

Verendra Kumar Vs. Aashraya Makers and anr.

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Court : Andhra Pradesh

Decided On : Apr-20-1999

Reported in : 1999(1)ALD(Cri)753; 1999(1)ALT(Cri)716; 1999CriLJ4206

Judge : Bilal Nazki, J.

Acts : Negotiable Instruments Act - Sections 138; Code of Criminal Procedure (CrPC) , 1974 - Sections 238 to 243, 244 to 246 and 482; Indian Penal Code (IPC) - Sections 420; Code of Criminal Procedure (CrPC) - Sections 252 and 254

Appeal No. : Criminal Petition No. 1217 of 1999

Appellant : Verendra Kumar

Respondent : Aashraya Makers and anr.

Advocate for Def. : K. Venkateshwar Rao, Adv. for Respondent No. 1 and ;Public Prosecutor for Respondent No. 2

Advocate for Pet/Ap. : Srikishan Sharma, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Bilal Nazki, J.

1. This is a petition under Section 482, Cr. P.C. seeking quashing of C.C. No. 5/99 pending on the file of IV Metropolitan Magistrate, Hyderabad. This petition raises an interesting and important question of law. Counter has been filed and I have heard the learned counsel for the parties. Stay has been granted by this Court and a vacate stay application has also been filed. Since the pleadings are complete and the matter was heard in detail the matter is finally decided.

2. A private complaint has been filed against the petitioner for the offence under Section 420, I.P.C. and Section 138 of the Negotiable Instruments Act. The learned Magistrate issued summons to the petitioner and after his appearance framed a charge under Section 420, I.P.C. and Section 138 of Negotiable Instruments Act. The contention of the petitioner is that the procedure adopted by the Magistrate in framing the charge is illegal in view of the provisions of Sections 244, 245 and 246 of the Criminal Procedure Code, whereas the contention of the respondent is that the procedure laid down by the Criminal Procedure Code for taking cognizance and framing of charge in complaints filed otherwise than on a Police report has been complied with. It is admitted case of both the parties that no evidence was taken by the Magistrate before the charge was framed. In the light of this admitted position, it is necessary to appreciate the import of Sections 244, 245 and 246 of the Criminal Procedure Code. In fact Sections 238 to 243 of the Code deal with the procedure regarding warrant-cases instituted on Police report whereas Sections 244 to 246 deal with warrant-cases otherwise than on Police report. The present case is a warrant-case but instituted otherwise than on a Police report. Therefore, there is no dispute with regard to the fact that it has to be dealt with in accordance with Sections 244 to 246 of the Code. For the purpose of present controversy this Court needs to examine Sections 244, 245 and 246. All the three sections are reproduced herein below :-

244. (1) When, in any warrant-case instituted otherwise than on a Police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

245. (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, if for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

246. (1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under Sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forth- with, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any), they shall also be discharged.

While analysing all these three sections and trying to read them in tandem the scheme becomes clear. When a case is instituted otherwise than on a Police report and the Magistrate issues notice to the accused for appearance and he is brought before the Magistrate, the Magistrate is supposed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. Under Section 245, if after taking the evidence as referred in Section 244, the Magistrate considers that no case against the accused has been made out which goes unrebutted, would warrant his conviction, the Magistrate shall discharge him. If, on the other hand he finds evidence against the accused and finds there are grounds for presuming that the accused has committed an offence, he shall frame charge against him. This being the scheme laid down by Sections 244, 245 and 246, whether the petitioner was correct in stating that since no evidence has been taken under Section 244 therefore no charge could be framed under Section 246. The counsel for petitioner further submits that since no evidence was taken under Section 244 the petitioner got prejudiced as he had no chance to get a discharge under Section 245. Since the Court at no point of time had the opportunity to consider whether grounds exist, in the light of the evidence, for proceeding in the matter against the petitioner, he lost a valuable right of getting a discharge under Section 245. At first sight this argument looks to be attractive but the scheme which is laid down in Sections 244, 245 and 246 is not without exceptions. Section 244 lays down that the Magistrate shall proceed to hear the prosecution and take evidence as may be produced. From bare perusal of Section 244(1) it is clear that the option is not with the Magistrate to get the evidence of the prosecution examined but the option is with the complainant to produce the evidence. The provision itself says that the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced. Hearing of the prosecution is a must, but taking of evidence of prosecution is not a must under Section 244(1). It is made further clear by Sub-section (2) of Section 244 when it lays down that the Magistrate on the application of the prosecution shall issue summons to any of the witnesses directing them to attend or to produce any document or a thing. So, if

the complainant does not produce any evidence under Section 244 he cannot be forced to produce such evidence while the case is at the enquiry stage under Section 244 and by not bringing the evidence to the Court the complainant would be running a risk of getting the accused discharged in terms of Sub-section (2) of Section 245. Section 245(1) lays down that, after the evidence is taken in terms of Section 244, the accused can be discharged by the Magistrate for reasons to be recorded that no case is made out against the accused on the basis of the evidence which even if goes unrebutted. But, Sub-section (2) lays down that the Magistrate is not powerless to discharge the accused, even before evidence under Section 244 is taken, if he considers the case to be groundless. So, if the evidence is not brought before the Magistrate in terms of Section 244, Cr. P.C. the complainant runs the risk of losing the case and the accused gets a chance of getting discharge on the ground that the case itself is groundless. This interpretation looks to be the only interpretation possible in view of the mandate of Section 246, Cr. P.C. Under this section, the Magistrate is supposed to frame charge against the accused but it does not lay down that the charge shall be framed only after evidence is taken in terms of Section 244. There are two stages at which the Magistrate can frame a charge in a warrant-case filed otherwise than on Police report. One, at a time when the evidence taken under Section 244 discloses commission of an offence, two, even before taking evidence under Section 244 if the Magistrate finds that there is ground for presuming that the accused has committed an offence. Therefore, Section 246 makes it clear that it is not necessary that in all cases the Magistrate should take evidence under Section 244 before he frames the charge.

3. Certain judgments have been cited at the Bar, one of the judgments is *Ratilal Bhanji v. State of Maharashtra* AIR 1979 SC 94:1979 Cri LJ 41. This judgment was dealing with certain other issues and has not in fact directly dealt with the issue involved in this case. This judgment also lays down, if a prima facie case is made out the Magistrate must proceed under Section 254 (of the old Code corresponding to Section 246 of the new Code) and frame charge against the accused. Section 254 (old Code) shows that charge can be framed if after taking evidence or at any previous stage, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable as a warrant case.

4. Another judgment of Jammu and Kashmir High Court was pressed into service being Prithvi Nath v. R.C. Kaul (FB) 1975 Cri LJ 216 which only deals with the meaning attached to the word 'hear' the prosecution as it appears in Section 252 of old Code (Section 244 of new Code).

5. For the foregoing reasons, I do not find any merit in this petition which is accordingly dismissed.

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