

The State of Mysore Vs. Parvathamma and ors.

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Court : Karnataka

Decided On : Feb-16-1971

Reported in : 1971CriLJ1038

Judge : M. Santhosh, J.

Appellant : The State of Mysore

Respondent : Parvathamma and ors.

Judgement :

ORDER

M. Santhosh, J.

1. This is a reference made Under Section 438 of the Code of Criminal Procedure, by the learned Sessions Judge of Chitradurga, recommending to this Court, the order of costs of Rs. 50/- directed to be paid by the complainant to the accused in C. C. No. 1290 of 1968, be set aside.

2. The complainant, who is respondent No. 1 before this Court, filed a complaint against the two accused-respondents Nos. 2 and 3 for an offence Under Section 354 of the Indian Penal Code before the First Class Magistrate, Chitradurga. The learned Magistrate recorded the sworn statement of the complainant Paravathamma. Thereafter, he also recorded the statement of two of her witnesses and took the case on file and issued summons to the two accused for

an offence Under Section 323 of the Indian Penal Code. After the trial, of the case, the Magistrate acquitted both the accused, but acting Under Section 516-AA of the amended Criminal P.C. (Mysore) asked the complainant to show cause why she should not be ordered to pay to the accused costs of the proceedings. After hearing the complainant, the learned Magistrate directed the complainant to pay cash of Rs. 50/- to the accused towards costs of the case. The complainant, thereafter, filed revision petition before the learned Sessions Judge, challenging this order passed by the Magistrate. The learned Sessions Judge, after hearing the parties, was of the opinion that the Magistrate was not justified in passing the said order in question and he made a reference Under Section 438 of the Code of Criminal Procedure to this Court, that the impugned order be set aside.

3. The learned Government Pleader has supported the reference and has taken me through the records. He has argued that the Magistrate had come to the conclusion, after recording the evidence of the complainant and examining her two witnesses, that there was a prima facie case and registered the case and issued summons against the accused. He argues that the accused have admitted their presence at the time of occurrence in the house of the complainant. Merely because the complainant has not been able to secure witnesses and prove their case, that is no ground for holding that she had no reasonable or probable cause for filing the complaint. The complainant bona fide thought that it was a true case and gave a complaint and the court was satisfied that there was a prima facie case and issued summons to the accused. He argues that in the circumstances of the case, it cannot be said that the complainant did not have reasonable and probable cause for filing a complaint.

4. Shri S. G. Bhat, learned Counsel appearing for respondents 2 and 3, the accused in the lower court, has supported the order passed by the learned Magistrate, awarding costs, to the two respondents. He submits that in the complaint filed by her, Parvathamma suppressed the facts that both the accused had come to her house for preparing an inventory as per the orders of the court. What she has stated in the complaint has a bearing in coming to the conclusion as to whether there was a reasonable or probable cause. The test to be applied in a case like this is not whether the complaint filed by her is false or frivolous as per

Section 250 of the Code of Criminal Procedure, but to find out whether there was any reasonable or probable cause for her to file a complaint. It is also contended by Shri Bhat that the learned Sessions Judge has committed two mistakes in his order of reference. The learned Sessions Judge was wrong in thinking that in a case like this the burden of proof lies on the accused to show that the complainant had no reasonable or probable cause to file a complaint. The view of the learned Sessions Judge that evidence in a criminal proceeding cannot be looked into in awarding costs Under Section 516-AA of the Code is not correct. It is also argued that under Sub-clause

(5) of Section 439 of the Code, this Court cannot exercise its revisional jurisdiction, since an appeal against the said order has not been filed by the complainant before the learned Sessions Judge. Since the complainant has not filed any appeal before the Sessions Judge, this Court cannot exercise powers of revision as Sub-clause

(5) of Section 439 of the Code is a bar. It is contended that since the learned Magistrate awarded costs of Rs. 50/-each against the two accused under Sub-clause

(6) of Section 516-AA of the Code, an appeal against the said order lay to the learned Sessions Judge has since the complainant has not filed any appeal against the said order but filed only revision, this Court is not competent to exercise its revisional jurisdiction Under Section 439 of the Code. The learned Counsel has relied on : AIR1959 All751 (Harwari Lai v. State) and : AIR1958 Cal615 (Ram Dass Ghosh v. The State) in support of his contentions.

5. Taking first the contention of the learned Counsel for respondents 2 and 3 that this Court is precluded from exercising its powers Under Section 439 of the Code because of Sub-clause (5) of the said section, it may be mentioned that this is a reference made by the learned Sessions Judge to this Court Under Section 438 of the Code and not a revision petition filed by the complainant Under Sections 435 and 439 of the Code. Sub-clause (5) of Section 439 reads as follows:

Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

In the instant case, as already pointed out, no revision has been filed at the instance of the complainant, and this is a reference made by the learned Sessions Judge Under Section 438 of the Code. Under Section 438 of the Code, the Sessions Judge may, if he thinks fit, on examining Under Section 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination. In this case, even assuming that the learned Sessions Judge had no right to exercise revisional jurisdiction, it was still open to him to make a reference to the High Court Under Section 438 of the Code, because the sub-section says that on examining the records Under Section 435 or otherwise a reference can be made.

6. Both the decisions relied on by the learned Counsel for the respondents, arose out of proceedings taken in revision before the High Court by the party who could have filed an appeal and in that case their Lordships held that Sub-clause (5) of Section 439 would be a bar. As already pointed out in the instant case the complainant has not filed any revision before the court challenging the impugned order, but it is only the Sessions Judge who had made the reference. I am, therefore of opinion that the decisions cited by the learned Counsel for the respondents are not of any assistance to him.

7. The question for consideration in this case is whether the complaint in question was made without reasonable or probable cause. Sub-clause (1) of Section 516-AA (Mysore amendment) of the Code reads as follows:

If in any case instituted upon complaint or upon information given to a Police Officer or to a Magistrate the accused is ordered to be discharged or acquitted by any court (including a court of appeal or revision) or if in any such case the proceedings are quashed by the High Court by an order made Under Section 561-A, and if such court is of the opinion that the complaint was made or the information was given without any reasonable and probable cause, it may, at the time of making such order, if the complainant or informant is present, call upon him

forthwith to show cause why he should not be ordered to pay costs to such persons; or if the complainant or informant is not present direct the issue of notice to him to appear and show cause as aforesaid.

Under the above provision, if the Court is of the opinion that the complaint was made or information was given without any reasonable or probable cause, it is open to the court to direct the complainant to pay costs to the accused. In the instant case, the complaint was filed by Paravathamma before the Magistrate and he recorded the sworn statement of the complainant. Thereafter, he also examined two of her witnesses Mallikarjunappa and Choudappa and registered a case and issued summons to both the accused Under Section 323 of the Indian Penal Code. The complainant was examined in court as P.W. 1 on 23-7-1969. She stated that at about 10-30 or 11 p.m., both the accused came to her house when her husband was away and thereafter accused No. 1 broke open the lock of the box. She protested saying that her husband was away and that they should not do so. Then accused No. 1 held her hand and broke her bangles. Then they began to remove the valuables from the trunk. She asked them not to remove them. Then accused No. 1 asked accused No. 2 to drag her away. Accused No. 2 told her that he would arrest her and put her in the lock-up and dragged her away. She sustained pain on her hand. She went to a doctor of the Civil Hospital at Chitradurga and obtained a certificate for her injuries. She has produced the certificate as per Ex. P-I.

8. The order sheet of the case indicates that after the complainant had been examined as P.W. 1 in the case, on 23-8-1969 her counsel made a request to the court for time to enable him to examine the other witnesses.

But, the learned Magistrate stated that sufficient time had already been granted and rejected the request made on behalf of the complainant. So, the complainant's case was closed and the accused were examined Under Section 342 of the Code and thereafter the learned Magistrate passed the order acquitting the accused.

9. The learned Magistrate, in his order awarding costs to the accused, has stated that none of the witnesses cited in the complaint petition were examined by Paravathamma. But the learned Magistrate has not stated that request made on her

behalf by her counsel for time to examine the other witnesses has been refused by the court. If time had been given to the complainant, she could have examined the witnesses in support of her case. This refusal by the court to grant her time to examine her witnesses has resulted in her not being in a position to prove the case against the accused. The learned Magistrate has stated that even the medical certificate Exhibit P-I produced by her has not been proved by examining the doctor. In the circumstances mentioned above, after recording the statement of the complainant, the learned Magistrate, without giving an opportunity to the complainant to examine her other witnesses, came to the conclusion that the complainant has not proved the charge against the accused and acquitted them.

10. The question for consideration in this case, as already stated, is whether Parvathamma, made the complaint without reasonable or probable cause. The records of the case clearly indicate that before issuing the process, the learned Magistrate had recorded the sworn statement of two of the witnesses produced by Parvathamma. The sworn statement of Mallikarjunappa and Choudappa. the witnesses cited by her had been recorded by the learned Magistrate and they had in their statement supported substantially the version of the complainant about the accused catching hold of her, pulling her and breaking her-bangles. As pointed out by the learned Sessions Judge, the Magistrate issued process to the accused only after coming to the conclusion that a prima facie case has been made out by the complainant. In the circumstances mentioned above, it cannot be said that Parvathamma gave a complaint without reasonable and probable cause. Mere fact that Parvathamma had not adduced evidence of other witnesses to prove her case beyond all reasonable doubt against the accused, is no ground for holding that she had no reasonable or probable cause for filing the complaint. The learned Magistrate, in his judgment recording acquittal of the accused, has himself stated that this is not a fit case for awarding compensation to the accused Under Section 250 of the Code on the ground that the complaint petition is false, frivolous and vexatious. The contention put forward by the counsel on behalf of the accused that the complaint was false and frivolous was rejected by him. The learned Magistrate also stated in that context that if the complaint was really false, the accused could have examined the Commissioner who was holding the inventory and was present throughout at the time of the occurrence, to prove the same. From what has been

stated above, it is clear that the finding of the learned Magistrate that Parvathamma did not have reasonable or probable cause for filing the complaint is not correct and proper, and has to be set aside.

11. For the reasons mentioned above, I accept the reference made by the learned Sessions Judge and set aside the impugned order passed by the learned Magistrate, directing the complainant to pay costs of Rs. 50/- to each of the accused.

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