

**Kumar Vs. Perumal and Others**

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**Court :** Chennai

**Decided On :** Apr-26-1996

**Reported in :** 1997CriLJ907

**Judge :** M. Karpagavinayagam, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 427, 447 and 506; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 27, 156(3), 173, 207, 239, 251, 254, 255(1), 397, 401 and 482

**Appeal No. :** Cri. R.C. Nos. 693 and 691 of 1991

**Appellant :** Kumar

**Respondent :** Perumal and Others

**Advocate for Def. :** S. Maniram, Govt. Adv. and ;N. Jothi, Adv.

**Advocate for Pet/Ap. :** T. Sivagnanasambandam, Adv.

**Judgement :**

ORDER

1. This revision is preferred by the petitioner/complainant against the order of the Judicial Magistrate II, Poonamallee, dated 27-8-1990 discharging the accused in respect of the charges under Ss. 147, 447, 427 and 506(1) IPC by invoking the provisions under S. 251 of the Code of the criminal procedure.

2. The facts of the case are as follows :- The complainant/petitioner has purchased a house site with a stone-house from one Rathinam on 24-2-1989. Since then he had been in possession and enjoyment of the same. The respondents 1 to 13 accused, since gave trouble to the complainant possession of the said property, he filed a suit O.S. No. 484 of 1980 on the file of District Munsif court, Poonamallee and obtained interim injunction restraining the accused from interfering with the possession and enjoyment of the property by the complainant. On 28-3-1989 the complainant also gave a petition to the Superintendent of police, Chingleput and Sub-Inspector of Police, Adambakkam against the accused/respondent informing about the pendency of interim injunction and the efforts of the accused persons to trespass into the said property despite the interim injunction.

3. On 15-4-1989 at about 10-00 a.m. when the complainant and his brother went to the land, they saw the accused trespassed into the said land removing the parapet wire fence putting around it by the complainant. On questioning about the highhanded action, the accused threatened the complainant and his brother with dire consequences. This occurrence was witnessed by three more witnesses. Fearing further trouble by the accused, the complainant came to the police station and gave a complaint. Since the police did not take action against the accused, the complainant filed a private complaint on 2-5-1989 before the Judicial Magistrate, II, Poonamallee.

4. On 31-5-1989 this complaint was referred to by the Magistrate for the Police Investigation under S. 156(3) of the Code of the Criminal Procedure. On receipt of this complaint, the sub-Inspector of Police, Adambakkam registered a case in crime No. 479 of 1989 for the offences under Ss. 147, 447, 427 and 506(1) IPC. After the investigation the Sub-Inspector of Police filed a charge sheet against the respondents/accused on 31-5-89 before the Learned Judicial Magistrate, II, Poonamallee, for the offences under Ss. 147, 447, 427 and 506(1) IPC and the same was taken on file in CC No. 103 of 1990 on 19-2-1990 for the abovesaid offences. On service of summons, the respondents filed an application for discharge on 22-6-1990 under S. 251 read with S. 255(1) of the Code of the Criminal Procedures on the ground that the contents of the accusations levelled in

the charge sheet against them is false and the question of possession in respect of the land has to be dealt with by the civil Court in O.S. No. 484 of 1980 on the file of District Munsif, Poonamallee. On 19-7-1990 written objection was filed by APP on behalf of the police contending that the question of trespass and the act of causing damage and the criminal intimidation could be decided only by the trial Court and the materials, placed before it and therefore the application for discharge was not maintainable.

5. After hearing the respective parties, the learned Magistrate passed an order discharging the accused, by elaborately considering the merits of the case touching upon the various factual aspects found available in the case records.

6. Aggrieved over this, the present revision has been preferred by the complainant/petitioner under Ss. 397 and 401 of the Code of the Criminal Procedure, challenging the above order.

7. Counsel for the petitioner contended that the learned Magistrate committed illegality by invoking the provisions of S. 251 of the Code of the Cr.P.C. by discharging the accused on appreciation of the statement of the witnesses, which is not permissible under law.

8. On the contrary, Mr. N. Jothi, learned counsel appearing for the respondents/accused contended that the lower Courts' order was based on various decisions rendered by this Court and there is no infirmity in the said order and as such he wants this Court to confirm the order. He further contended that the original suit filed by the complainant in O.S. No. 484 of 1989 before the District Munsif, Court, Poonamallee has ended in favour of the respondents and as such the complainant has no case whatsoever.

9. Mr. S. Manimaran, Government advocate (Criminal side) appearing for the State has contended that the order of the Magistrate is not in accordance with law since the trial Court has exceeded its limit by indulging itself in the case of appreciation, which cannot be done in the stage of framing charges. He would also say that the Magistrate has relied upon several citations rendered by this Court to discharge the accused, though the principles laid down in this case were not at all

applicable to the present case.

10. I have heard both the parties, perused the documents as well as the lower Court records. At the very outset I must say that the order suffers from grave illegality on two important points of law referred below. The offence for which the cognizance taken by the Magistrate are under Sections 147, 447, 427 and 506(1), I.P.C. As per the schedule of criminal procedure code these offences are to be tried as summons cases. The application for discharge was filed under Section 251 read with S. 255(1) of the Code of the Criminal Procedure. Section 251 read with S. 255(1), Cr.P.C. are contained in Chapter 20. This deals with trial of summon cases by the Magistrate. Under Section 251 of Criminal Procedure Code, when the accused appears before the Magistrate, the particulars of the offences for which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence is to make, but it shall not be necessary to frame a formal charge. Under Section 255(1) of the Code of the Criminal Procedure, if the Magistrate, upon taking the evidence referred to in Section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal. Therefore, these two sections do not refer the discharge. On the contrary, under Section 255(1), the Magistrate can acquit, only after taking evidence under Section 254 of the Code of Criminal Procedure, Section 254 of Cr.P.C. contemplates the necessity of the Magistrate to proceed to hear the prosecution case and as such the Magistrate while invoking Section 255(1) of Cr.P.C. has to necessarily take of the witnesses of either side. Without resorting to this procedure Section 255(1) of the Code of Criminal Procedure cannot be invoked. In this case, the respondents 1 to 13 herein, have filed a petition for discharge under Sections 251 and 255(1) of the Code of the Criminal Procedure before taking evidence as contemplated under Section 254 of the Code of Criminal Procedure. As such, the petition itself was not maintainable. The worst part of it is that the order of discharge passed by the Magistrate was under Section 251 of the Code of Criminal Procedure, which has no relevance to discharge.

11. The foregoing analysis of these provisions would make it clear that the accused could not invoke for discharge before the trial has been either under

Sections 251 or 255(1) of the Code of the Criminal Procedure. In this case it is fairly apparent that the Magistrate has grossly violated this mandatory procedure, as contemplated between Sections 251 and 255(1) of the Code of the Criminal Procedure. So, the above order which suffers from the above illegality is liable to be set aside.

12. Consequently, there are some other sections provided for discharge, discharging the accused in a (police) warrant case and (Police) sessions case. Under Section 239 of the Code of the Criminal Procedure if upon considering the police report and the documents sent with it under Section 173 and making such examination if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

13. Under Section 227 of the Code of the Criminal Procedure, in a sessions case, the Sessions Court, if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. However, Sections 239 and 227 of the Code of the Criminal Procedure would not be applicable to this case. I must point out that even the power for discharge of the accused in (Police) warrant case and (Police) sessions case as provided in Sections 239 and 227 of the Code of the Criminal Procedure has got some restrictions. Under these sections, the Court can discharge only when there is no sufficient ground for proceeding or the charge against the accused was found to be groundless and not otherwise. So in the light of these provisions, this Court has to see at least this impugned order passed by the Magistrate at least satisfy the guidelines provided by these sections. This Court as well as the Apex Court on various occasions held that the Courts have to consider only the documents filed along with the police report in order to find out whether the charge was groundless or not, for the discharge of the accused and there is no question of adding or subtracting anything or considering any extraneous materials other than the documents forwarded to the Court as

contemplated under Section 173 of the Code of the Criminal Procedure and furnished to the accused under Section 207 of the Code of the Criminal Procedure. The stage prior to the framing of the charge is not accepted to be a rehearsal of the trial. The Magistrate at this stage is required to consider the Police report and the documents sent along with under Section 173 of the Code of Criminal Procedure which are furnished to the accused in compliance with the accused under Section 207 of the Code of Criminal Procedure and the explanation given by the accused during his examination and the submissions, if any, made by the prosecution and the accused, for finding out whether accusation levelled against the accused is groundless. At this stage, it is not open to the Magistrate to consider any other documents which is not covered by the provisions of Section 207 of the Code of the Criminal Procedure. The documents if any produced by the accused at the time of his examinations before the trial is commenced cannot be taken into consideration by the Magistrate while applying his mind to decide whether to proceed against the accused or not. These principles have been laid down by this Court in *Angusami v. Kalseswaran Ambalam*, 1989 MLW (Cri.) 108 by the officiating Chief Justice S. Ratnaval Pandian (as he then was) and in *Muthuraman v. State by Sub-Inspector of Police, Crime Branch, Madras*, 1991 MLW (Cri) 223 by T. S. Arunachalam, J.

14. In the light of the above principles, this Court has to see the reasonings given for the discharge though it is not permissible under Section 251 of the Code of Criminal Procedure. The trial Court has elaborately considered the statement of the witnesses and the record produced by the accused and appreciated the evidence meticulously and discharged the accused. To come to the said conclusion, the Magistrate relied upon catena of decisions reported in *M. N. Subramani v. S. Pasupathi*, 1981 MLW (Cri) 251, *M. V. Ramaswamy v. State*, 1987 MLW (Cri) 71, *Thankappan v. Thankaraj*, 1988 MLW (Cri) 395, *Kannan v. Inspector of Police* (1989) MLW (Cri) 410 and in *R. Krishnamurthy v. Raja*, 190 MLJ (Cri) 13. All these decisions relate to the powers of the High Court under Section 482 of the Code of the Criminal Procedure to quash the proceedings when the proceedings were found to be of civil nature. As such, those decisions would not be applicable to this case. The mere pendency of the suit in Civil Courts would not entitle the Magistrate to invoke the power under Section 482 of the Code of the

Criminal Procedure, to discharge the accused. Moreover, the meticulous appreciation of the evidence would be done only after the trial is over as contemplated under Section 254 of the Code of the Criminal Procedure in a summon case like this. The trial Court fully analysed the materials collected by the prosecution and came to the hasty conclusion that the case was of a civil nature, which is not permissible under law at this stage.

15. In view of the above situation, I am of the considered opinion that the order suffers from incurable and grave illegality and the same is liable to be set aside. I am rather pained to see that some of the observations which have been made by the Magistrate are not warranted. The Magistrate had gone to the extent of saying that

'Vernacular matter - Omitted.'

16. I am at a loss to understand how the Magistrate would come to such conclusion without any material whatsoever, that too before the evidence was let in. So, the way in which the Magistrate has handled the issue in this judgment clearly reveals that he has exceeded his limit, which causes serious concern in the mind of this Court. With these observations, the order of the learned Magistrate discharging the accused under Sections 251 and 255(1) of Cr.P.C. is set aside and the revision is allowed and the matter is remitted back to proceed on with trial and disposal. The learned Magistrate is directed to dispose of the case as expeditiously as possible.

17. Revision allowed.