

The State of Mysore Vs. M. Srinivasa

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Court : Karnataka

Decided On : Nov-07-1972

Reported in : 1973CriLJ741; (1973)1MysLJ44

Judge : B. Venkataswami, J.

Appellant : The State of Mysore

Respondent : M. Srinivasa

Judgement :

ORDER

B. Venkataswami, J.

1. These two petitions can be disposed of by a common order. They are by the State and directed against two common Orders, made in two sets of cases on one and 'the same day, viz. 11.1.1972 by the Judicial Magistrate. First Class (2nd Court). Bangalore City. The accused in all these cases were common. The two Orders relate to C.C. Nos. 1946 to 1948/1971 in one case and C.C. Nos. 1949, 1964 and 1965/1971 in the other. In all these cases the charges relate to theft, among other things, and therefore trouble by following the warrant procedure prescribed under the Code.

2. The learned Magistrate purporting to exercise jurisdiction under Section 249. Criminal Procedure Code has directed stoppage of proceedings, preserving liberty

to the prosecution to revive them on the production of the accused.

3. On behalf of the State it is contended by Sri M. Nagappa. the learned Public Prosecutor, that the orders were clearly erroneous and illegal. The contention urged is that the provisions of Section 249. Criminal Procedure Code would not be attracted to cases trouble by Warrant Procedure. His further contention is that if the accused could not be produced it was the duty of the Magistrate to have proceeded under Section 87 of the Code.

4. It seems to me that this contention is clearly right. Section 249 Cr.P.C. occurs in Chapter XX of that Code which has made provision for procedure to be followed in trial of cases trouble by summons proceedings. That Chapter exclusively applied to such cases is made clear by Section 241. Cr.P.C. It cannot also be disputed that a case under Section 380 I.P.C. is trouble by Warrant Procedure prescribed in Chapter XXI of that Code. In this view of the matter. it was not at all open for the learned Magistrate to have exercised jurisdiction under Section 249 of the Code. The Orders impugned herein, therefore, are clearly unsustainable.

5. In the result, these petitions succeed and are allowed. The orders made by the learned Magistrate in C.C. Nos. 1946 to 1948/1971 and C.C. Nos. 1949, 1964 and 1965/1971 are hereby set aside. The learned Magistrate will now proceed to restore the said cases to file and dispose of them in accordance with law.