

Devendra Kumar Jain and anr. Vs. State (Delhi Administration) and anr.

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SooperKanoon Citation : sooperkanoon.com/689337

Court : Delhi

Decided On : Mar-10-1989

Reported in : 38(1989)DLT213

Judge : Santosh Duggal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 204(2) and 251

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1187 of 1988

Appellant : Devendra Kumar Jain and anr.

Respondent : State (Delhi Administration) and anr.

Advocate for Def. : Mr. Subhash C. Buttan

Advocate for Pet/Ap. : D.C. Mathur,; Neelam Grover,; M.S. Siddique and;

Judgement :

Santosh Duggal, J.

(1) This petition under section 482 of the Code of Criminal Procedure has been filed by the petitioners- Devendra Kumar Jain and Anurag Kumar Jain, after being served with a notice under the provisions of Section 251 of the Cr. P. C., as accused persons for offences under section 427 read with section 34 of Indian Penal Code, in a complaint case instituted by Kapil Kumar, respondent No. 2

herein. The complaint was filed in

(2) The accused entered plea of not guilty and also filed a written statement enclosing copies of certain court proceedings in a civil matter, where after the court adjourned the matter for complainant's evidence on 5th February, 1989.

(3) In this petition it is contended that the order whereby one court framed notice under section 251 Criminal Procedure Code . and served the same upon the accused persons, suffers from the vice of lack of application of mind by the court, and thus liable to be quashed. Further that. the court has not paid due regard to the wording of section 251 Criminal Procedure Code ., as it stands at present, in contradistinction to the earlier section 242 .)f the Code of Criminal Procedure, 1898, and that the present provisions envisage the situation, where the accused persons indicate their defense, making it incumbent upon the court concerned to consider that defense, and in appropriate cases, discharge the accused persons rather than unnecessarily prolong the proceedings, and that in this case inspire of the fact that the accused persons Sled the written statement disclosing their defense as supplemented by the copies of the court proceedings, the court did not advert to that defense, and decided to proceed further by fixing a date for complainant's evidence and that the proceedings will thus result in the abuse of process of law, and are I label to be quashed.

(4) Mr D C. Mathur, appearing turn the petitioner, reiterated the contentions during hearing by referring to the provisions of section 251 of Criminal Procedure Code . 1973 contrasting it with the provisions of section 242 of the old Code. The contention is that where's earlier the accused was required to show cause as to why he be not convicted, all that has to be seen under the present provision is as to whether the accused has any defense to make. Mr. Mathur contended that the implication is that the court need not examine as to whether the case shall result in conviction of the accused for which evidence had to he recorded, but had only to see on the basis of the defense disclosed by the accused persons as to whether the matter should proceed further or not, and that a duty is cost on him to examine the defense setforth by the accused persons, while making a plea of non-guilt in response to the notice served on them. He, thereforee, argued that once the

accused persons had filed a written statement and also enclosed copies of documents which consisted of orders passed by the civil court in a suit for injunction having been filed by petitioner No. 1, it was a clear case where the accused had indicated that they had defense to make, and it was obligatory on the magistrate to look into that defense before proceeding further.

(5) Mr. Subhash C. Buttan, appearing for respondent No. 2, (complainant in the case), countered this contention by contending that there was no such requirement under section 251 Cr. P.C., and that the amendment in the Code by replacing section 242 of the old Code with the present section 251 has no implication in so far as the trial of the complaint in a summons case is concerned. He further pointed out to the provisions of sections 239 and 240 of the new Code in contrast to the provisions of section 251 thereof, pointing out that whereas the former provisions envisaged cases where the accused can be discharged after being given an opportunity of being heard, there is no such provision in Chapter Xx in relation to trial of summons causes by magistrate, which Chapter commences with section 251 Criminal Procedure Code ' and thus there is no contemplation in the Code that in summons cases also, the magistrate should consider discharge of the accused after serving a notice, only on the basis of defense pleaded by accused person or documents produced by him, and on a cumulative reading of different provisions of the Criminal Procedure Code . 1973, I find that the contentions advanced by Mr. Mathur regarding necessity of examination of the defense at the stage of service of notice is not tenable.

(6) The scheme of Chapter Xx relating to proceedings in summons cases, as contained in section 251 onwards, is very clear, and except for cases covered by sections 252 and 253 of the Code. when in certain cases on plea of guilty by the accused, a conviction can be recorded immediately after service of notice, there is no provision turn entering into defense of the accused indicated in reply to the service of notice. Rather, section 254 Cr. P.C. unequivocally lays down that except for cases where the accused can be convicted under section 252 or section 253,

'THE Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to heat the accused

and take all such evidence as he produces in his defense'.

The clear implication is that where the accused does not plead guilty, the trial magistrate is to take the evidence first of the prosecution or the complainant. and thereafter of the defense, and dispose of the case in the light of the evidence produced before him.

(7) The plea, that there being difference in the wording in the present Code as compared to that of section 242 of the old Code, the implication is that of modification in the trial procedure is not, at all, tenable because the only difference is that instead of an accused being asked to show cause as to why he should not be convicted, the requirement has been changed into that of his only having to show that he has a defense to make. The scheme otherwise remains the same because earlier also section 243 dealt with the situation where the accused pleaded guilty otherwise under section 244 the trial was to proceed. Similarly, now, unless accused pleads guilty, in the manner contemplated by sections 252 and 253 of the Code. the provisions of section 254 make it clear that the trial is to proceed. This is precisely what the learned magistrate did in this case. There is absolutely no force in the contention that he was required to examine the defense which had been put-forth by the petitioners, as accused persons in their written statement filed in reply to the service of notice under section 251 Criminal Procedure Code . or their documents. Otherwise also, it is observed that the documents which were in the form of the photo copies had to be proved in evidence, unless proceedings under section 294 of the Criminal Procedure Code . for admission/dental had been conducted, and the accused persons cannot expect at the stage of service of notice that by merely filing some photo copies, they can have the trial waived, and have the matter determined with reference to those copies or what they stated in their written statement.

(8) The conclusion that at the stage of service of notice in a summons case, the magistrate is not called upon to consider discharge of the accused, is fortified from the reading of other provisions in the Code such as section 227, where the Sessions Judge has been given power to order discharge of the accused if on hearing the prosecution as well as considering the submissions of the accused, he

finds reasons for doing so. Similarly, in cases instituted on police report, as earlier noticed, the provisions of section 239 of the Code envisage discharge of the accused at the stage of arguments on the charge, after taking into consideration the arguments addressed by the prosecution as well as the accused, otherwise under section 240 of the Cr. P.C. he is to proceed to frame the charge. In warrant cases instituted on complaint, there is also a provision under section 245(1) of the Criminal Procedure Code . for discharge of the accused if after taking all evidence in consideration, recorded at pre-charge stage, the magistrate finds that no case is made out or otherwise he finds the charge to be groundless. There is no such provision for dropping of a summons case were the accused does pet plead guilty and scheme of the Code from section 251 on wards does not envisage any such order by the magistrate, but section 254(1) makes it clear that in case the accused does not plead guilty or indicates that he has defense to make, the magistrate has to proceed with the case by recording evidence. This is what precisely the magistrate has done. There is thus no illegality or irregularity in the order. There is also no question of abuse of the process of law because the complainant has filed a complaint making certain allegations which the magistrate found to be prima facie borne out by the evidence, and on that account the order of summoning was made. If there is any abuse of the process of the court that seems to be on the part of the accused persons who have not let the trial proceed from 1982 till 1988, and have now, when proceedings were to make a headway, come up with this petition, urging the point of law or procedure, which on the face of it is not tenable.

(9) The present petition also does not raise any question for securing ends of justice to the petitioners, because all that is pleaded by them is that they have a defense to make. That is exactly what the trial court proposes to do; namely, recording of evidence and examining the case including that of the defense which the accused might make before him both oral as well as documentary.

(10) I, therefore, do not find it to be a case where the inherent power of the High Court could have been invoked, and as such the petition is liable to dismissal.

(11) In all fairness to Mr. Mathur, I would also like to notice one other argument which he advanced during the course of arguments, namely, that the proceedings

were liable to be quashed because there has been non-compliance with the provisions of section 204(2) of the Cr. P.O., 1973 in as much as the complaint was not accompanied by any list of witnesses, and as such no process could have been issued. Apart from the fact that Mr. Mathur could not show any authority which might have laid down that provisions of section 204(2) are mandatory, in the sense that in the event of failure to comply therewith, the proceedings stand vitiated, otherwise also it appears to be too late in the day for Mr. Mathur to have advanced this contention because order of summoning was passed as far back as on 11th November, 1982. The present petitioners had to put in appearance on 7th February, 1983 and they have been filing different applications, including one under section 340 Criminal Procedure Code . and the other under sections 193 Indian Penal Code , but at no stage any objection to the continuance of the proceedings for want of list of witnesses by reference to provisions of section 204(2) of Criminal Procedure Code . was made. The proposition is well settled that unless a prejudice is shown to have been caused to the accused person because of failure of the complainant to have filed the list of witnesses with the complaint, the proceedings shall not be vitiated. No such prejudice has been pleaded at any stage during the period of six years before the magistrate nor in the present petition filed under section 482 Criminal Procedure Code . I did not think that on a bare oral contention advanced by the learned counsel for the petitioners, in the absence of any plea by the accused persons themselves; any prejudice can be presumed to have been caused to them. They, as already observed, had been filing applications, and have known the case, as put forth by the complainant, fully well and thus it does not now remain open to them to contend at this stage that the proceedings were liable to be quashed because of non-observance, on the part of the court, of the provisions of section 204(2) of Criminal Procedure Code .

(12) I, therefore, do not find any case made out for interference by exercise of power under section 482 Criminal Procedure Code The petition is, therefore, dismissed. The file of the trial court be sent back so that the proceedings can continue.