii) Though ordinarily a Magistrate should try a case which he is competent to try and which he can adequately punish, it is desirable and advantageous that when a case is committed to sessions, the counter-case should also be committed and tried by the Court of Session though the Magistrate himself is competent to try the counter-case and inflict adequate punishment. At p. 113 the learned Judge ex-pressed himself thus:

In my opinion, however, speaking generally, the balance of advantage would appear to be in the trial by the Sessions Court of be to cases when one case had to JW) commuted. It must be in the interest of all concerned, accused and witnesses in the case and the counter case, that all should attend the same Court at the same time and take their place as witnesses and accused and accused and witnesses, as the two cases are tried, it is an advantage too that the fame Judge should preside at the trials of the two cases which are often but two different aspects of one transaction. In my opinion, Section 347, Criminal P. C, is not controlled or limited by the narrow provisions of Section 254 of the Code, though, ordinarily, it is desirable that a Magistrate should indeed try a case which he is competent to try and which he can adequately punish ; but there are exceptions to every rule ; and this one of counter cases may be one of them. I do not think, therefore, that the Magistrate has acted illegally in committing be to the cases to the Court of Session.

In this view of the matter the reference was rejected.

32. It is, therefore, clear that there is a weighty volume of judicial opinion in India which runs counter to the view so far taken by this Court. I Shall, however, revert to this question after examining the relevant provisions contained in the Code of Criminal Procedure.

33. The trial of what are known as cross-cases arising out of one single incident has given rise to an important question relating to the procedure which should be followed by Magistrates in such oases. In several decisions of different High Courts weighty considerations have been urged by learned Judges who were in favour of the view that such, cross-cases should be tried by the same Court. If that position be accepted, as I am inclined to do, it would follow that there is yet another reason for holding that the discretion of the Magistrate holding the trial of a warrant case in the matter of commitment cannot be limited to the two cases contemplated by Section 254, viz,, (a) want of jurisdiction to hold the trial and (b) inability of the Magistrate to inflict an adequate sentence. Reference may be made to the case of Banappa Kallappa and Ors. v. Emperor A.I.R. (31) 1944 bom. 146 : 45 Cr. L. J. 701) where two learned Judges of the Bombay High Court have made some Salutary observations at p. 147. The learned Judges observed:

The question of the proper procedure to be followed in such cases, where rival factions which have taken part in a riot are be to prosecuted is one of considerable importance. The two factions must obviously be prosecuted separately, since the common intention of each of the two parties to the riot would be different and they could not be tried in a single case. There is, of course, no objection in law to be to the cases being tried by separate Judges with the help of separate juries or assessors, but such a procedure is always open to the risk of the two Courts coming to conflicting

findings, and occasionally, as in the present case, it may result in very serious injustice, one side or the other being wrongly convicted. In our opinion the most desirable procedure in such cases would seem to be that be to the cases should be tried by the same Judge, though with different assessors or juries. The first case should be tried to a conclusion and the verdict of the jury or the opinion of the assessors taken. But the Judge Should postpone judgment in that case till he has heard the second ease to a conclusion, and be should then pronounce 'judgments separately in each case. He would, of course, be bound to confine his judgment in each case to the evidence led in that particular case and would not be at liberty to use the evidence in one case for the purpose of the judgment in the other case and to allow his findings in one case to be influenced in any manner to the prejudice of the accused by the views which he may have formed in the other case. It would be obviously necessary the t he should try the two cases in quick succession one after the other. It may be that in some particular oases he might feel some difficulty about trying be to cases and in such a case it would always be open to him to get the second case transferred.

34. To the same effect is the observation of Jackson J. in the case of Krishna Pannadi v. Emperor A.I.R. (17) 1930 Mad. 190 : 31 or. Ii. J. 461), At page 190, the learned Judge observed:

There is no dear law as regards the procedure is counter cases, a defect which the Legislature ought to remedy.

It is a generally recognised rule that such cases should be tried in quick succession by the same Judges who should not pronounce judgment till the hearing of be to oases is finished.

This precludes the danger of an accused being convicted before his whole case is before the Court, and also prevents there being conflicting judgments upon similar facts.

35. In the end the learned Judge suggested an intervention by the Legislature for providing a special machinery for the trial of counter cases. This view of Jackson, J, was subjected to severe criticisms in the case of Kandregula Jaggu Naidu v. Emperor 1932 H. w n. 692, but in a later Pull Bench case of the same High Court, In re Mounagurusami Naicker and Ors. A.I.R. (20) 1939 Mad. 367 : 34 Cr. L. J. 175 (F B), the opinion of Jackson J. in Krishna Pannadi v. Emperor A.I.R. (17) 1930 Mad. 190, was approved. The Full Bench, on a consideration of the question, reached a conclusion which may be summed up thus:

No hard and fast rule can be laid down as regards the procedure in the trial of a case and a counter case. There can be nothing irregular in a Judge trying each case to a conclusion before different assessors and afterwards pronouncing judgment in be to so long as he tries the one quite independently of the facts in the other, But it is necessary (1) that the trial must be separate, i. e., before different assessors and separate judgments delivered; (2) that the conclusions in each case must be founded on, and only on, the evidence in each case, and (3) that if the Judge considers himself unable to detach himself from extraneous considerations a transfer may be necessary to deliver the Judge from this embarrassment.

36. A similar view appears to have been taken by the Lahore High Court in the case

of Ujagar Singh v. Emperor A.I.R. (23) 1936 Lah. 366 : 37 Cr. L J 510).

37. Lastly a reference may be made to the case of Madat Khan v. Emperor which eventually went up to their Lordships of the Privy Council and is reported in . The observations of their Lordships of the Privy Council in effect support the views expressed by the Bombay High Court in the case of Banappa Kallappa Ajawan and Ors. v. Emperor (A.I.R. (31) 1944 Bom. 146: 45 Cr. L. J. 701).

38. After briefly noticing the case-law on the crucial point involved in the case, I proceed to refer to the relevant provisions contained in the Code of Criminal Procedure. Chapter 18 of the Code deals with inquiry into oases triable by the Court of Session or High Court.

39. Section 206 indicates that a Magistrate who is empowered to commit for trial, e.g., a Magistrate of the first class, may commit any .person for trial to the Court of Session or High Court for any offence triable by such Court. Any one of the Magistrates referred to in Section 206 has power to commit any person for trial to the Court of Session.

40. Section 207 reads thus:

The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

41. It would be noticed that here the Legislature has contemplated that the.. Magistrate should hold an inquiry before commitment not only in cases which are exclusively triable by a Court of Session or High Court but al3O in other cases, i.e., cases which, in the opinion of the Magistrate, ought to be tried by such Court The words 'ought to be tried' are significant; they clearly refer to cases where it is the Magistrate who decides if they are fit cases for commitment. In other words, this section shows that even in a case in which the Magistrate has only a concurrent jurisdiction to hold a trial, ha is competent to commit a person for trial to the Court of Session.

42. Next comes ch. 20 which deals with the trial of summons cases. Section 241 indicates that the procedure laid down in the following sections is to be observed by a Magistrate in the trial of the summons cases. Next after that comes ch. 21 which deals with the trial of warrant cases by Magistrates, Here again Section 251 indicates that the procedure laid down in that chapter will have to be observed by Magistrate holding the trial of warrant cases. Section 254 occurs in this chapter and reads thus:

254. If, when such evidence and examination have been taken and made, or at any pervious stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

43. Section 255 deals with the plea of the accused, and the rest of chap. 21 indicates the further stages in the course of the trial of warrant cases.

44. Next chapter i.e., ch. 22 contains provisions for summary trials. Chapter 23 deals

with the trials before High Court and Courts of Session. Then follow chaps. 24 and 25 which lay down some general provisions relating to inquiries and trials. Sections 846 and 347 occur in chap. 24. Section 846 (2) contemplates the commitment of an accused person for trial to the Court of Session by a Magistrate to whom a subordinate Provincial Magistrate has referred a case which he himself cannot dispose of.

45. Section 347 reads thus:

347. (1) If in any inquiry before a Magistrate, or in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial he shall commit the accused undo the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Section 349 (l) runs thus:

349, (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under Section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

46. The provisions contained in Sections 346, 347 and 349 are generally applicable to all inquiries and trials. Obviously, therefore, they apply to trials of summons cases under chap. 20, as also to trials of warrant eases under chap. 21. Similarly they are applicable to summary trials under chap. 22. It seems to me, therefore, that they should be looked upon as supplemental to the provisions contained in those chapters.

47. As mentioned above Section 254 occurs in the chapter relating to the trial of warrant cases by Magistrates, It only deals with the question as to when a 'charge' is to be framed by the Magistrate, It indicates the conditions under whush a Magistrate should frame a charge and thereafter hold a trial. The conditions mentioned are : i) that the accused appears to have committed an offence which the Magistrate is competent to try and (ii) that the offence is one which in the opinion of the Magistrate can be adequately punished by him. When the stage contemplated by Section 264 is reached in the course of a trial of a warrant case and the two conditions mentioned above are satisfied, the Magistrate is be und to frame in writing a charge against the accused. Section 284 goes no further than this. It does not profess to deal with the jurisdiction of the Magistrate to hold an enquiry prior to commitment. Indeed in view of the position which Section 354 occupies in the scheme of procedure pre-scribed by ch. 21, it would be wholly out of place if it did deal with the jurisdiction of a Magistrate to hold an enquiry prior to commitment. Such a provision must be looked for elsewhere and not in chapter which deals with the 'trial' of warrant cases.

48. The provisions of Sections 346, 347 and 349 clearly indicate that a Magistrate who takes cognizance of a case may try it himself, if he has jurisdiction. But if he is of

opinion that he cannot inflict an adequate sentence, he may act under Section 346, or Section 349, and send the case to a higher Magistrate. Lastly he may, if he thinks that it is a fit case for trial by a Court of Session, commit the accused for trial, or if he has no power to commit himself, he may send it by reason of the provisions of Section 346 to another Magis- trate for proceedings for commitment. The words 'the case is one which should be tried or com. milled for trial' show that there is a clear reference to the discretion or 'opinion' of the Magistrate concerned. Similarly, the expression 'it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court' clearly indicates that the Magistrate has full discretion, at any stage of the proceedings in any case before him to decide whether or not, the case is a fit one for commitment to the Court of Session. The next point which requires serious consideration is whether there is any provision in the Code of Criminal Procedure which in any way restricts the discretion of the Magistrate vested in him by Section 317. There is, undoubtedly, a serious conflict of judicial opinion on this question, as would appear from a long line of cases briefly noticed in an earlier part of this judgment. Section 254 has been interpreted in such a way as to make it obligatory for the Magistrate to frame a charge and proceed with the trial when once he has found that the offence is one which he is competent to try and which ha can adequately punish.

49. With great respect to the learned Judges who have interpreted Section 254, it seems to ma that in this connection the provisions of Section 34'if have not received the attention which they deserve. It seems to me that when a Magistrate holding the trial of a warrant case, has framed a charge, the next step for him is to ask the accused whether he pleads guilty or would like to make a defence. If the Magistrate feels at this stage, if not at an earlier stage, that there are weighty reasons for stopping further proceedings in the trial and committing the case to the Court of Session, I fail to see why the pro-visions of Section 347 do not come into play and enable the Magistrate to stop the trial and commit the accused under the provisions relating to inquiries for commitment. The power to commit rather than continue the trial is available to the Magistrate, whenever, in the language of Section 347, 'it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court ...'I find it impossible to read into the language of Section 254 something which is not there, viz., a provision to the effect that when once a charge is framed, the Magistrate must proceed with the trial to its close and not alter his course, even though circumstances may require him to hold an inquiry for commitment of the case to the Court of Session. In many of the above-mentioned cases it seems to me-I again speak with the utmost respect-that the real significance of the general provisions contained in Chap. 24 and, in particular, provisions of 3.317 has been lost sight of. Then again it appears to me that the provisions of Sections 206 and 207, Criminal P. C,, which imply the existence of a power in the Magistrate concerned to commit a person for trial to the Court of Session or High Court, have not been given due consideration in the determination of these questions. It is important to note that the words used in this section give a wide discretion to the Magistrate to commit any person for trial to the Courts of Session for any offence triable by such Court. The words 'triable by such Court' do not, in my judgment, necessarily mean an offence which is shown as triable by the Court of Session in column 8 of sch. 2 of Criminal P. C. The words are quite general and they mean that any case involving any offence triable by the Court of Session, should be committed by a Magistrate for trial to the Court. Section 28, Criminal P. C, makes it abundantly dear that the Court of Session is empowered to try every offence under the Penal Code.

50. Further more it seems to me that in the course of the trial of a warrant case it is open to a Magistrate to adopt proceedings for commitment of the accused to the Court of Session even though he be satisfied that : i) he is competent to try the offence which appears to have been committed and (ii) that he can inflict adequate punishment if the trial ends in a conviction. In this connexion reference may be made to the provisions of Section 349, Criminal P. C. This section indicates the procedure which a Magistrate of the second or third class has to follow when he finds inter alia that he cannot pass a sentence sufficiently severe. It is provided by sub-a. (2) that the District Magistrate or Sub. Divisional Magistrate to whom the ease is refer, red may pass such judgment, sentence or order in the case as he thinks fit and as is according to law. It has been held that the superior Magistrate to whom the case is referred under this section has power to commit the case to the Court of Session if he thinks it necessary to do so. This section corresponds to Section 46 of the Code of 1872. It was held by a Pull Bench of the High Court of Madras in a case which arose under Section 46 of the old Code of 1872 that

the words of the section enabling the Magistrate to pass such judgment, sentence or order, etc, expressly provide for the disposal of the case otherwise than by an acquittal or sentence ... and it was quite competent to the Magistrate to whom the case was referred, to say that, either from the gravity of the matter or other sufficient reason, the Sessions Court was the proper tribunal for the disposal of the case and to make an order in accordance with that opinion.' Vide In the matter of Chinnimarigadu, 1 Mad, 289 : 2 Weir 425 (F. B.)).

Section 349 of the present Code represents the provisions of Section 46 of the Code of 1872 without' any alteration. The decision of the Full Bench of the Madras High Court, therefore, remains in full force.

51. In the light of the above it must be observed that the reasons for which the superior Magistrate may commit a case to the Court of Session are not in any way limited either to a case which he cannot try or to a case in which he cannot adequately punish the accused. The Legislature did not intend to provide that the Magistrate, otherwise competent, would have no power to commit a case to the Court of Session except for one of the two reasons, viz., (i) that he cannot inflict sufficiently severe sentence, and, (ii) that he is not competent to hold a trial of the case.

52. After giving my anxious consideration; to the relevant provisions of the Code, and the case-law, I have arrived at the conclusion that the view which has so far been generally accepted by this Court and, in particular, the view taken by the learned Judges in the case of King-Emperor through Bachan Lai v. Subedar Singh and Ors., 1946 Cr. L. J. B. at p. 137 : A.I.R. (33) 1946 ALL. 366: 47 Cr. L. J. 804) is not correct. On the contrary, I find myself in full agreement with the view taken by the Madras, Bombay, Lahore and Rangoon High Courts and the Sind Chief Court in the cases discussed by me in an earlier part of my judgment. To sum up, in my judgment, a Magistrate, otherwise competent, may commit any person for trial to the Court of Session or the High Court for any offence ; but he must give adequate reasons for committing a person for an offence which is not exclusively triable by the Court of Session or the High Court.

53. For the reasons given above, I am Of opinion that the order of commitment in the present case was perfectly valid in law. The reference should be rejected.

Sankar Saran, J.

54. I agree and have nothing to add.

R. Dayal, J.

55. I agree.

56. The reference is rejected.