

Rajaram Vs. Sundram and Others

Rajaram Vs. Sundram and Others

SooperKanoon Citation : sooperkanoon.com/789395

Court : Chennai

Decided On : Feb-28-1995

Reported in : 1995CriLJ3418; 1995(1)CTC509

Judge : Rengasamy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 347, 350, 352 and 506; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 204 and 204(4)

Appeal No. : Crl. R.C. No. 710 of 1994

Appellant : Rajaram

Respondent : Sundram and Others

Advocate for Pet/Ap. : V. Padmanabhan, Adv.

Judgement :

ORDER

1. This revision is directed against the order of the learned Judicial Magistrate No. II, Poonamallee Chengai-MGR District (E) in C.C. No. 33/94 dismissing the complaint under S. 204(4) of the Cr.P.C.

2. The petitioner filed a private complaint against the respondents before the learned Judicial Magistrate No. II, Poonamallee, for the offences under Ss. 347, 350, 352, 506, Part II and 384 read with S. 34, IPC. The complaint was taken on

file, the sworn statement was recorded and notice was ordered to the accused persons on 11-5-1994 for the appearance of the accused on 29-6-1994. But the revision petitioner complainant did not pay the process fee for the issue of the summons to the accused persons till the adjourned date and therefore the learned Judicial Magistrate on 29-6-1984, having found that no process fee was paid, dismissed the complaint under S. 204(4), Cr.P.C. It is against this order of dismissal, the complainant has come forward with this revision.

3. The learned counsel appearing for the revision petitioner would argue before me that as the offences alleged in the complaint are warrant cases, for which the complainant is not bound to pay the process fee as held in Babu Ram v. State of U.P. 1978 Cri LJ 1430 : 1978 All LJ 251 and even assuming that the complainant has to pay the process fee, Rule 119 of Criminal Rules of practice contemplates the Chief Clerk of the Court to prepare a notice showing the amount of fees to be paid in the Courtfee stamps and furnish the same to the complainant for the payment of the process fee, but as the Chief Clerk of the court following this rule did not furnish the complainant the details of the amount of fees payable by the complainant, the order of dismissal of the complaint passed by the learned Judicial Magistrate is illegal and therefore the same has to be set aside and to order for the restoration of the complaint on file.

4. Under S. 204, Cr.P.C. if the Magistrate is of the opinion to take cognizance of the offence alleged in the complaint he may issue summons for the attendance of the accused or issue either warrant or summons in the warrant cases. In this case, the learned Magistrate has taken cognizance of the offences alleged in the complaint and therefore he ordered on 11-5-1994 itself for the issue of summons for the appearance of the accused persons on 29-6-94. Section 204(4) Code of Criminal Procedure reads that when the process fee was not paid within a reasonable time, the Magistrate has the powers to dismiss the complaint. As the summons was ordered for the appearance of the accused persons on 29-6-94, the summons should have been issued on payment of process fee before 29-6-1994. As the process fee was not paid till 29-6-1994, the learned Magistrate, exercising the powers conferred on him under S. 204(4), Cr.P.C. has dismissed the complaint.

5. The learned counsel for the petitioner would submit that in view of the decision in Baburam v. State of U.P. 1978 Cri LJ 1430 : 1978 All LJ 251 (referred supra) for the warrant cases, the process fee need not be paid by the complainant. That is a decision of the Uttar Pradesh High Court following the rules framed by the Uttar Pradesh Government. But so far as the Tamil Nadu is concerned, the Criminal Rules of Practice framed by the Government of Tamil Nadu has to be followed and under Rule 111 of Criminal Rules of Practice, the private complaint shall be presented to the Magistrate by a party in person or by his pleader and under Rule 119, as soon as the orders to issue process have been passed upon a complaint, the complainant shall pay the amount of process in court-fee stamps for the issue of process to the accused. Under the Criminal Rules of Practice which is in force in Tamil Nadu, there is no discrimination, between the summons case and warrant case, for the payment of process fee. Therefore, it cannot be contended that for the warrant cases, the complainant need not pay the process fee.

6. The next question is the mode of payment of the process fee. The learned counsel for the revision petitioner argues that Rule 119 of Criminal Rules of Practice directs the Chief Clerk of the Court to prepare a notice showing the amount of fees payable by the complainant and the latest date of filing or paying the fees, but this was not followed by the Chief Clerk of the Court and when the Court had not complied with Rule 119, the learned Magistrate ought not to have dismissed the complaint under S. 204(4), Cr.P.C. Rule 119, Criminal Rules of Practice reads as follows :

'119. Issue of Process-fees to be paid - As soon as orders to issue process have been passed upon a complaint, it shall be sent to the Chief Clerk of the Court who will furnish the complainant with a notice, showing the amount of fees to be paid in court-fee stamps and the latest date of filing or paying them.'

It is true that a duty is cast upon the Chief Clerk, to furnish the complainant with a notice showing the amount of fees to be paid in court-fee stamps and also the last date for payment. This Rule is to enable the complainant to note the amount of fees payable by him towards the process fee payable by him. As the Rule reads 'Chief clerk of the court will furnish the complainant with a notice showing the

amount of fees', only when the complainant approaches the chief clerk, he will be able to furnish the complainant the amount of fees payable by him. When the private complaint was taken on file, the complainant must have been present in the court and therefore if the complainant must be made known, the quantum of process fee, we cannot expect the Chief clerk of the Court to go in search of the complainant to furnish the amount of fees payable by him for the issue of the summons to the accused. As the complainant will be in the court, only when he approached the Chief Clerk of the Court, he will be able to furnish the complainant the amount of process fees payable by him. This Rule cannot be interpreted in any other manner for the payment of process fee by the complainant. It is not the allegation of the petitioner that the Chief Clerk of the Court when approached had refused to furnish the details of the process fee payable by him or the process fee paid by him was not accepted by the Chief Clerk of the Court. The only allegation made in this petition is that for a cognizable offence which shall be tried under the warrant procedure, the court shall not dismiss the complaint for want of process fee.

7. The another contention raised in the grounds of revision is that under Rule No. 403 of Criminal Rules of Practice, the Criminal Courts have to pay the rates specified under the Rule and therefore the order of dismissal is erroneous. Rule 403 of Criminal Rules of Practice relates to the expenses of the witnesses summoned by the Court in the cases instituted by the State. Therefore Rule 403 is not applicable for this case as the summon was ordered for the appearance of the accused persons. As mentioned above, so far as Tamil Nadu is concerned, the Criminal Rules of Practice does not dispense with the process fee for the private complaints to be tried under warrant procedure. Therefore, the contentions raised in the grounds of revision do not interfere with the powers of the Magistrate to dismiss the complaint under S. 204(4), Cr.P.C.

8. The revision petitioner has not given any reasons for the non-payment of the court-fees for the issue of summons to the accused persons. When the summon has been ordered for the appearance of the accused, it is the duty of the complainant to pay the process fee for the issue of the summons to the accused. Only when he approached the Chief Clerk of the Court, he would be able to furnish

with a notice showing the amount of fees which should be paid in the court-fee stamps for the issue of summons to the accused persons. Even if the Chief Clerk of the Court had not furnished him the particulars of the process fee in spite of his approach to him, the complainant could have brought to the notice of the learned Magistrate for the preparation of the notice giving the particulars of the fees to be paid in court-fee stamps. As the complainant was negligent in not paying the process fee till the next adjourned date, the learned Magistrate was entitled to exercise his powers under S. 204(4), Cr.P.C. Therefore, as I find no error in the order passed by the learned Magistrate, this revision challenging his order is not sustainable.

9. In the result, the revision is dismissed.

10. Petition dismissed.

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