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Court : Karnataka

Decided On : Jan-21-1976

Reported in : 1976CriLJ1437

Judge : C. Honniah and ;M.S. Nesargi, JJ.

Appellant : P.T. Doddiah

Respondent : Hanumanthappa and ors.

Advocate for Def. : Shri. B. K. Ramachandra Rao

Judgement :

M.S. Nesargi, J.

1. This petition has come up before us by way of reference.

2. The facts giving rise to this petition may be briefly narrated as follows:

3. Respondent-1 Hanumanthappa filed a private complaint before the court of the Judicial Magistrate First Class, Tarikere in C. C. No. 877 of 1973 alleging that the petitioner had, as hereditary patel of Mudigere village in Tarikere Taluk, collected a sum of Rs. 100/- from him (respondent-1) on 20-5-1970 towards land revenue payable by him and that the petitioner had issued an official receipt, but later on respondent-1 received a demand notice demanding payment of a sum of Rs. 380/- and odd towards arrears of land revenue and hence he made enquiries with the

petitioner and requested the petitioner to give reference for having remitted the said sum of Rs. 100/-. The petitioner asserted that he had remitted the amount and what was demanded by the taluk office was the amount actually due from the 1st respondent after deducting the sum of Rs. 100/-. On 14-6-1973 after sunset the Tahsildar P.W. 1 accompanied by the Revenue Inspector and some police officers went to respondent-1 and demanded payment of Rupees 380-13 and distrained the moveables of respondent-1. Respondent-1 averred on the basis of the afore-mentioned facts that the petitioner had committed an offence punishable under Section 409 I.P.C. in regard to the said sum of Rs. 100/-. The learned Magistrate, after taking into consideration all the evidence produced by the 1st respondent, discharged the petitioner-accused, Respondent-1 filed Criminal Revision No. 7 of 1974 in the court of the Sessions Judge, Chickmagalur as against the order of discharge. The learned Sessions Judge allowed the revision petition and directed the Magistrate at Tarikere to frame a charge against the petitioner. Being aggrieved by this order, the petitioner has filed this revision petition. He has taken shelter under Sections 397, 401 and 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code').

4. The order of reference shows that a preliminary objection was taken by Shri B. K. Ramachandra Rao, learned Counsel appearing for respondent-1 that the criminal revision petition filed by the petitioner is not maintainable in view of the decision of this Court in Giriyappa Gowda v. Basavarajappa (1975) 1 Kant. LJ 434. As many other revision petitions involving the question as to whether the decision in Giriyappa Gowda's case required reconsideration had been referred to a Bench, this petition also came to be referred to the Bench.

5. Section 397 (2) of the Code reads as follows:

The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

6. The revisional powers of Sessions Judge are enumerated in Section 399 of the Code, High Court's powers of revision are enumerated in Section 401 of the Code. A reading of Section 397 (2) of the Code shows that in regard to interlocutory

orders mentioned therein, the powers of revision both of the Sessions Judge as well as of the High Court are not exercisable. But in regard to orders dismissing a complaint under Section 203 or Sub-section (4) of Section 204 of the Code or an order of discharge, power is given to both the Sessions Court and the High Court by Section 398 of the Code to enable the said courts to interfere after calling for records under. Section 397 of the Code and giving opportunity to the person likely to be affected by the order be passed. Section 398 of the Code ads as follows:

On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make further inquiry into any complaint which has been dismissed under Section 203 or Sub-section (4) of Section 204 or into the case of any person accused of an offence who has been discharged;Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

7. It is plain from what has been stated in the preceding paragraphs that so far as the orders, of dismissal under Section 203 or Sub-section (4) of Section 204 of the Code and of discharge under the relevant provisions of the Code are concerned, the bar provided in Sub-section (2) of Section 397 of the Code is removed. When that is so, it cannot at all be contended that this Court cannot revise the order passed by the Sessions Judge because the court of Session is a court inferior to the High Court and is subject to the revisional jurisdiction of the High Court. If at all there is a bar to the exercise of the revisional powers of this Court, that could be only under Sub-section (2) of Section 397 of the Code and when once it is seen that Section 397 (2) does not control the orders falling within the ambit of Section 398 of the Code, that bar cannot operate at all. Therefore we hold that the preliminary objection raised by Shri. B. K. Ramachandra Rao, learned Counsel for respondent-1 cannot be sustained and it is unnecessary in this case to go into the question whether the decision in Giriyappa Gowda's case calls for reconsideration.

8. Perusal of the order passed by the learned Magistrate and the material produced by the respondent No. 1 complainant before the Magistrate shows that all that the 1st respondent has succeeded in establishing is that he had entrusted the petitioner with the sum of Rs. 100/-. No material has been produced by the 1st respondent to show that the petitioner had not accounted for the amount of Rs. 100/- paid by the first respondent to the petitioner, Shri B. K. Ramachandra Rao pointed out to us at this stage that the first respondent (complainant) has narrated in his evidence that when the Tahsildar (P.W. 1) visited his house and distrained the moveable properties, the petitioner himself gave the amount. But this statement is not at all supported by any material. The best evidence would have been that of the Tahsildar. No such evidence has been produced. In this view of the matter, it is clear that the order of discharge passed by the learned Magistrate could not have been interfered with. Therefore, we allow this revision petition and set aside the order dated 24-9-1974 passed by the Sessions Judge, Chickmagalur in Criminal Revision Petition No, 7 of 1974 and restore the order passed by the Judicial Magistrate First Class, Tarikere in Criminal Case No. 877 of 1973.

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