

In Re: Mohammad Raiazuddin

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SooperKanoon Citation : sooperkanoon.com/432128

Court : Andhra Pradesh

Decided On : Jul-15-1975

Reported in : 1976CriLJ125

Judge : Madhusudan Rao, J.

Appellant : In Re: Mohammad Raiazuddin

Judgement :

ORDER

Madhusudan Rao, J.

1. This revision is directed against the order passed by the learned Judicial First Class Magistrate, Adilabad dismissing the petitioner's complaint under Section 203, Cri. P.C.

2. The petitioner is a Forest Guard. He filed a complaint under Sections 323 and 504, I. P.C. against the District Forest Officer Adilabad and one Namdev. a Forest Guard alleging as follows :

The complainant is a Forest Guard working under the District Forest Officer. On 16-1-1975, the District Forest Officer called the complainant to his residence and abused him. The complainant reported the matter to the. Conservator of Forests. On 28-1-1975 when the complainant was going in a rickshaw at about 5-30 p.m. and when he reached the office of the Assistant Engineer, P.W. D. Adilabad, he

met the District Forest Officer and Namdev who were coming in the opposite direction on a scooter. The District Forest Officer asked the complainant to stop the rickshaw. When the complainant stopped the rickshaw the District Forest Officer abused him as Lanja Kodaka for having reported against him to the Conservator of Forests. In the meanwhile the Forest Guard, Namdev caught hold of the hand of the complainant and pulled him towards the District Forest Officer. The District Forest Officer thereupon slapped the complainant on the left cheek saying that the complainant may do whatever he liked.

3. After recording the sworn statement of the complainant, the learned Magistrate thought it necessary to postpone the issue of process to the accused and himself held an enquiry under Section 202, Criminal P.C. During the enquiry the complainant has produced three witnesses who deposed as direct witnesses to the incident. P.W. 1 is a rickshaw puller. P.W. 2 is a police constable (on leave). P.W. 3 is a fruit seller. On a consideration of the complaint, the sworn statement of the complainant and the statements of P.Ws. 1 to 3 the learned Magistrate dismissed the complaint under Section 203, Criminal P.C. being of the view that the complaint is frivolous and has been concocted by the complainant to harass the District Forest Officer who is enquiring into charges of corruption against the complainant.

4. Sri B. Anjaneyulu, the learned Counsel for the petitioner urged two grounds in assailing the order of dismissal passed by the lower Court;

5. The first ground is that the Magistrate ought not to have cross-examined the complainant's witnesses during the enquiry under Section 202, Cri. P.C. In support of this contention he relies on Yusuf H. Abbas v. Bhagwandas P. Nangpal AIR 1949 Bom 346, In Re Sivasubbu Nadar : AIR1951 Mad772 and Chandra Deo v. Prokash Chandra : [1964]1SCR639 . The object of an enquiry under Section 202, Cri. P.C. is to ascertain the truth or falsehood of the complaint and to ensure that no person shall be harassed by being brought to the court for answering a frivolous or unfounded charge. No doubt, the scope of the enquiry is limited to the finding of the prima facie truth in the complaint or otherwise of the complaint for the purpose of deciding whether or not there is sufficient ground for proceeding

with the case. For being satisfied with regard to the prima facie truth of the complaint and for a decision as to whether there is sufficient ground for proceeding with the case, it is certainly open to the Magistrate to put appropriate questions to the witnesses that might be produced by the complainant. The duty of ascertaining the truth is of the Magistrate and it would be impossible for the Magistrate who makes the enquiry to ascertain the truth if he is to simply hear and record whatever the complainant and his witnesses state before him.

6. In AIR 1949 Bom 346 (supra) the practice of the trial Judge examining and cross-examining the witnesses himself in spite of the presence of the counsel of both the parties has been deprecated. The facts of the case and the observations therein have no bearing on the facts of the instant case. There was only one party before the court and the Magistrate had to discharge his duty of ascertaining the truth of the version of that party.

7. In (1951) 52 Cri LJ 844 (Mad) the Sessions Judge while trying a murder case put 'very many questions' to P.Ws. 1 to 3 and 10 both while the prosecution examined them and also when the defence cross-examined them. It was pointed to a witness during the course of either the examination in chief or the cross-examination the counsel is bound to feel embarrassed and troubled as such interference of the Court might take him away from the trend of his questions. It is not the case of the petitioner herein that while he was examining his witnesses the Magistrate interfered in the examination. The record clearly shows that the Magistrate recorded whatever was stated by the witnesses in their examination-in-chief without any interruption whatever and that he put questions to the witnesses only after they completed their versions.

8. In the last case relied on by Sri Anjaneyulu i.e. Chandra Deo v. Prokash Chandra : [1964]1SCR639 the Supreme Court has pointed out that 'the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the

complainant.' This observation is made by the Supreme Court in para 3 of the judgment while dealing with the question as to what exactly is the matter in respect of which the Magistrate has to be satisfied in an enquiry under Section 202, Cri. P.C. The Supreme Court has pointed out that for determining the question whether any process is to be issued or not, the Magistrate has to be satisfied as to whether there is sufficient ground for proceeding, and not whether there is sufficient ground for conviction. The contention of Sri Anjaneyulu that the Magistrate must decide the matter only with reference to whatever the witnesses have stated on their own accord or at the instance of the complainant and that no reference should be made to any matter elicited by the Magistrate by his examination of the witnesses, is based on a misconception of the observation of the Supreme Court. In the very case relied on, in para 7 the Supreme Court has pointed out as follows

It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued nor can he examine any witnesses at the instance of such person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go.

9. In the light of the categorical pronouncement of the Supreme Court in *Chandra Deo v. Prokash Chandra* : [1964]1SCR639 (supra) that in an enquiry under Section 202, Criminal P.C. a Magistrate is free to put such questions to the witnesses produced before him by the complainant, as he may think proper in the interests of justice, there can be little doubt that there is absolutely no substance in the first ground urged by Sri Anjaneyulu.

10. The next ground is that the Magistrate used his personal knowledge of facts obtained from the accused Jin putting questions to the complainant and P.W. 3. In support of this contention Sri Anjaneyulu relies on what has been recorded by the Magistrate in his examination of the complainant and P.W. 3.

11. The first four paras of the statement of the complaint in the examination by the Court, read as follows:

There is a corruption charge against me and the enquiry against me is going on Sub-D.F.O. is conducting the enquiry.

Namdev and his wife gave petition to D.F.O. against me stating that I motested the modesty of his wife and also that I took bribe.

In 1973 I had given information to the D.F.O. regarding the destruction of jungle. I had given petition to the Conservator stating that the D.F.O. transferred me to Nirmal Division I was transferred two or three months back. I did not join, D.F.O. transferred me. Conservator did not take any action on my petitions and the information of destruction of the forest.

There is also a charge against, me that I went to the forest of Utnoor West and utilised the money. D.F.O. has served a charge-sheet against me. The enquiry is still pending against me. I am on leave since 5th September, 1974 I did not join duty.

In his examination by the court, P.W. 3 has stated that he was prosecuted for gambling by the police, Adilabad. No doubt as observed already, in an enquiry under Section 202, Criminal P.C. a Magistrate may put any questions he considers necessary to the complainant or the witnesses produced by the complainant. But the questions that can be put would generally be in the light of the allegations in the complaint, the facts stated by the complainant in his sworn statement, the facts stated by the witnesses of the complainant and the probabilities that arise therefrom. On account of his experience of men and matters a Presiding Officer of the Court may sometimes put searching questions and such intelligent questioning need not be suspected as a result of information from the party in whose favour the answers are obtained. A Judge may use his general knowledge and experience not only to test the veracity of the witnesses but also to shake their credit. But this discretionary power of the Court as any other discretionary power should be used judiciously and not capriciously by the use of private knowledge gained with reference to facts impeaching the credit of the witnesses. I have anxiously read and re-read the answers of the complainant and the witnesses in their examination of the Court and I am unable to comprehend the judicial data which enabled the Magistrate to put the questions which he put to the complainant

and P.W. 3. It is indeed significant that the question 3c regard to the pendency of a prosecution under the Gaming Act is put only to P.W. 3 who admitted the fact and the same question has not been put to either the complainant or the other two witnesses. Under the circumstances, I have no hesitation to agree with the contention of Sri Anjaneyulu that the Magistrate examined the witnesses with reference to facts known to him otherwise than judicially.

12. The question now arises whether the order of the Magistrate can be interfered with. Though, it was improper and unwarranted, the Magistrate however elicited certain facts which tend to show that the allegations of the complainant may not be true and he dismissed the complaint basing en these facts. When a court records certain evidence by adopting a procedure not warranted by the law, it would not be permissible to base a judicial conclusion on such improperly recorded evidence. If the facts stated by (he complainant in paras 1 to 4 of his examination by the Court and the statement of P.W. 3 that a prosecution under the Gaming Act is pending against him, are eschewed from consideration, there can be little doubt that the sworn statement of the complainant and the statements of the witnesses examined on his behalf make out sufficient ground for proceeding against the two accused. These statements disclose that A-1 committed offences punishable under Sections 504 and 323, I. P.C. while A-2 committed an offence punishable under Section 323 read with Section 34, I. P.C. The order of dismissal passed by the learned Magistrate is vitiated in so far as it is based on facts elicited from private information received by the Magistrate and the order is therefore set aside. The Chief Judicial Magistrate, Adilabad is directed to make a further enquiry into the complaint either by himself or may direct any subordinate Magistrate in the District to make a further enquiry.

13. In the result, the petition is allowed and a further enquiry is directed.