

1.Sridhar Vs. Chandra Priya

1.Sridhar Vs. Chandra Priya

SooperKanoon Citation : sooperkanoon.com/60067

Court : Chennai

Decided On : Jun-17-2015

Judge : D. Hariparanthaman

Appellant : 1.Sridhar

Respondent : Chandra Priya

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 17.06.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU CrI.R.C.(MD).No.487 of 2014 and M.P.(MD).No.1 of 2014 1.Sridhar 2.Rajagopalan 3.Prabavathi 4.Poongodi 5.Shanmugasundaram .Petitioners/Accused 1 to 5 versus Chandra Priya .Respondent/Complainant PRAYER Criminal revision filed under Section 397 r/w 401 of Cr.P.C.against the order, dated 29.01.2014, made in Cr.M.P.No.1124 of 2013 in C.C.No.24 of 2012 on the file of the learned Judicial Magistrate No.I, Karur.

!For Petitioners : Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates ^For respondent : Mr.D.Selvaraj :

ORDER

The petitioners are the accused in C.C.No.24 of 2012 on the file of the learned Judicial Magistrate No.I, Karur.

The respondent is the complainant in the case.

Originally, on the complaint made by the respondent, the Sub Inspector of Police, All Women Police Station, Karur, registered a case in Crime No.3 of 2010, on 30.06.2010, under Sections 498-A and 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, against the petitioners herein.

On completing the investigation, the investigating officer filed a final report before the learned Judicial Magistrate No.I, Karur, reporting thereby that there was no such offence committed by these petitioners/accused.

On receipt of the said report, the learned Magistrate had rightly issued notice to the respondent / defacto complainant, as directed by the Hon'ble Supreme Court in Bhagwant Singh versus Commissioner of Police, reported in AIR 1985 SC1285. On receipt of the said notice, the respondent appeared before the learned Magistrate and filed a protest petition.

2.The learned Magistrate, considering the protest petition, accepted the contentions of the respondent herein and treated the said protest petition as a private complaint, as dealt with by the Hon'ble Supreme Court in Bhagwant Singh case.

The respondent was examined as CW1 under Section 200 Cr.P.C.and three more witnesses were examined on the side of the respondent as CW2 to CW4.

Having considered the same, the learned Magistrate, by order dated 05.03.2012, took cognizance of the offence on the private complaint and issued summons to the petitioners herein to appear on 12.04.2012.

Accordingly, they appeared.

Thereafter, the petitioners filed a petition under Section 245(2) of Cr.P.C., seeking discharge, on various grounds enumerated in the said petition.

That was opposed by the respondent / defacto complainant.

The learned Magistrate, by order dated 29.01.2014, dismissed the said petition holding that there are prima facie materials to proceed further with the trial of the accused.

Challenging the said order, the petitioners are before this Court with this petition.

3.I have heard the learned senior counsel appearing for the petitioners and the learned counsel appearing for the respondent.

I have also perused the records carefully.

4.In this case, the petition seeking discharge was filed by the petitioners under Sub Section (2) of Section 245 of the Code of Criminal Procedure.

The said Sub-section (2) of Section 245 and Sub-section (1) of Section 245, though deal with the discharge of the accused from the case, they operate at different stages under different considerations.

Before going into the further debate, let us have a look into Section 245 Cr.P.C.:
?.245.When accused shall be discharged.

(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.?.

5.A plain reading of Sub Sections (1) and (2) of Section 245 of Cr.P.C.would make it clear that a petition seeking discharge of the accused under Sub Section (1) of Section 245 of Cr.P.C.can be made only after taking all the evidence referred to in Section 244 Cr.P.C., on the side of the complainant, whereas under Sub Section (2).such petition can be filed only at any previous stage, i.e., before the completion of recording of the evidences under Section 244 Cr.P.C.While dealing with a petition under Sub Section (1) of Section 245 Cr.P.C., the Magistrate has to take into consideration the complaint, the documents filed therewith and the evidences recorded under Section 244 Cr.P.C, whereas while dealing with a petition under Sub Section (2) of Section 245 Cr.P.C., the Magistrate shall consider the

complaint and the statement of witnesses recorded under Sections 200 and 202 Cr.P.C. Thus, it is clear that if once the evidence under Section 244 Cr.P.C. is completed, the Sub Section (2) of Section 245 Cr.P.C. shall not be applicable.

6. Under both the provisions, the accused could be discharged only for reasons to be recorded by the Magistrate.

But, the reasons to be so recorded under Sub Section (1) and sub Section (2) of Section 245 Cr.P.C. are vastly different.

Under Sub Section (1) of Section 245 Cr.P.C., the reasons to be recorded by the Magistrate should indicate that no case against the accused has been made out which, if unrebutted, would warrant his conviction, whereas the reasons to be recorded under Sub Section (2) of Section 245 Cr.P.C. are that the charge to be groundless.

The phrase "charge to be groundless", has been employed in Section 239 Cr.P.C. also.

The different language employed in Sub Section (1) and Sub Section (2) serves a purpose, which marks the benchmark.

7. In the instant case, therefore, the question is whether there are no grounds to frame charges? A perusal of the records would go to show that the complaint, the statement of witnesses and the documents filed therewith make out grounds to frame charges.

The learned Magistrate has rightly held so, in which I do not find any infirmity warranting interference.

8. But, the learned senior counsel appearing for the petitioners would submit that the dismissal of this petition shall not deter the petitioners from filing a petition for discharge, after the evidence is recorded under 244 Cr.P.C. Regarding this plea, I have no hesitation to concur with the learned senior counsel.

After the evidence on the side the prosecution is completed under Section 244 Cr.P.C., if the accused finds that there are no materials to frame charges, then, at

that stage also, the accused would be at liberty to make a fresh application for discharge, for which the dismissal of the petition under Section 245(2) of Cr.P.C. shall not be a hindrance.

The learned senior counsel also wants it to be clarified that the right of the petitioners to challenge the order taking cognizance on a private complaint may be preserved.

In this regard, I hold that it is always open to the petitioner to challenge the order taking cognizance, which is an independent judicial order.

9.

In view of the above, I do not find any merit in the petition and the petition fails and the same is dismissed, however, with the clarifications stated above.

Consequently, connected miscellaneous petition is also dismissed.

To 1. The Judicial Magistrate No. I, Karur.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com