

D. Dasappa Vs. State of Karnataka and Another

D. Dasappa Vs. State of Karnataka and Another

SooperKanoon Citation : sooperkanoon.com/375272

Court : Karnataka

Decided On : Jun-13-2000

Reported in : ILR2001KAR1373; 2001(2)KarLJ282

Judge : G. Patribasavan Goud, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 206(1), 253(1) and 260; [Payment of Wages Act, 1936](#) - Sections 20(2); [Motor Vehicles Act, 1988](#)

Appeal No. : Criminal Revision Petition No. 230 of 1998

Appellant : D. Dasappa

Respondent : State of Karnataka and Another

Advocate for Def. : Sri N. V. Prakash, State Public Prosecutor

Advocate for Pet/Ap. : Sri Hedge Associates, Adv.

Judgement :

ORDER

1. On the complaint of the second respondent-Labour Inspector, the petitioner has been prosecuted before the learned Additional Chief Metropolitan Magistrate, Bangalore, at C.C. No. 20975 of 1997 for offences punishable under sub-sections (2) and (3) of Section 20 of the [Payment of Wages Act, 1936](#) ('Act' for short). The first order of the learned Magistrate in the matter of issuing summons to the

petitioner-accused reads thus.-

'Perused. Cognizance taken. Register the case and issue SS to accused by 25-8-1997'.

On the summons being served, when the petitioner-accused remained absent, the learned Magistrate issued NBW. It was then that, on behalf of the petitioner-accused, his Counsel filed an application under Section 253 of the Cr. P.C., praying for permission for the said learned Counsel to plead guilty, on behalf of the petitioner-accused. The learned Magistrate, by the order impugned in this revision petition under Section 397 of the Cr. P.C., observed that, since NBW was pending against the accused, and since there was no provision to permit the Counsel to plead guilty on behalf of the accused, the Counsel be directed to keep the petitioner-accused present for further proceedings. In the meantime, NBW was reissued.

2. Sri Abdulla, the learned Counsel for the petitioner-accused would submit thus:

For the offence punishable under sub-section (2) of Section 20 of the Act, the maximum punishment is, fine of Rs. 500/-. For the offence punishable under sub-section (3) of Section 20 of the Act, the maximum punishment is, fine of Rs. 1,000/-. Sub-section (5) of Section 20 of the Act, calling for imprisonment, does not apply to this case, because it is not even allegation of the complainant that the petitioner-accused had been convicted previously of any offence punishable under the Act. Therefore, for the purpose of the present prosecution, the maximum punishment could be taken as fine of Rs. 500/- and Rs. 1,000/-. Both these are petty offences for the purpose of Section 206 of the Cr. P.C. and within the meaning of sub-section (2) of the said Section 206 of the Cr. P.C. It was therefore necessary for the learned Magistrate to issue summons under Section 206 of the Cr. P.C., requiring the petitioner-accused, broadly speaking, either to appear in person or by pleader, or even to plead guilty and send the amount of fine specified in the summons. For the sake of brevity, I shall call this kind of summons as special summons. Since the offences punishable under sub-sections (2) and (3) of Section 20 of the Act are petty offences within the meaning of Section 206 of the Cr. P.C., the learned Magistrate was bound to issue special summons under

Section 206 of the Cr. P.C. This being the position, even when a plea was put forth on behalf of the accused that he would plead guilty through his Advocate, the learned Magistrate erred in declining to accede to this request. This is the submission of petitioner-accused's Counsel Sri Abdulla.

3. The above said contention of Sri Abdulla, the learned Counsel for the petitioner, is not legally tenable for the following reasons:

I would extract sub-section (1) of Section 206 of the Cr. P.C., before proceeding further:

'206(1).--If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under Section 260, the Magistrate shall, except where he is, for reasons to be recorded in writing, of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader'.

The said sub-section (1) of Section 206 of the Cr. P.C. would call for forming of an opinion by the learned Magistrate at two stages. The first one is where the learned Magistrate takes cognizance of a petty offence and directs issue of summons. On taking cognizance of a petty offence, as the opening words in sub-section (1) of Section 206 of the Cr. P.C. make it clear, the learned Magistrate has two options. One is to dispose of the case summarily under Section 260 of the Cr. P.C. Another one is not to proceed to so dispose of the case summarily under Section 260 of the Cr. P.C., but, to proceed with the case as a normal summons case. In the later event, there would be no occasion for the learned Magistrate to issue special summons. In the former event, however, i.e., where the learned Magistrate forms an opinion that a particular petty offence of which he has taken cognizance, may be summarily disposed of by him under Section 260 of the Cr. P.C., then, he is

bound to issue special summons under Section 206 of the Cr. P.C. But, here again, the second stage of forming an opinion arises. That would be, where in spite of deciding to dispose of the petty case concerned summarily under Section 260 of the Cr. P.C., the learned Magistrate may still be of the opinion that special summons shall not be issued, in which event, at this second stage, he shall be bound to record reasons for holding such contrary opinion.

From the scheme of sub-section (1) of Section 206 of the Cr. P.C. therefore, it is not as though in respect of every petty case the learned Magistrate has no alternative but to issue special summons. It is only where he is of the opinion that a particular petty case may be summarily disposed of under Section 260 of the Cr. P.C. that he shall issue special summons, unless he is of the contrary opinion in the matter of issuing of the said special summons, in which event, he has to record reasons. This discretion on the part of the learned Magistrate to proceed or not to proceed to dispose of a petty case in a summary way and to issue special summons as per the scheme under Section 206 of the Cr. P.C. is better understood if we look to Section 208 of the [Motor Vehicles Act, 1988](#), wherein, for example, in respect of an offence punishable with fine only, the Court taking cognizance of such an offence is bound to issue what can be loosely worded as special summons as described above. Thus, under Section 208 of the [Motor Vehicles Act, 1988](#) the Magistrate has no discretion whether or not to issue special summons even in a case referred to therein. It is not so under Section 206 of the Cr. P.C. Therefore, if the accused, or his Counsel is insisting upon special summons, one has to invariably go to the first opinion that the learned Magistrate has formed at the outset, viz., as required by the opening words of sub-section (1) of Section 206 of the Cr. P.C. whether the learned Magistrate has formed an opinion that the petty case concerned should be summarily disposed of under Section 260 of the Cr. P.C. Only if it is so, i.e., only if the learned Magistrate has formed such an opinion, that an accused is entitled to insist upon special summons, unless, of course, the Magistrate is of the contrary opinion in the matter of issuing special summons, for the reasons to be recorded in writing.

In the present case, the offences concerned are petty offences. But, as the first order of the learned Magistrate extracted at the outset would show, there is no

indication at all that the learned Magistrate formed an opinion that he would proceed to dispose of the case summarily under Section 260 of the Cr. P.C. That is how, summons in the normal course came to be issued. It is evident therefrom that the learned Magistrate is proceeding to deal with the case as a normal summons case, and not by way of summary trial under Chapter XXI of the Cr. P.C. This being the position, as of right, the petitioner-accused cannot insist on special summons under Section 206 of the Cr. P.C. being issued to him. Section 253(1) of the Cr. P.C. that the petitioner-accused resorted to, inviting the passing of the impugned order, is available only where the summons has been issued under Section 206 of the Cr. P.C. Since in the present case, summons was not issued under Section 206 of the Cr. P.C., any request under Section 253(1) of the Cr. P.C. could not have been acceded to. There is therefore nothing illegal or improper in the impugned order.

Petition dismissed.

Before parting with this case, it would be necessary to make certain observations:

1. It is true, even in respect of some of the petty offences, like the offence of gambling in a public place that the Kerala High Court was dealing with in *Santhosh and Others v State of Kerala and Another*, it may be desirable for the Magistrates not to proceed to dispose them of summarily under Section 260 of the Cr. P.C. The Magistrates who are competent/empowered under Section 260 of the Cr. P.C., however, have a discretion, while dealing with petty offences, to decide at the outset as to whether they should summarily dispose them of under Section 260 of the Cr. P.C., or whether the said cases should be dealt with as summons cases by following the process under Chapter XX of the Cr. P.C. In many of the cases dealing with petty offences, I have had occasion to notice that the Magistrates have mechanically directed issuing of summons without applying their mind at the outset in the matter of forming an opinion as to whether the petty offence concerned may be summarily disposed of under Section 260 of the Cr. P.C. or otherwise. A provision like the one at Section 206 of the Cr. P.C., permitting an accused to plead guilty to the charge without appearing before the Magistrate, has to be taken serious note of by the Magistrates who are

competent/empowered to act under Section 260 of the Cr. P.C., and has to be made workable in many of the petty offences so as to give impetus to the legislative intent in that regard. Looking to the particular petty offence, it should not be difficult to form an opinion as to whether it is a case that needs to be summarily disposed of, and therefore calling for issuing of special summons under Section 206 of the Cr. P.C., or whether it is a case where even though it is a petty offence, still, it is not desirable to dispose it of in a summary manner under Section 260 of the Cr. P.C. All that I would emphasize is that an opinion needs to be formed in this regard at the outset in respect of every petty offence by conscious application of mind, and not in a mechanical manner as is being done routinely by the Magistrates.

2. Further proceeding in C.C. No. 20975 of 1997 before the learned Additional Chief Metropolitan Magistrate, Bangalore, had been stayed till now. The petitioner is now directed to appear before the said learned Additional Chief Metropolitan Magistrate on 10th of July, 2000 for further proceedings. In the meantime, the Non-Bailable Warrant issued shall be recalled, since Sri Abdulla, the learned Counsel for the petitioner-accused, undertakes to keep the petitioner-accused present before the learned Additional Chief Metropolitan Magistrate on 10th of July, 2000.