

**(1977) 09 BOM CK 0032**

**Bombay High Court**

**Case No:** Criminal Reference No. 4 of 1977

State of Maharashtra

APPELLANT

Vs

Ramprakash

RESPONDENT

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**Date of Decision:** Sept. 20, 1977

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 484
- Penal Code, 1860 (IPC) - Section 120B, 302, 34, 420, 467

**Citation:** (1978) 80 BOMLR 179

**Hon'ble Judges:** Apte, J

**Bench:** Single Bench

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**Judgement**

Apte, J.

A short point which is raised on this reference made by the Additional Chief Metropolitan Magistrate is whether a case already committed by the learned Magistrate before the Code of Criminal Procedure, 1973, came into force on April 1, 1974, but which was taken up for trial by the Sessions Court after that date, should be tried under the old Code by the Sessions Court or whether it should be tried by the Magistrate since under the new Code the Magistrate would be competent to try the offence.

2. The facts giving rise to this reference are shortly these:

The three respondents were challenged by the police before the Additional Chief Metropolitan Magistrate on a charge for offences u/s 120B read with Sections 420/511, 467, 471, Indian Penal Code read with Section 5 of the Imports and Exports (Control) Act, 1947, before the Code of Criminal Procedure, 1973 (hereinafter referred to as "the new Code") came into force on April 1, 1974.

3. The learned Magistrate recorded the evidence and passed an order on March 18, 1974 committing the accused to the Sessions Court for trial. The record of the case

was received by the Sessions Court before April 1, 1974. However, it appears that actually the case was registered by the Sessions Court in its register after April 1, 1974.

4. When the case came up for trial before the Additional Sessions Judge, Mr. Thorat, he framed a charge against the accused for offences but he was of the view that under the new Code the Chief Metropolitan Magistrate had jurisdiction to try these offences. He, therefore, passed an order transferring the case for trial to the Chief Metropolitan Magistrate, Bombay.

5. In taking this view, the Additional Sessions judge relied upon an unreported decision of Vimadalal J. in *The State of Maharashtra v. Umer Hasham Batliwala* (1975) Criminal Revisional Application No. of 399 of 1974.

6. When the matter came up before the Additional Chief Metropolitan Magistrate, he found that there were two decisions in which contrary view was taken—one of a division Bench of this Court in *Janardan Sarvottam v. The State* (1975) 78 Bom. L.R. 380, and the other of the Supreme Court in *State of Karnataka v. K.H. Annegowda*. He has, therefore, made this reference to this Court for retransfer of the case to the Sessions Court for trial.

7. It is true that Vimadalal J. on facts quite similar to the facts of the present case upheld the order made by the Sessions Judge for retransfer of the case to the Magistrate who had committed it before the new Code came into force as in his view the provisions of the new Code were applicable to such a case.

8. However, the Supreme Court has now taken a contrary view in the aforesaid decision in *State of Karnataka v. K.H. Annegowda*. In that case, a case was registered on October 13, 1973 at the Police Station for murder against the respondents—accused in that case. After completing the investigation, charge-sheet was put up against the respondents in the Court of Judicial Magistrate. The Magistrate held inquiry in accordance with the provisions of chap. XVIII of the old Code as that Code was then in force and passed an order committing the accused for trial to the Court of Session for an offence u/s 302 read with Section 34 of the Indian Penal Code on March 15, 1974.

9. Pursuant to this order the record of the case was also transmitted to the Court of Session by March 23, 1974.

10. Before the Sessions Court, the case came up for trial on July 15, 1974, that is, after the new Code came into force on April 1, 1974.

11. It appears that on behalf of the prosecution the public prosecutor having made an application praying for permission to withdraw the prosecution u/s 494 of the old Code, the learned Sessions Judge by an order passed on June 29, 1974 accorded permission prayed for and discharged the accused.

12. Thereafter the State ordered fresh investigation into the offence and in consequence of fresh investigation, a new charge-sheet was put up against the same accused and three others.
13. By this time the new Code had come into force and, therefore, the learned Magistrate following the provisions of the new Code, committed the respondents and the other accused to stand their trial before the Court of Session for the same offence.
14. When the case came up for hearing before the Sessions Judge, an application was made on behalf of the accused, who were already discharged by the Magistrate by his order dated June 20, 1974, that by virtue of the said order passed u/s 494 of the old Code, these accused had been acquitted and, therefore, they were not liable to be prosecuted again for the same offence.
15. The Sessions Judge having rejected the application on the ground that as the accused were discharged and not acquitted, fresh trial was not barred, the accused approached the High Court in revision.
16. The High Court allowed the revision holding that though the order passed by the Sessions Judge directed that the respondents be discharged, the legal effect of the order was to bring about the acquittal of the respondents inasmuch as withdrawal from the prosecution was made after the charge had been framed.
17. The matter was taken in appeal by the State of Karnataka to the Supreme Court. The Supreme Court observed (p. 359):
- ◆Section 484 of the new Code clearly provides that where a trial is pending immediately before the commencement of the new Code, it shall be proceeded with in accordance with the provisions of the old Code as if the new Code were not in force. Here in the present case the Judicial Magistrate had already made an order of committal on 15th March, 1974 and pursuant to that order, the records of the case had reached the Court of the Sessions Judge on 23rd March, 1974. The case was, therefore, already before the Court of Session prior to 1st April, 1974 and it was pending before that court for trial on 1st April, 1974 when the new Code came into force. It is immaterial as to when the case was actually registered and number given to it. Since the case was pending for trial before the Sessions Court on 1st April, 1974, it was liable to be tried in accordance with the provisions of the old Code and it was for this reason that the application for withdrawal from the prosecution was also made by the Public Prosecutor u/s 494 of the old Code and not under the corresponding provision of the new Code.
18. The point that arose before the division Bench of this Court in Janardan Sarvottam's case was slightly different. The point was whether cases which were pending on the date on which the new Code came into force would be governed by the old Code throughout their life, including the stage of appeal as well as of

revision or whether such a case would be governed by the old Code in respect of only the stage at which the case stood on the date of the coming into force of the new Code. In that case the accused was prosecuted before a Magistrate for an offence under the Prevention of Food Adulteration Act and although the case was instituted prior to the, coming into force of the new Code, the trial terminated and the case ended in conviction on June 15, 1974, that is, after the new Code came into force.

19. The accused having pleaded guilty, the learned Magistrate took a very lenient view and imposed a nominal sentence.

20. On a newspaper report, the Sessions Judge called for the record of the case in exercise of the powers u/s 397 of the new Code which is analogous, to Section 435 of the old Code and after issuing notice to the accused and after giving a hearing to him, enhanced the sentence to imprisonment for six months and a fine of Rs. 1,000.

21. The accused came in revision to this Court. When the revision application came up for hearing before a single Judge, the single Judge having found that the points raised were of general importance, referred the case to a larger Bench. That is how the matter came before the division Bench.

22. The point that arose before the division Bench was whether in respect of a prosecution launched and cognizance taken much before the coming into force of the new Code, what procedure Code, whether old or new, will govern not only the hearing of the case but its ultimate disposal including all appellate and revisional proceedings which can arise subsequent to the decision of the trial Court. The division Bench took the view that the old Code would apply only with respect to the stage at which the case was pending on the date of coming into force of the new Code, but the subsequent stages would be governed by the new Code.

23. The observations made by the Supreme Court in the above cited case, however, make it clear that since this case was already committed to the Court of Session before the new Code came into force, the Sessions Judge alone would have jurisdiction to try it. The order passed by the learned Additional Sessions Judge transferring the case to the Chief Metropolitan Magistrate is therefore incorrect.

24. I must record that Mr. Gursahani for the accused also conceded this position.

25. For the reasons discussed above, the reference is accepted and it is directed that Criminal Case No. 2118/S of 1973 which was already committed by the Metropolitan Magistrate to the Court of Session where it was numbered as Sessions Case No. 288 of 1974 be retransferred from the Court of the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Bombay, to the Court of Session for Greater Bombay for trial according to law.