

**The State Vs. Rangasamy and Others**

**The State Vs. Rangasamy and Others**

**SooperKanoon Citation :** [sooperkanoon.com/789397](http://sooperkanoon.com/789397)

**Court :** Chennai

**Decided On :** Oct-24-1997

**Reported in :** 1998CriLJ3428

**Judge :** R. Balasubramanian, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200

**Appeal No. :** Criminal R.C. Nos. 424 and 425 of 1994

**Appellant :** The State

**Respondent :** Rangasamy and Others

**Advocate for Def. :** A. Padmanabhan, Adv.

**Advocate for Pet/Ap. :** R. Karthikeyan, Govt. Adv.

**Judgement :**

ORDER

1. Cri. R.C. No. 424/94 is directed against the order in Cri. M.P. No. 301/94 in P.R.C. No. 5/94 on the file of the Judicial Magistrate, Kangeyam. Cri. R.C. No. 425/94 is directed against the order in Cri. M.P. No. 330/94 in P.R.C. No. 5/94 on the file of the Judicial Magistrate, Kangeyam. Both the above referred to Cri. M.P.s were disposed of by the learned Judicial Magistrate, Kangeyam by a common order dated 25-4-1994. Cri. M.P. No. 301/94 came to be filed by the first accused

in P.R.C. No. 5/94 and Crl. M.P. No. 330/94 came to be filed by accused 2 to 7 in the very same P.R.C. No. 5/94. Since both the Crl. M.P.s were disposed of by a common order and though there are two Crl. Revisions before this Court, yet in view of the fact that a common issue was raised by the accused before the learned Judicial Magistrate which found favour with them, and since the same common issue is also involved in these two revision petitions, I am inclined to dispose of both these revisions by a common order. I heard Mr. R. Karthikeyan, learned Government Advocate on the Criminal Side in both these revisions as well as Mr. A. Padmanabhan, learned counsel for the respondents in these two revisions. I have also perused the order challenged in these revisions as well as perused the complaint filed before the Judicial Magistrate, Kangeyam. I am carefully refraining myself from saying anything on the merits of the complaint filed before the Judicial Magistrate, Kangeyam or enter into any area in which incidentally it may become necessary for me to say something about the complaint, as the same is likely to affect the complainant and the accused when the case is taken up for trial. However, by inadvertence, if anything is said in this order on the merits of the complaint, even then the learned Magistrate, without in any way being influenced by such observations, if any, may proceed with the case in accordance with law. In this common order, the parties to the two revisions are referred to in the same rank in which they are described in P.R.C. No. 5/94 on the file of the Judicial Magistrate, Kangeyam. It is reported by Mr. R. Karthikeyan, learned Government Advocate on the Criminal Side that one of the accused is reported to be dead. It is a matter for the verification by the Judicial Magistrate.

2. The accused are all police personnel of different categories. A case of custodial death of a person by name Sivagurunathan was the subject-matter of an enquiry under Section 145 of the Police Standing Orders by the Sub-Collector and Executive First Class Magistrate, Dharapuram. After completing the enquiry, he filed a complaint before the Judicial Magistrate, Kangeyam alleging offences under Sections 342, 302 read with 34, 193, 196 and 201, I.P.C. and Section 8 of Tamil Nadu Prohibition Act, 1937 as amended Act 2 of 1989. Immediately after the complaint was filed, it seems that the first accused filed Crl. M.P. No. 301/94 and accused 2 to 7 filed Crl. M.P. No. 330/94 for a direction that all the witnesses mentioned in the complaint shall be examined before ever the learned Magistrate

could take further proceedings towards committal. This request made by the accused in the two petitions above referred to were heard by the learned Magistrate after notice to the Public Prosecutor and ultimately by the judgment challenged in this revision, allowed both these applications. The correctness of the order referred to above is challenged in these two revisions.

3. An authenticated copy of the complaint filed by the Sub-Collector and the Executive I Class Magistrate, Dharapuram is produced before me. The respondents in these two revisions are arrayed as accused in that case which was filed for offences already referred to above. It is a lengthy complaint running to 14 pages. At the end of the complaint, there are a number of sheets attached to it and it discloses that as many as 39 witnesses have been cited as witnesses to be examined; and as many as 53 documents were disclosed as documents, copies of which had to be furnished to the accused under Section 208 of the Code of Criminal Procedure. As submitted by the learned Government Advocate on the criminal side, this is a private complaint lodged by the Executive Magistrate under Section 190(1) of the Code of Criminal Procedure and therefore, the procedure contemplated under Chapter XXV of the Code of Criminal Procedure containing Sections 200 to 203 have to be followed. The learned Government Advocate also submitted that though normally in a private complaint examination of the complainant on oath and his witnesses present, if any, is called for under Section 200 of the Code of Criminal Procedure, yet clause (a) to the proviso to Section 200 dispenses with such a requirement, if a public servant acting or purporting to act in the discharge of his official duties or a Court had made the complaint. According to the learned Government Advocate, in view of the statutory exception provided in clause (a) to the proviso to Section 200 of the Code of Criminal Procedure to the normal procedure to be adopted by a Magistrate taking a private complaint on file, the accused were not legally right in requesting the Magistrate for a direction to examine all the witnesses cited in that complaint. On the contrary, Mr. A. Padmanabhan, learned counsel appearing for the respondents contended that whenever the complaint before the Court was at the instance of a private party, irrespective of the fact whether it was lodged by an individual or a public servant or a Court as the case may be, the examination of the complainant and the witnesses cannot be dispensed with.

4. After bearing the submissions as referred to above, I do find considerable force in the arguments advanced by the learned Government Advocate on the criminal side Mr. R. Karthikeyan. Apart from putting forward his submissions in a forcible manner based on clause (a) to the proviso to Section 200 of the Code of Criminal Procedure, the learned Government Advocate also brought to my notice three judgments to substantiate his arguments and they are :

(i) 1978 MLW (Cri) 135 (Mokkasami v. Divisional Officer, Sivaganga);

(ii) 1983 MLW (Cri) 23 : 1983 CLJ 917 (M. Govindraja Pillai v. Thangavelu Pillai);  
and

(iii) : 1988 CriLJ1095 (T. J. Stephen v. M/s. Parle Bottling Co. (P) Ltd.).

Before reading the judgments cited by the learned Government Advocate, he also requested me to read Section 200 of the Code of Criminal Procedure and Section 202 of the Code of Criminal Procedure. The learned counsel submitted that on a reading of the Sections referred to above, it is clear that there is no legal obligation cast upon the Magistrate to enter into an enquiry under Section 202 of the Code of Criminal Procedure and it is always open to the Magistrate to pass from the stage of Section 200 enquiry either to the stage contemplated under Section 203 of the Code of Criminal Procedure or go over to the stage contemplated under Section 204 of the Code of Criminal Procedure. On a reading of Sections 200 and 202, the submissions made by the learned Government Advocate appear to be well founded. Section 202 of the Code of Criminal Procedure enables a Magistrate to enter into an enquiry as contemplated under Section 202 only when he thinks fit to do so. In other words, the materials collected by him under Section 200 of the Code of Criminal Procedure should appear to the Magistrate to be not sufficient and though he may be entitled to proceed under Section 203 of the Code of Criminal Procedure, yet there is no legal bar for him, if he thinks fit, to enter into the enquiry stage provided for under Section 202 of the Code of Criminal Procedure. The word used in Section 202 of the Code of Criminal Procedure namely 'Any Magistrate, on receipt of the complaint of an offence which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process etc. etc.' The question

whether a Magistrate must necessarily enter into the enquiry contemplated under Section 202 of the Code of Criminal Procedure or whether he has a choice to avoid it has been decided by a learned single Judge of this Court in a judgment reported in 1983 MLW (Cri) 23 : 1983 CLJ 917 cited supra. In that judgment, the learned single Judge held as follows (Para 6 of Cri LJ) :-

'A combined reading of Sections 200 to 204 of the Code of Criminal Procedure would show that there is no legal obligation on the part of a Magistrate taking cognizance of an offence, to resort to the procedure laid down in Section 202 before dismissing a complaint or issuing process to the accused after taking cognizance of the offence complained of'.

5. On the question whether the Court is bound to examine the complainant and the witnesses when a public servant acting or purporting to act in the discharge of his official duties has made the complaint, again a learned single Judge of this Court has held that it is not so required. That judgment is reported in 1978 MLW (Cri) 135 cited supra. The facts in that case show that a complaint was filed by a Revenue Divisional Officer for offence under Sections 376 and 330, I.P.C. The Magistrate committed the proceedings since an offence exclusively triable by a Court of Session was made out. This committal order was sought to be quashed by the accused on the ground that the learned Magistrate before committing should have examined the complainant and the witnesses, which he had not admittedly done in this case. While dealing with this question, the learned single Judge, his Lordship Mr. Justice S. Natarajan (as his Lordship then was) held as follows :-

'Secondly, as pointed out by the learned Assistant Sessions Judge, the case may not even attract the application of S. 202(2), Cr.P.C. for, the complaint has been laid down by the Revenue Divisional Officer and not by a private party. In such circumstances, the 1st proviso to S. 200, Cr.P.C., 1973, will be attracted to the facts of the case. The proviso to the section says that if a complaint is made by a public servant acting or purporting to act in the discharge of his official duties, or a Court has made the complaint, then the Magistrate taking the case on file need not examine the complainant's witnesses. On that ground too, the petitioner's

contentions cannot be accepted. In the result the petition fails and will stand dismissed.'

This judgment of the learned single Judge was also referred to and approved by another learned single Judge of this Court, his Lordship Mr. Justice S. Rathnavel Pandian (as his Lordship then was) in the judgment reported in 1982 MLW (Cri) 23 : 1983 C LJ 917 cited supra). His Lordship in that case held as follows (Para 13 of Cri LJ) :-

'In Mokkasami v. Revenue Divisional Officer Sivaganga 1978 MLW (Cri) 135 a contention was raised before Natarajan, J, that as the committing Magistrate did not examine any one of the witnesses on oath by resorting to S. 202(1), Cr.P.C., the committal proceedings were invalid. The contention was rejected by the learned Judge holding that the legislature has enjoined a Magistrate to follow procedure prescribed in S. 202(2) for a two fold purpose, viz., (1) that the Magistrate should satisfy himself beyond doubt that the offence complained of is triable exclusively by the Court of Session, and (2) that the accused should not be taken by surprise at the sessions trial by the examination of witnesses who had not been examined by the Magistrate on oath before passing the committal order. However, having regard to the facts of the case therein, viz., that the complaint was filed by a public servant, viz., the Revenue Divisional Officer, who had held an inquiry under the Police Standing Orders, and that all the statements recorded by the Revenue Divisional Officer had been perused by the Magistrate and copies had been made available to the accused, the learned Judge held that the first proviso to S. 200, Cr.P.C. was attracted to the facts of the case and the question of the examination of the witnesses by resorting to S. 202(2) did not arise and consequently the committal could not be said to be illegal.' The last of the judgment cited by the learned Government Advocate on the criminal side is also of very much use in the disposal of this case and is on the point. The Honourable Judges of the Supreme Court of India had occasion to consider this question in a judgment, reported in : 1988 CriLJ1095 cited supra. The facts of that case are as follows :

'The Deputy Chief Controller of Imports and Exports filed a complaint in the Court of the Chief Metropolitan Magistrate, Bombay alleging commission of offence under Section 5 of the Imports and Exports (Control) Act 1947 against accused 1 and 2. This case was later on transferred to the file of the Additional Chief Metropolitan Magistrate. The first accused was a company and the second accused was the Managing Director. The Magistrate took cognizance of the complaint without examining the complainant and the witnesses. Process was issued. This was questioned by the accused stating that the examination of the witnesses was necessary before the issue of summons. It was rejected by the learned trial Magistrate which order was affirmed in the High Court. The matter was taken up to the Supreme Court by the accused and the Supreme Court of India was pleased to affirm the orders of the Magistrate and that of the High Court. It was held that the proviso (a) to Section 200 of the Code of Criminal Procedure was applicable. Thereafter again, the second accused moved the very same Magistrate for a discharge on the ground that the first accused is prepared to plead guilty and there are no allegations of any criminal misconduct against the Managing Director. This application was dismissed by the trial Magistrate. This went up before the High Court once again and the High Court was pleased to allow the revision and thereby set aside the order of the Magistrate refusing discharge. In so doing, the High Court held as follows :-

'On perusal of the averments it is seen that at the time the learned trial Judge issued/processed against the petitioners/accused, the Department and the State had merely filed a complaint case along with list of witnesses and documents. None of the statements of witnesses or copies of documents were produced before the trial Judge. The complainant's verification statement is also not recorded. As such the order of issuance of process is clearly as a result of non-application of mind by the trial Judge. Such order would mean that merely on filing a complaint the process could be issued. It would be unjust to the accused if process is issued against him by the Magistrate without first satisfying himself about the nature of the case and whether there exist sufficient grounds for proceeding with the case. Since this is not done, then in the instant case the process issued against petitioner No. 2 (Managing Director) is liable to be quashed on this ground alone. Without short circuiting other grounds it must be pointed out

that perusal of the complaint and in particular page 23 of the complaint shows that the prosecution intends to charge petitioner No. 2 as the principal offender along with the petitioner No. 1 company. That is not possible for the simple reason that offence under Section 5 of the Imports and Exports (Control) Act is done principally by the licensee (Company in this case) and/or by the abetter to the offence. There are no allegations in the complaint that the petitioner No. 2 either aided or abetted in the contravention of licence conditions by the petitioner No. 1 Company. As such on this ground also the process issued against petitioner No. 2 is liable to be and in quashed and set aside.'

6. The Supreme Court in the Special Leave Petition was inclined to set aside the order of the High Court and restore the original order of the Magistrate, dismissing the petition for discharge. In so doing, the Honourable Judges of the Supreme Court had held as follows (at P. 1096 of 1988 Cri LJ 1095) :-

'If reference had been made to S. 200, Proviso (a) of the Code of Criminal Procedure, what has been advanced as the most impressive ground for quashing the proceedings against the respondent No. 2 could not at all have been accepted. The learned Judge obviously has not cared to look into the procedural law applicable to the factual situation before him. The learned Judge also lost sight of the fact that similar objections had once been raised and this High Court had refused to entertain the same and the order of the High Court had been upheld here by dismissing the special leave petition.'

7. In view of the categorical pronouncement of this Court and the Honourable Supreme Court of India on this issue as referred to above, I have no hesitation to hold that Clause (a) to Proviso to Section 200 of the Code of Criminal Procedure is an exception to the main section itself. Under these circumstances, the direction given by the Magistrate to examine the complainant and his witnesses on the facts of this case, namely when the complaint is lodged by public servant in the discharge of his official duties, cannot be sustained in the eye of law. The Magistrate has no jurisdiction to insist on the examination of the complainant and this witnesses as provided for in Section 200 of the Code of Criminal Procedure. Under these circumstances, I am of the opinion that all the arguments advanced

by the learned Government Advocate on the Criminal Side have to be sustained and accordingly they are sustained and both the Criminal Revisions are allowed. The learned counsel appearing for the respondents is not in a position to bring any authority contrary to what is cited by the learned Government Advocate on the criminal side. Accordingly, both the Revisions are allowed and the learned Judicial Magistrate, Kangeyam is directed to take P.R.C. No. 5 of 1994 on his file and proceed in accordance with law. In view of the order passed in the main petitions, CrI. M.P. Nos. 4983, 4984 and 4985 of 1994 are closed as unnecessary.

8. Order accordingly.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**