

Abdul Khader Vs. Mohammed Faizuddin

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Court : Karnataka

Decided On : Feb-12-1987

Reported in : ILR1987KAR832

Judge : Patil, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 161, 164, 200, 202, 202(2), 204 and 208

Appeal No. : Crl. Petn. No. 725 of 1986

Appellant : Abdul Khader

Respondent : Mohammed Faizuddin

Advocate for Def. : K.S. Desai, Adv.

Advocate for Pet/Ap. : Shivraj Patil, Adv.

Judgement :

ORDER

Patil, J.

1. In this petition, the petitioners who are accused in C.C. No. 53/82, on the file of the Chief Judicial Magistrate, Bidar, have sought to challenge the legality and correctness of the process issued against them and confirmed by the Sessions

Judge in revision.

2. The case is instituted on a private complaint filed by the respondent alleging commission of the offences of criminal trespass and dacoity, punishable under Sections 447 & 395 IPC. The Learned Magistrate, after taking cognizance of the offences, proceeded to record the sworn statement of the complainant and three witnesses examined on his behalf as provided under Section 200 Cr.P.C. and thereafter he straight away directed to issue process against the accused, for the offences punishable under Sections 447 & 380 IPC. Aggrieved by the issue of process the petitioners approached the Sessions Judge in revision and the Sessions Judge having confirmed the same, they have come up with this petition.

3. The grievance of the petitioners is that the Magistrate has failed to comply with the provisions of law as contained in proviso to Sub-section (2) of Section 202 Cr.P.C. Not only he has failed to make any inquiry as provided thereunder, but had failed to call upon the complainant to produce all his witnesses and examine them on oath before issuing the process. Besides, although the allegations made in the complaint were in respect of offence of dacoity, which is exclusively triable by a Court of Sessions, the Magistrate has thought of issuing process against the accused, for the offences under Sections 447 & 380 IPC only. The procedure followed by the Magistrate in not complying with provisions of law is prejudicial to the case of the accused and therefore the orders passed by the Magistrate directing issue of process against them and confirmed by the Sessions Judge deserve to be set aside.

4. Although the complainant has not made any grievance in this behalf, but, it would appear, having regard to the fact that the committal enquiry having been dispensed with in view of the provisions contained in Section 202 and those provided under Section 208 Cr.P.C. there appears to be sufficient force in these contentions of the accused. In a case instituted on a private complaint, where the offences alleged are exclusively triable by a Court of Sessions, it is not only not permissible for the Magistrate to direct investigation by the police as provided under Section 156(3), or Section 202 but it is also obligatory on him to call upon the complainant to produce all his witnesses and examine them on oath as

provided under proviso to Sub-section (2) of Section 202 Cr-P.C. before issuing process under Section 204. The Magistrate has also no jurisdiction to appreciate the evidence of the witnesses in such a case to reach any conclusion if the offences disclosed are triable by the Magistrate. That is exclusively the function of the Sessions Judge. After issue of process, the only judicial function that the Magistrate is called upon to do is one indicated in Section 208 Cr.P.C. i.e. to furnish to the accused, free of cost, a copy of each of - (i) statements recorded under Section 200 or Section 202, of all persons examined by the Magistrate; (ii) the statements and confessions, if any, recorded under Section 161 or Section 164; and (iii) any documents produced before the Magistrate on which the prosecution proposed to rely: provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court. Thereafter commit the case to the Court of Sessions and it is for the Sessions Judge to appreciate the evidence so recorded by the Magistrate and to find out whether any such case exclusively triable by the Court of Sessions is or is not made out. In the absence so evidence of all the witnesses, it would also be not possible to the Sessions Judge to appreciate the contentions urged before him. Therefore, failure on the part of the Magistrate to call upon the complainant to file the list of witnesses and examine all such witnesses sought to be examined not only tantamounts to violation of provisions of Section 202, but is also prejudicial to the case of the accused.

5. The petition is therefore allowed. The orders under petition are set aside and the process issued by the Magistrate are quashed. The Magistrate is directed to take the case to his file, call upon the complainant to examine all his witnesses and dispose of the same in accordance with law, in the light of the observations made above.