

Rajanna Vs. Chayapathi

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Court : Karnataka

Decided On : Nov-20-1987

Reported in : ILR1988KAR198

Judge : Kulkarni, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 244, 245 and 246

Appeal No. : Crl. R.P. 504 of 1987 and Crl. Petn. No. 1224 of 1987

Appellant : Rajanna

Respondent : Chayapathi

Advocate for Def. : C.V. Nagesh, Adv.

Advocate for Pet/Ap. : S.K. Venkataranga Iyengar, Senior Adv.

Judgement :

ORDER

Kulkarni, J.

1. Criminal Revision Petition No. 504/87 by the complaints Nos. 1 and 2 is directed against the order dated June 26, 1987 passed by the Principal City Civil and Sessions Judge, Metropolitan Area, Bangalore, in Criminal Revision Petition No. 23/87 setting aside the order dated February 7, 1987 passed by the Chief

Metropolitan Magistrate, Bangalore in C.C.No. 1461/85 ordering the framing of a charge against the accused Nos. 1 and 2 for an offence under Sections 417 and 421 I.P.C., and the consequent order of remand made by the Sessions Judge to the trial Court.

Shri Venkataranga Iyengar submitted that he appears for the respondents in Criminal Petition No. 1224/87. Arguments of all Advocates are heard on final merits in both the cases.

2. The material facts are as under :- The complainant No. 1 is the father of complainant No. 2 - Jayarathnamma. The accused Nos. 1 and 2 are father and son respectively. The accused No. 1 and 2, on 29-8-1983, are stated to have borrowed Rs. 1,70,000/- from complainant No. 1 on executing a pronote and are also stated to have borrowed Rs. 1,30,000/- from complainant No. 2 on the same day, on executing a pronote. According to the complainants, accused Nos. 1 and 2 did not return the money due to them under both the pronotes. When the complainants insisted on the accused paying the money, accused No. 2 is stated to have given a cheque for the said two amounts due under the two pronotes on 1-6-84 and thus acknowledged the amounts due under the pronotes. According to the complainants, the accused persons, sold their immovable property for Rs.4 lakhs even though it was worth more than that, with a view to defraud the complainants. Hence the complainants filed a complaint against the accused Nos. 1 and 2.

3. The Court below recorded the sworn statement of the first complainant Rajanna and ordered issue of process under Sections 417 and 421 I.P.C.

4. After the issue of process and after the accused were served, the accused Nos. 1 and 2 both appeared before the learned Magistrate. As can be seen from the order-sheet dated 9-5-85, the Magistrate treated the case as a warrant case and posted it for evidence before charge. On 21-4-86 the Advocate for the complainants submitted that he had no evidence to lead before charge and that the sworn statement of complainant No. 1 may be treated as his evidence before charge. On 11-11-86 a submission was again made on behalf of complainants that the complainants had no evidence to lead and requested the Court for framing a

charge on the basis of the sworn statement of complainant No. 1 recorded by the Court below before issue of process. The Chief Metropolitan Magistrate, after perusing the allegations made in the complaint, and the sworn statement of complainant No. 1, and after hearing the Advocates for both the parties, passed an order dated 7-2-87 that a prime facie case for offences under Sections 417 and 421 I.P.C. had been made out and so he framed a charge for the said offences against the accused Nos.1 and 2. The accused Nos.1 and 2 being aggrieved by the said order dated 7-2-87 passed by the Magistrate, approached Sessions Judge, Metropolitan Area, Bangalore, in Criminal Revision No. 23/87. The learned Sessions Judge, on hearing the Advocates for both the parties, set aside the order passed by the Magistrate and remanded it to the Magistrate for disposal in accordance with law.

5. The complainants being aggrieved by the said order-have approached this Court with Criminal Revision Petition No. 504/87. The accused Nos.1 and 2 being aggrieved by the said order of remand have approached this Court with Criminal Petition No. 1224/87.

6. The allegations made in the complaint are that the accused Nos.1 and 2 received a cash of Rs.1,70,000/-from complainant No. 1 on 29-8-83 and executed a pro-note and that accused Nos. 1 and 2 on the same day received Rs. 1,30,000/- from complainant No. 2 and executed a pronote on the same day in favour of complainant No. 2. The allegations in the complaint are that complainant Nos. 1 and 2 requested the accused persons to pay off the money due under the pronotes and they avoided to make the payment. The allegations in the complaint show that when the complainants insisted on the accused persons to pay the said amounts due under the two pronotes, but the accused No. 2 passed a cheque dated 1-6-84 for Rs.3,60,000/- in token of acknowledging the amounts due under both the pronotes. The cheque was issued by the accused No. 2 even though the Bank account was closed. The allegations in the complaint further show that accused Nos.1 and 2 with a view to defrauding the complainants sold their only house for Rs.4 lakhs though it was worth more than Rs.6 lakhs today. According to them, the accused sold the said property for less than the market value only with a view to cheat the complainants.

7. It is undisputed that on the sworn testimony of complainant No. 1 Rajanna was recorded by the Magistrate and the Magistrate after taking into consideration the allegations in the complaint and the sworn statement of complainant No. 1 ordered issue of process against accused Nos.1 and 2 for the offences under Sections 417 and 421 I.P.C.

8. It is undisputed before me and it becomes clear from the order passed by the Magistrate as well as from the order passed by the Sessions Judge, that the complainants made a submission before the Magistrate that they had no evidence to lead before the framing of a charge and requested the Magistrate to take into consideration the sworn statement of the complainant No. 1 only for the purpose of framing a charge. The Magistrate appears to have been impressed by the statement made and passed the order proposing the framing of a charge against accused Nos. 1 and 2 for offences under Sections 417 and 421, treating the sworn statement of complainant No. 1 as the evidence recorded before charge.

9. The learned senior Counsel Shri Venkataranga Iyengar, submitted that the Magistrate had chosen to follow the warrant case procedure for the case. He referred me to Section 244 Cr.P.C. which reads thus:

'(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.'

Section 245 Cr.P.C., reads:-

'(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.'

Section 246 Cr.P.C., reads:-

'(1) If, when such evidence has been taken, or at any previous 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.....etc., etc.'

The learned Senior Counsel Shri Venkataranga Iyengar mainly relied on the phraseology 'or at any previous stage of the case' used in Section 246 Cr.P.C. On the basis of this phrase he constructed an argument that it was not necessary that the complainant should lead or should have led evidence in order to enable the Court to frame a charge. According to him, the said words mean that the Magistrate was at liberty to frame a charge after recording any evidence mentioned in Sections 244 and 245 Cr.P.C. He relied for that purpose in re UMAYYATHANTAGATH PUTHEN VEETIL KUNHI KADIR, AIR 1922 Madras 126; PRITHVI NATH v. B.C. KAUL, 1975 Cr.L.J. 216; SANTIRAM MANDAL v. EMPEROR : AIR1929 Cal229 ; KEWAL RAM v. EMPEROR, AIR 1935 Patna 515 and RATILAL BHANJI MITHANI v. STATE OF MAHARASHTRA & OTHERS AIR 1979 SC 94. The said decision of the Supreme Court is not an authority for the proposition now involved in this case. The facts involved in that case are altogether different.

It has been laid down in T.K.APPU NAIR v. EARNEST & OTHERS, : AIR1967 Mad262 thus:

'In a private complaint in respect of a case triable under warrant procedure, the Magistrate is entitled to frame charges for the offences mentioned in the complaint as soon as some witnesses are examined to prove the ingredients required for the said offences.'

Shri Nagesh referred me to R.S. NAYAK v. A.R. ANTULAY AND ANOTHER, (1986)2 SCC(Cri) 256. On page 258 it has been laid down by the Supreme Court as:

'The use of the words 'if, upon taking of the evidence referred to in Section 244' in Section 245(1) is suggestive of the statutory intention that until 'all such evidence as may be produced in support of the prosecution' is taken, the stage for judicial consideration as to whether charge is to be framed is not reached. Although in the present case several prosecution witnesses remained to be examined when the trial Court framed the charges, but since the prosecution instead of objecting to the premature framing of charges had itself invited the Court to take up the matter of framing charges, no complaint could be made by the prosecution in that regard.'

The said decision of the Supreme Court is a clear authority for the proposition that when the Court considers the question as to whether the materials on record are sufficient or not to frame a charge, it must have before it legal evidence contemplated under Sections 244 and 245 Cr.P.C. The words 'at any previous stage of the case' found in Section 246 Cr.P.C. only mean that the complainants need not lead all the evidence proposed by them to lead but the Court, even before the complainants adduce all the materials cited by them in the complaint, at any stage before recording all such evidence, may proceed to frame a charge, if the evidence already on record is sufficient to sustain the charge. It does not mean that even before recording any evidence on behalf of the complainants the Court can frame a charge only on the sworn statement of the witnesses, if at all examined by the complainants, before ordering issue of process.

10. Section 244 Cr.P.C. makes it absolutely clear that the complainants should lead evidence after the accused appears or is brought before the Magistrate. Section 245 speaks that after such evidence as referred to in Section 244 is lead, the Court may, if it finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, discharge him. Therefore, it is only after recording the evidence of the complainant and his witnesses, if any, after the accused appears or is brought before the Court as laid down in Section 244 Cr.P.C., the Court may proceed to frame a charge or discharge the accused.

If the complainant does not choose to lead any evidence before charge, after the accused appears or is brought before the Court, no case which, if unrebutted, would warrant a conviction can be said to have been made out. Therefore, if the complainant does not choose to lead any evidence after the accused appears or is brought before the Court, then it is a clear case for discharge. The learned Counsel Shri Venkataranga Iyengar, submitted that the sworn statement of the complainant would come within the ambit of Sections 244, 245 and 246 Cr.P.C. and it would be evidence and so if the Court proposes to rely on such sworn statement for the purpose of framing a charge it cannot be said to be wrong.

The learned author Sohoni, in his Criminal Procedure Code, 18th Edition, Volume-3, page 2692 stated : 'It is not open to the Magistrate to take into consideration any report received under Section 202. Statements made before the Court, before the accused was summoned, are not evidence within the meaning of Sub-section (1) and cannot be taken into account'. The learned author Sohoni has made a reference to a decision in *ANGREJ RAM v. BIMLA DEVI*, 1982 MLR 217 (P & H) : 1982 CHAND Cr.C. 149.

The learned author B B. Mitra in his Criminal Procedure Code, 16th Edition, has stated :

'One of the distinguishing points between a summons case and a warrant case is that in a summons case the accused is called on to plead as soon as he appears, before any evidence is taken, but in a warrant case sufficient evidence to support the charge must be recorded before a charge can be framed and the accused called on to plead. And this must be done even if the warrant case is tried summarily. It is not necessary that the Magistrate should wait till the whole of the evidence for the prosecution has been taken before any charge can be framed. The words are 'or at any previous stage'; the moment the stage is reached when there is ground for presuming that the accused person has committed an offence, the charge-sheet can be drawn up before all the prosecution witnesses have been examined. The words 'at any previous stage' are important....'.

That the sworn statement of the complainant before the issue of process is not evidence within the meaning of Sections 244, 245, and 246 Cr.P.C., does not

require any further authority on the point.

11. The learned Counsel Shri Venkataranga Iyengar referred to Section 244 Cr.P.C and urged that the Magistrate may only hear the prosecution and proceed to dispose of the case. The words 'to hear the prosecution' cannot be read disjunctively from the subsequent words, namely, 'and take all such evidence as maybe produced in support of the prosecution.' Therefore, the decision rendered in AIR 1922 MADRAS, 126 (supra)' on this point runs contrary to the words used in Section 244 Cr.P.C. and appears to have been not approved in the subsequent decision reported in : AIR1967 Mad262 (SUPRA), : AIR1967 Mad262

12. Therefore, under these circumstances, and when the complainants had clearly stated before the Magistrate that they had no evidence to lead at all before the framing of a charge, the Magistrate committed a serious illegality in ordering that a charge should be framed.

13. Then the next question is whether the allegations in the complaint make out any case at all. According to the complainants, accused Nos.1 and 2 borrowed two items of money from them on 29-8-83 and for the purpose of acknowledging those debts a cheque for Rs. 3,60,000/-was passed by accused No. 2 on 1-6-84. Thus, it becomes crystal clear that no money passed under the cheque dated 1-6-84 passed by accused No. 2. It was only an acknowledgement of the liability covered by the two pronotes. The learned Senior Counsel Shri Venkataranga Iyengar submitted that when the cheque was issued, the account of accused No. 2 in the Bank had been closed and that he passed the cheque knowing full well that he had no account in the Bank. A similar situation arose in NARAYANA v. DEENDAYAL & ANOTHER, Crl.Rev.Petn. No. 359 of 1987 DD 30-7-1987..... This Court has stated:

'It appears to me, a civil wrong has been dressed in a criminal charge for reasons obvious and not far to seek.'

Similar is the view taken in 1986(1) CRL.LAW JOURNAL 207, P. Eswara Reddy v. State of Andhra Pradesh and AIR 1972 SC 1243, Dhondey & Others v. State of U.P.. Therefore the ingredients of cheating appear to be lacking under the present

set of circumstances. Therefore, the offence under Section 417 IPC cannot be said to have been made out even on a plain reading of the allegations made in the complaint.

14. The next allegation in the complaint is that the accused Nos.1 and 2 though they were indebted to the complainants to the tune of Rs. 3,60,000/- sold their only house for Rs.4 lakhs though it was worth more than Rs.6 lakhs. Admittedly there was no charge on the property in question. This position has been covered by a ruling reported in AIR 1938 RANGOON 242 - ISMAIL PEER MOHAMED v. THE KING, AIR 1938 Rangoon 242. Therefore, even the offence under Section 4211.P.C. cannot be said to be made out by the allegations mentioned in the complaint. Thus, in the result the Magistrate committed an error in holding that there were sufficient grounds to frame a charge. The Magistrate ought to have discharged the accused persons on the ground that there was no case made out against the accused persons at all. The learned Sessions Judge taking into consideration the said legal position ought to have set aside the order passed by the Magistrate and ought to have set aside the order proposed by the Magistrate to frame a charge against the accused persons. He was wrong in remanding the matter to the Magistrate. Therefore, under these circumstances, the order passed by the Sessions Judge remanding the case to the Magistrate and the order passed by the Magistrate proposing to frame a charge against both the accused persons are set aside. Criminal Revision Petition No. 504/87 filed by the complainants is dismissed. Criminal Petition No. 1224/87 filed by the accused persons is allowed. The order passed by the Magistrate proposing to frame a Charge and the order passed by the Sessions Judge, remanding the case to the Magistrate, are set aside. The accused are discharged.

15. Let me consider the case from another point. Let me assume for a moment that the Magistrate committed an error in adopting the warrant-case procedure. Both the offences under Sections 417 and 421 I.P.C. are summons cases. When the complainants say that they have no evidence to lead, the Magistrate would not have any option but to acquit the accused under the circumstances. Therefore, viewed from any angle, the order passed by the Magistrate cannot be sustained.

