



**Citation :** CDJ 2016 MHC 1929

**Court :** Before the Madurai Bench of Madras High Court

**Case No :** CrI.O.P.(MD) No. 3144 of 2016

**Judges :** THE HONOURABLE MR. JUSTICE P.N. PRAKASH

**Parties :** Petitioner Versus Respondent

**Appearing Advocates :** For the Appearing Parties: -----

**Date of Judgment :** 07-03-2016

**Head Note :**

Indian Penal Code, 1860 – Section 306 – Committal of Case – Trial Magistrate arrested and remanded Petitioner to judicial custody for the offence punishable under Section 306 of IPC -

Court held – if the accused are on bail, then committal would prepare muchalika directing accused to appear before trial Court on particular date – Therefore, Magistrate who commits case to trial Court should also direct the accused in custody to be produced before trial Court on a date, not beyond 15 days – after report was called for from Trial Magistrate, he realised his mistake and issued directions to jail authorities to produce the accused before concerned Trial Court, and thereby rectified the mistake – It is not possible for every accused languishing in jail to knock at doors of High Court for highlighting such miseries -

(Paras 9, 10, 11)

**Judgment :**

P.N. Prakash, J.

1. A serious illness that plaques our majesty requires medication through this order.
2. The petitioner was arrested and remanded to judicial custody on 11.1.2016 for the offence punishable under Section 306 IPC in Cr.No.109 of 2009 on the file of the Inspector of Police, Alangulam Police Station, Virudhunagar District. 3. One Sankarasubbu committed suicide, in connection with which the respondent Police registered a case in Cr.No.109 of 2009 under Section 174 Cr.P.C. During the course of investigation it came to light that one Narmadha and Dharmaraj had abetted the commission of offence, and that, Police arrested Narmadha (A-1) and altered the section from one under Section 174 Cr.P.C. to Section 306 IPC. Eventually, Narmadha (A-1) was released on bail, but Dharmaraj (A-2) is absconding. The Police completed investigation and filed final report in P.R.C.No.18 of 2013 before the Judicial Magistrate No.II, Sattur, wherein Dharmaraj is shown as an absconding accused. 4. On 11.1.2016, in execution of the non-bailable warrant issued by the learned Judicial Magistrate No.II, Sattur, Dharmaraj (A-2) was arrested. Dharmaraj (A-2) filed bail petition in CrI.O.P.(MD)No.2406 of 2016, which was dismissed on 10.2.2016 on the ground that he was absconding for a very long time, and that, the committal proceedings are yet to be completed by the learned Judicial Magistrate No.II, Sattur. After some time, Dharmaraj filed the present bail application in CrI.O.P.(MD)No.3144 of 2016 contending that the learned Judicial Magistrate No.II, Sattur, has committed P.R.C.No.18 of 2013 to the Sessions Court, and therefore he prayed for release on bail. The learned Counsel appearing for Dharmaraj (A-2) produced the diary extract in support of his plea, which makes interesting reading. 5. The learned Judicial Magistrate No.II, Sattur has passed the committal order on 17.2.2016, in which he has stated that Dharmaraj (A-2) was remanded to judicial custody and should be produced before the Assistant Sessions Court. He has not given the date on which Dharmaraj (A-2) should be produced before the Assistant Sessions Court, on account of which Dharmaraj (A-2) is languishing in judicial

custody from 17.2.2016 onwards.

6. This is not a stray incident, where such orders are passed by Judicial Magistrates while committing a case to the Sessions Court, when the accused is in judicial custody. Time and again it has been taught to the Magistrates during training programmes conducted in the Judicial Academy that they have no power to remand an accused beyond the period of 15 days at one stretch, despite which, they continue to pass such remand orders, perhaps on the ill-advice of their Bench Clerk and FIR Clerks.

7. On an enquiry made by me, I came to understand that when committal papers are sent by the Judicial Magistrate to the Court of Sessions, they are invariably incomplete and the Sessions Clerk sends them back to the Magistrate for correcting the defects. Mostly, this happens even without the knowledge of the Principal Sessions Judge. The case papers shuttle between the Sessions Clerk and Magisterial Clerk and in the interregnum, the accused, who is remanded to custody is completely forgotten. Sections 209 and 309 of Cr.P.C. read thus,

"209. Commitment of case to Court of Session when offence is triable exclusively by it.— When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made];

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

"309. Power to postpone or adjourn proceedings.— (1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under Section 376, Section 376-A, Section 376-B, Section 376-C or Section 376-D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time: (emphasis supplied)

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him:

Provided also that—

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."

Under Section 309 Cr.P.C., a Judicial Magistrate cannot remand an accused for an indefinite period and the maximum period for which he can remand the accused is 15 days.

8. The accused languishing in jail will have no clue about the ping-pong match that is played with his case papers by the Sessions Clerk and the Magisterial Clerk at his cost. By the time the papers are rectified and sent to the Sessions Court, more than 15 days would have lapsed. The Principal Judge would have gone for training or fallen ill and only when he or she returns, the Sessions Clerk will place the papers for orders. Thereafter, the case is given a Sessions Case number. If the Principal Judge is alert enough to find out that the accused is in jail or one of the accused is in jail, then he would issue a PT warrant for production of the accused before the Court. A full stop has to be put to this pernicious practice that prevails in the subordinate judiciary.

9. If the accused are on bail, then the committal Magistrate would prepare a muchalika directing the accused to appear before the Sessions Court on a particular date. One does not understand why a different yardstick should be shown to the accused who are in jail. I am told that some Principal Sessions Judge take it as an insult, if the Judicial Magistrate directs production of the accused before the Sessions Court while committing the case. Law cannot pander to the idiosyncrasies and presumed sensitivities of Judicial Officers with such archaic attitudes.

10. Therefore, I have no hesitation in my mind in holding that a Magistrate, who commits the case to the Court of Sessions should also direct the accused in custody to be produced before the Sessions Court on a date, not beyond 15 days. Such an endorsement should be made in the committal warrant. If incomplete papers are sent by the Magistrate, the Sessions Clerk should not return the same, but instead, should retain the available papers and call for the remaining papers.

11. In the present case, after a report was called for from the Judicial Magistrate No.II, Sattur, he realised his mistake and issued directions to the jail authorities to produce the accused before the concerned Sessions Court, and thereby rectified the mistake. It is not possible for every accused languishing in jail to knock at the doors of the High Court for highlighting such miseries.

12. The Registry is directed to place this order before My Lord The Chief Justice to have this order circulated to all the Judicial Officers on Criminal Side for future guidance and compliance.

13. By a separate order dated 7.3.2016 this Court has granted bail to Dharmaraj (A-2), petitioner herein.