

Ramesh Vs. A. Ramanujam

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Court : Chennai

Decided On : Dec-05-1997

Reported in : 1998(1)ALT(Cri)420; 1998CriLJ1959

Judge : M. Karpagavinayagam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 204(3); Criminal Practice Rules - Rule 7

Appeal No. : Crl. O.P. No. 13428 of 1997 and Crl. M.P. Nos. 5061 and 5062 of 1997

Appellant : Ramesh

Respondent : A. Ramanujam

Advocate for Def. : Mr. Kumaresan, Govt. Adv. (Crl. Side)

Advocate for Pet/Ap. : K. Ravi Anantha and ;Padmanabhan. Adv.

Judgement :

ORDER

1. The interesting question that arises in this petition is : Whether in the proceedings initiated in a private complaint, one of the accused is entitled to the copy of the complaint, even when the other accused persons do not appear before the Court :

2. The facts that are relevant to dispose of the present petition are these : The complainant who is the respondent herein filed a complaint against a partnership firm (A1) and two others, including the petitioner (A3) being a partner of the partnership firm, for the offence punishable under section 138 of the Negotiable Instruments Act. On receipt of summons, the petitioner appeared before the lower Court on 19-9-1997. The second accused Mrs. Brinda Vaidyanathan did not appear on that date. However, a petition under section 317 of the Code of Criminal Procedure was filed on her behalf of the same was allowed. The bearing was adjourned to 26-9-1997 for her presence. At this juncture, the petitioner filed an application in CrI. M.P. No. 3792 of 1997 in the Calendar Case No. 5208 of 1997 before the lower Court requesting to furnish a copy of the complaint to him. This petition was dismissed by the lower Court on the ground that the copies will be furnished only after the second accused Brinda Vaidyanathan appears before the Court, that too after verification with the second accused whether the copy of the complaint was sent along with the summons and the same was received by her. This order is challenged in this petition.

3. Mr. Ravi Anantha Padmanabhan, learned counsel appearing for the petitioner would contend that in view of Rule 7 of the Criminal Rules of Practice and Section 204(3) of the Code of Criminal Procedure, every summons issued under section 204(1) of the Code of Criminal Procedure shall be accompanied by a copy of the complaint and if not done, atleast on the date of first appearance, the accused shall be furnished with such a copy of the complaint and as such, the Court need not wait till the other accused appears before the Court.

4. Section 204 of the Code of Criminal Procedure falls under Chapter XVI. Under this section the Magistrate taking cognizance of the offence, shall issue summons in a summons case for the attendance of the accused and a warrant or, if he thinks fit, a summons in a warrant case for causing the accused to appear before him. Section 204(1) of the Code of Criminal Procedure would apply to both the private complaint as well as police report, which reads as follows :

'Section 204, Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be :-

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.'

But, in a private complaint, when it is taken on file, it is mentioned in Section 204(3) of the Code of Criminal Procedure, that every summons or warrant issued under section 204(1) of the Code of Criminal Procedure shall be accompanied by a copy of such complaint, which reads as follows :

'Section 204(3) : In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.' The word 'shall be' indicates the importance of sending the complaint along with summons or warrant to be served upon the accused. This is the specific stand taken by the petitioner, both in the application filed before the lower Court as well as before this Court, that he only received the summons and the copy of the complaint did not accompany the summons. On the basis of that he requested the trial Court to furnish the copy of the complaint atleast in the Court on his appearance on the first day, so that he may know what the accusation is, against him.

Rule 7 of the Criminal Rules of Practice would provide that the accused shall be furnished with the copy of the complaint even on the first occasion when he appears before the Court.

Rule 7 of the Criminal Rules of Practice reads thus :

'7(7). Accused summons to be signed by Magistrate :-

Magistrate shall themselves sign summonses to accused persons.

In a proceeding instituted upon a complaint made in writing, the accused shall be furnished with a copy of such complaint as early as practicable and not later than the first occasion when he appears in Court.

Note 1 : The copy of the complaint may be sent with the summons or warrant issued to the accused under section 204 of the Code.

Note 2 : Complaints in this rule will include Police report in non cognizable cases and other complaints by departmental offices P. Dis No. 677/1965 High Court, Madras.'

According to the learned counsel for the petitioner the failure of the Magistrate in sending the copy of the complaint along with summons to the accused could be definitely an irregularity and of course this irregularity could be cured at least by furnishing the copy of the complaint, when it is asked for by the accused on his appearance.

5. The impugned order would say that the copy of the complaint could be furnished to the accused only after the appearance of the other accused so that it could be verified with the other accused whether the copy of the complaint was received by him along with summons or not. In my view, the reason adduced by the Magistrate does not sound well. Rule 7 of the Criminal Rules of Practice would specifically say that the accused shall be furnished with the copy of the said complaint not later than the first occasion when 'he' appears before the Court.

6. Therefore, as per this rule, when it is reported to the Court by the accused that the copy of the complaint did not accompany the summons, as per the provisions under section 204(3) of the Criminal Procedure Code, the Court should have furnished him with a copy of such complaint immediately on his appearance, irrespective of the appearance of the other accused. The Court need not also wait for the appearance of the other accused in order to verify whether the provisions under section 204(3) of the Code of Criminal Procedure have been complied with or not. Even assuming that the other accused would come and say that she was served with the copy of the complaint along with summons, that would not make the Court to infer that this accused also must have been served with the copy of

the complaint in a similar way.

7. The law does not provide that the accused who is to face the trial before the Court has to wait till the other accused comes and appears before the Court, in so far as the private complaint is concerned. If such a condition is put, there may be occasions where the summons is not duly served on the other accused and in such event the Court, at the instance of the complainant has to take coercive measures for causing appearance of the other accused before the Court. This may consume a longer course and it cannot be said as to when the other accused would appear before the Court. If the copy of the complaint is not furnished to the accused till then, it would not only spoil the right of the accused, who appears before the Court, for a speedy trial, but also he may not be able to get the services of the lawyer with reference to the accusations made against him or it will be difficult to seek legal opinion as to what course he has to adopt, to face the complaint filed against him.

8. Therefore, the lower Court shall have to send the copy of the complaint under section 204(3) of the Code of Criminal Procedure to each of the accused and if any one of the accused complains that he/she has not received the copy of the complaint, the Magistrate, as per Rule 7 of the Criminal Rules of Practice shall arrange to furnish the copy of such complaint, even on the first day when he/she appears before the Court, although the other accused do not appear before the Court on the said date for some reason or the other.

9. In a private complaint the accused is not entitled to the documents, but definitely he is entitled to the copy of the complaint the moment he received the summons, for attending the case as an accused to face the trial before the Court. This view of mine gets support from the decision in *Municipal Committee, Amritsar v. Labhu Ram* reported in 1970 CLJ 553 (Punj & Hary) in which it is held as follows (at pp. 555-56 of Cri LJ) :

'It is true that in a proceeding instituted on a complaint in writing, a copy of such complaint has to accompany the summons or warrant issued to the accused with a view to enforce his appearance in Court but then it cannot be said that a complainant is bound either by virtue of an express provision of law or by

necessary implication to furnish to the accused, copies of documents produced by him along with the complaint or relied by him in support thereof.'

The above said view of mine is also supported by the other authorities cited both by the learned counsel for the petitioner as well as the learned Government Advocate who was asked to render assistance in this case, which are as follows : In *Brahma Panda v. Chairman of Howrah Municipality*, : AIR1961 Cal648 the Division Bench would hold thus (para 4) :

'We are unable to agree with him that the summons ceased to be summons simply because it was not accompanied by copy of the complaint. The petitioners should have attended the Court in obedience to the summons and then brought to the notice of the learned Magistrate that the summons was not accompanied by a copy of the petition of complaint as required by Section 204(1-B) of the Code of Criminal Procedure It cannot be said that the jurisdiction of the learned Magistrate was affected simply because the summons was issued without a copy of the complaint. -

.....

If the petitioners attended the Court of the learned Magistrate and asked for a copy of the complaint, they would have known what the details of the offences were.

.....

When the petitioner attend the Court of the learned Magistrate, the learned Magistrate will certainly direct the copies of the complaint to be given to the petitioners.'

In *Jagannath Sahu v. State* reported in : AIR1966 Ori9 the relevant observations are as follows :

'The provisions of Section 204(1-B) are merely directory. They will not per se vitiate the proceedings. It would not, however, mean that the Magistrate can with impunity disregard the statutory directions contained in sub-sec. (1-B). It is his duty to see that before the accused proceeds with the case, a copy of the complaint

petition is supplied to him. Merely explaining to the accused the particulars of the offence before the posting of the case, for hearing, is not enough. It cannot be said that no prejudice would be caused to the accused by such omission. It is the duty of the Magistrate to supply the complaint copy before proceeding with the trial.'

In *T. T. V. Dhinakaran v. The Enforcement Officer, Enforcement Directorate Shastri Bhavan, Madras* (1997) 1 MLW (Cri) 111 this Court has held as follows :

'Sub-section (3) of Section 204, Cr.P.C. has specifically spelt out the process or summons when it was issued under this Section. These all would mean and are intended that when the accused receives the summons or process, he must be able to know what are all the averments, allegations and the circumstances and substratum of the complaint pertaining to his commission of offence in detail inclusive of a list of prosecution witnesses.'

In *Ram Narain v. Bishamber Nath*, the relevant portion reads as thus (para 8) :

'The Court's decision to issue a process cannot be deemed to have been necessarily and automatically invalidated by the omission of the ministerial officers to attach a copy of the complaint with the summonses, and the supply of such a copy to the accused on or before his appearance, though the copy was not attached with the summonses, may cure the defect, at worst, adjournment would, generally speaking, place the accused, for all practical purposes, in the same position as if such a copy had originally accompanies the summonses; Section 537, Criminal Procedure Code, would thus in my opinion, cure the defect.'

10. Thus, the conjoint reading of Section 204(3) of the Code of Criminal Procedure and Rule 7 of Criminal Rules of Practice would drive to bring to an inescapable conclusion that these provisions are meant for the protection of the accused persons and this would enable the accused to know about the nature of the accusation to which he would be answerable before the Court. The Courts of Justice in this country have been given a privileged position, a position which carried with it the corresponding responsibilities. It is therefore incumbent on their part to perform their judicial functions with the proper sense of responsibility. Failure on their part to apply their mind to the cases they are called upon to

decide, cannot but create an unhappy impression.

11. Therefore, the lower Court, in the light of the provisions under S. 204(3) of the Code of Criminal Procedure read with Rule 7 of the Criminal Rules of Practice should have immediately furnished the copy of the complaint to the petitioner, especially when the non-compliance of the provisions under section 204(1) of the Code of Criminal Procedure was complained of. The non-appearance of the other accused cannot be a valid ground in a case of this nature, arising out of a private complaint, for rejecting the prayer seeking the furnishing of the copy of the complaint as it amounts to deprival the valuable right of the accused.

12. In view of the above discussion, I am of the opinion that the accused is entitled to the copy of the complaint either under Section 204(3) of the Code of Criminal Procedure or on its failure, atleast under Rule 7 of the Criminal Rules of Practice, even when the other accused do not appear in the cases arising out of private complaint.

13. In fine, the impugned order is liable to be set aside and the same is therefore set aside. The learned Magistrate is directed to furnish a copy of the complaint on the appearance of the petitioner.

14. With the above direction, this petition is allowed. Consequently, Cri. M.P. Nos. 5061 and 5062 of 1997 are disposed of.

15. Petition allowed.