

Naganagouda Vs. Kamalaxi

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Court : Karnataka

Decided On : Nov-21-1985

Reported in : ILR1986KAR1229

Judge : Narayana Rai Kudoor, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200, 200(2), 202, 202(1), 202(2), 203, 204(1)

Appeal No. : Crl. R.P. No. 459 of 1985

Appellant : Naganagouda

Respondent : Kamalaxi

Advocate for Def. : W.V. Arabatti, Adv.

Advocate for Pet/Ap. : H.F.M. Reddy and ;Deshpande, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Narayana Rai Kudoor, J.

1. The matter arises in this way. The respondent Kumari Kamalaxi (Complainant) filed a complaint under Section 200 of Criminal Procedure Code ('the Code')

before the Principal Munsiff & I Additional JMFC., Ranebennur against the petitioners (accused) for various offences under the Indian Penal Code including offences under Section 307 and 392 of Indian Penal Code. The Magistrate, after recording the sworn statement of the Complainant directed issue of process against the accused for several offences including the offences under Sections 207 and 395 read with Section 149 of Indian Penal Code as per his order dated 14-8-1985.

2. It is the correctness of this order that is sought to be assailed in this Revision Petition. Heard the learned Advocates H.F.M, Reddy and Deshpande for the petitioners and Sri W. V. Arabatti for the respondent.

3. The main argument on behalf of the accused was addressed by Sri Deshpande. Sri H. F. M. Reddy put emphasis on the submissions made by Sri Deshpande. Sri Dashpande, in the course of his argument raised three main contentions. Firstly, he contended that in view of the fact the complainant has alleged certain offences against, the accused which are exclusively triable by the Court of Sessions, the Magistrate before taking action under Section 204 of the Code directing issue of process to the accused should have held an enquiry as contemplated under Section 202 of the Code.

4. His second submission was that since the Ranebennur Police have taken action on a complaint filed by the brother of the complainant by registering a crime in Crime No. 85/85, the Magistrate should have stayed the proceedings on the complaint instituted by the Complainant as stipulated under Section 210 of the Code.

5. The last contention urged was that the entire allegations in the complaint and the sworn statement of the complainant do not amount to any offence and they disclose at best a civil dispute between the parties.

6. On these grounds, he challenged the validity and legality of the order passed by the Magistrate dated 14-8-1985 directing issue of process to the accused.

7. Per contra, Sri Arabatti, Learned Advocate appearing for the respondent argued in support of the validity and the legality of the order passed by the Magistrate, refuting the various points urged by Sri Deshpande.

8. I shall proceed to consider the points urged by Sri Deshpande in the order in which they were presented before me.

Point No. 1 :

9. For the proper understanding and better appreciation of this contention, it is necessary to advert to the scheme provided under the Code in respect of the complaints filed to the Magistrates.

Section 190(1)(a) of the Cr. P.C., enables the Magistrates to take cognizance of any offence upon receiving a complaint of facts which constitute such offence.

Chapter XV deals with the procedure to be followed by the Magistrate on presenting a complaint to him.

Section 200 provides that a Magistrate taking cognizance of an offence on a complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also of the Magistrate except, in cases stipulated under the proviso to the Section where the Magistrate need not examine the complainant and the witnesses;

Section 202 of the Code lays down the procedure to be followed where the Magistrate thinks fit to postpone the issue of process against the accused. Sub-section (1) of Section 202 of the Code contemplates that any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192 may postpone the issue of process if he thinks fit against the accused and, either inquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Proviso to Sub-section (1) lays down the limitations upon the powers of the Magistrate in giving direction for investigation which is not material for our

purpose. Sub-section (2) of Section 202 of the Code which is very material for our purpose reads :

'In an inquiry under Sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath ;

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all the witnesses and examine them on oath.'

Section 203 of the Code provides for dismissal of a complaint. It lays down that if after considering the statement on oath, if any, of the Complainant and of the witnesses and the result of the enquiry or investigation, if any, under Section 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

Chapter XV opens with Section 200 and closes with Section 203 of the Code.

10. The next Chapter is Chapter XVI relating to the commencement of proceedings before a Magistrate. Subsection (1) of Section 204 provides for issue of process. It applies not only in respect of a complaint directly filed before the Magistrate but also to the other cases stipulated under Section 191 which enables the Magistrate to take cognizance, as it is obvious from the heading of the Chapter XVI 'Commencement of Proceedings before Magistrates'. Sub-section (1) stipulates that if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be a summons-case he shall issue summons for the attendance of the accused, or a warrant-case, he may issue warrant or if he thinks fit, a summons for causing the accused to be brought or to appear at a certain time before the Magistrate.

Section 208 of the Code relates to the supply of copies of statements and documents to the accused in other cases triable by the Court of Sessions. It provides among other things that where in a case instituted otherwise than on police report, it appears to the Magistrate issuing process under Section 204 that

the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the statements recorded under Section 200 or Section 202 of all persons examined by the Magistrate.

The next stage, in the order of sequence of the procedure to be followed in the case of an offence exclusively triable by the Court of Session is to commit the case to the Court of Session and the Court of Session shall proceed with the trial of the case as stipulated in Chapter XVIII of the Code.

11. A close analysis of these provisions shows that on receipt of a complaint the Magistrate taking cognizance of an offence on a complaint shall examine the complainant as well as the witnesses produced by him, on oath and record the substance of the statements made by them. On recording the statements of the Complainant and all the witnesses produced by him as required under Section 200 of the Code, it is open to the Magistrate to consider those statements and come to his conclusion on the matter and if the conclusion he thus reaches is that there is no sufficient ground for proceeding, he shall dismiss the complaint recording his reasons briefly for so doing. However, if he does not dismiss the complaint on recording the sworn statements of the complainant and his witnesses, but at the same time thinks fit to postpone the issue of process against the accused, then he has to take recourse as provided under Section 202 for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus, taking recourse to Section 202 will arise where the Magistrate, on recording the sworn statements of the complainant and his witnesses decides not to take action under Section 203 of the Code but at the same time, thinks fit to postpone the issue of process because he wants to secure some more material by adopting the procedure laid down in Section 202 to decide whether or not there is sufficient ground for proceeding. Even after taking recourse to Section 202 and collecting material as provided therein, if the Magistrate thinks that there is sufficient ground to proceed on examining the complainant as well as his witnesses on oath as required under Section 200 or after taking recourse to Section 202, the only course left to the Magistrate is to direct issue of process as contemplated under Sub-section (1) of Section 204.

12. There is one limitation on the powers of the Magistrate if he chooses to hold an enquiry under Sub-section (1) of Section 202, He is generally empowered to take evidence of witnesses on oath in the enquiry under Sub-section (1) but if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. In other words, in cases other than [offences complained of is triable exclusively by the Court of Session, the Magistrate may take evidence of such witnesses as he thinks fit. But if offence complained of is triable exclusively by Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath and in this regard there is no choice for the Magistrate to stop half-way in the matter of examining the witnesses.

13. The next question to be considered is whether it is obligatory for the Magistrate to adopt invariably the procedure laid down in Sub-section (2) of Section 202 of the Code where the offence complained of is triable exclusively by the Court of Session. To put it differently, in a case where the offence complained of is triable exclusively by the Court of Session, Sub-section (2) of Section 200 controls the power of the Magistrate, for taking action under Section 203 or under Section 204(0 of the Code, The language employed in Section 202 of the Code, in my opinion, does not lend support to such a construction. As noticed earlier a Magistrate may hold an enquiry as contemplated under Sub-section (1) of Section 202 of the Code only if he thinks fit to postpone the issue of process against the accused having followed the procedure laid down in Section 200 of the Cods. The opening expression in Sub-section (2) 'In an enquiry under Sub section (1), the Magistrate may. if he thinks fit, take evidence of witnesses on oath' shows positively that Sub-section (2) shall come into play only in a case where the Magistrate decides to hold an enquiry under Sub-section (1). In this view of the matter, the proviso to Sub-section (2) shall also govern an enquiry stipulated tinder Sub-section (1) and it cannot be said that this proviso controls Section 200 of the Code. In that view, it seems to me proper to hold that it is not obligatory for the Magistrate to invariably take recourse to the proviso to Sub-section (2) where the offence complained of is triable exclusively by the Court of Session. Certainly, he is empowered to deal with the case where the offence complained of is triable by

the Court of Session by adopting the procedure laid down under Section 200 and take appropriate decision as required under Section 203 or under Sub section (1) of Section 204 of the Code The construction I propose to place upon the language and the implication of Section 202 of the Code in taking recourse to the procedure therein is only in a case where the Magistrate, thinks to postpone the issue of process against the accused and that it is not obligatory to hold an enquiry in conformity with the proviso to Sub-section (2) where the offence complained of is triable exclusively by the Court of Session, is supported by a decision of this Court in the case of Ramanatha and anr. v. State and ors., ILR 1984(2) KAR= 1984(2) KLJ 126. The relevant observation of his Lordship Justice N.D. Venkatesh in deciding the above decision is found in paras 12 and 14 of the Judgment which reads thus :

'12. A plain reading of Section 202 shows that the law vests with the Magistrate taking cognizance of a complaint, a discretion in the matter of taking recourse to Section 202. This is clear from the words 'may if he thinks fit, postpone the issue of process and either enquire into the case himself or' found in Sub-section (1) of Section 202. Sub-section (2) of Section 202 comes into play only when the Magistrate decides to proceed under Sub-section (1) of that Section The proviso to Sub-section (2) controlling as it does that sub-section, cannot be viewed as if it controls even Section 200.

14. Re : the construction placed by various Courts on Section 202 of the Code I am inclined to follow the views of the Full Bench of the Kerala High Court in Kamala Bhargavi. As stated above, at para 12, the Magistrate has a discretion in the matter of himself holding an enquiry under Section 202.'

After holding that the proviso to Sub-section (2) controlling as it does that sub-section cannot be viewed as if it controls even Section 200, the Learned Judge proceeded to observe in para-15 as under :

'15. True it is also observed in Kamala Bhargavi Amma' 'that as in the matter of any discretionary jurisdiction vested in a Court it would not be proper to lay down any hard and fast rule as to when such discretion is to be exercised ; nor is it possible or feasible'. But at the same time would not this Court be failing in its duty

if it does not, atleast, broadly, indicate how subordinate Courts while dealing with situations like these may have to proceed so that parties are not put to hardship or harassment. Given the same set of facts or confronted with similar situations can they act differently, though exercising their discretionary powers I feel, that it is in the ends of Justice desirable that this Court should impress upon the Trial Courts dealing with private complaints involving offences exclusively triable by Courts of Session the feasibility of examining all the witnesses, taking recourse to the proviso to Sub-section (2) of Section 202 of the Code, before taking a decision in the matter under Section 203 or 204 thereof.

14. As seen from the above observation it is only an observation and not the ratio of the decision. If this observation is treated as ratio of the decision, then there is possibility of the lower Courts in understanding this decision in all cases where the offence complained of is triable exclusively by the Court of Session, it is mandatory for them to take recourse to proviso to Sub-section (2) of Section 202 of the Code and call upon the complainant to produce his witnesses and examine them on oath. This procedure, if held to be mandatory even though in the form of guidelines, then it would drag on the proceedings although it was not necessary on the mere pretext that the offence complained of is exclusively triable by the Court of Session. To illustrate, that in a given case if the offence complained of is exclusively triable by the Court of Session and on examining the complainant and his witnesses on oath as required under Section 200 of the Code if the Magistrate were to come to the conclusion that there is no sufficient ground to proceed with or that there is sufficient ground for proceeding certainly he could decide the matter as required under Section 203 or Sub-section (1) of Section 204 of the Code as the case may be. It cannot be said that in a case where the offence complained of is exclusively triable by the Court of Session, the Magistrate is required to call upon the complainant to produce all his witnesses and examine them on oath. This view I take gains support from the provisions contained in Section 208 of the Code dealing with the supply of copies of the statements and documents to the accused in the cases triable by the Court of Session on a complaint to the Magistrate. Under Clause (1) of Section 208 of the Code, it is provided that the Magistrate shall without delay furnish to the accused free of cost a copy of the statements recorded under Section 200 or Section 202 of the Code of all persons

examined by the Magistrate. In a case where the Magistrate issues process under Section 204 of the Code where the offence complained of is exclusively triable by the Court of Sessions, the copies of statements to be supplied to him/are the statements recorded either under Section 200 or under Section 202 of the Code. This provision clearly indicates that even in such a case, the Magistrate is at liberty either to take recourse only under Section 200 or Section 202 of the Code as he thinks fit. Viewed the case from any angle, I am inclined to hold that proviso to Sub-section (2) of Section 202 cannot control Section 200 of the Code.

POINT NO. 2

15. This contention is based upon the ground that the brother of the complainant had filed a complaint before the Ranebennur police which was registered as Crime No. 85/85 and F.I.R. was submitted to the Court. Sub-section (1) of Section 210 of the Code reads :

'When in a case instituted otherwise than a police report (hereinafter referred to as a complainant case), it is made to appear to the Magistrate, during the course of the enquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such enquiry or trial and call for a report on the matter from the police officer conducting the investigation.'

The other portion of this Section is not relevant and therefore, omitted.

16. A plain reading of Sub-section (1) shows that during the course of an enquiry or trial, if it appears to the Magistrate that investigation by the police is in progress in relation to the offence about which he is conducting the enquiry or trial, (sic)e shall stay the proceedings either of enquiry or of trial, and call for a report from the police officer conducting the investigation. In the instant case, the complainant, both in her complaint as well as in her sworn statement has stated that a complaint was lodged in respect of the same incident before Ranebennur police but the police did not take any action on the complaint. This was the only material that was available before the Magistrate while he was conducting the enquiry on the complaint filed by the complainant. It cannot be said that on the basis of this

material there was any indication for the Magistrate to know that an investigation by the police was in progress in relation to the same crime. In that view of the matter, the Magistrate could not have taken action under Section 210 of the Code. However, it is open to the parties to make appropriate statement at the appropriate stage to take action under Section 210 of the Code if the material produced would necessitate to take action under Section 210 of the Code. In the view I hold on this aspect, I find no much force in this contention.

POINT NO. 3 :

17. It was contended that the entire allegations in the complaint and the verifying statement do not amount to any offence and at best they show that the matter is purely of a civil nature, that is, a dispute between the landlord and the tenant in respect of a premises. I do not find much support to sustain this contention on the basis of the allegations in the complaint and the sworn statement of the complainant. Thus, I find no much force in this contention.

18. These are all the points canvassed before me in this case. In view of the above discussion and the conclusions reached, I hold that the Revision must fail and accordingly, it is dismissed.