

Public Prosecutor Vs. M. Sambaing Mudaliar and ors.

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Court : Chennai

Decided On : Apr-14-1964

Reported in : AIR1965Mad31; 1965CriLJ53

Judge : Ramakrishnan, J.

Acts : Code of Criminal Procedure (CrPC) (Amendment) Act, 1955 - Sections 25-A(11), 170, 173, 247, 251-A, 251-A(4), 251-A(7), 251-A(9), 251-A(11), 252, 256, 257, 495 and 540

Appeal No. : Criminal Appeal Nos. 797 and 798 at 1962

Appellant : Public Prosecutor

Respondent : M. Sambaing Mudaliar and ors.

Judgement :

(1) The matter that arises for consideration in these appeals filed by the State against the acquittal of the accused is whether it is appropriate to apply S. 251-A (11) Cri. P. C. and acquit the accused in case where the prosecution has neglected to produce witnesses in support of the prosecution case as required under s. 251-A (7) Cr. P. C. The learned Additional First Class magistrate, Kulitalai, who tried the case, observed in his judgment that notwithstanding the peremptory order issued by the court declining to grant further adjournments, the prosecution was not ready with its evidence on the date of hearing and that therefore the accused were entitled to an acquittal under S. 251-A (11), Cr. P. C.

The learned Public Prosecutor, who has appealed to this court, against the order of acquittal, for want of diligence on the part of prosecution, in the matter of producing its witnesses is permissible in summons cases, under s. 247 Cr. P. C. as has been out in *A. Reddi v. S. Goundan*, 1942 MWN 77: AIR 1942 Mad 584, but the position is quite different in the case of the trial of warrant cases, wherein the court cannot automatically acquit the accused for the laches of the complaint. No doubt, that decision dealt with a case that arose before the amendment of the Criminal Procedure Code in 1955 and when S. 252 applied to all warrant cases filed whether on a police report or otherwise. This section imposed an obligation on the magistrate himself to summon the appropriate witnesses for the prosecution of the case.

(2) The question for considerations whether after the commencement of the Criminal Procedure Code, in 1955 by the introduction of S. 251-A for dealing with the warrant case taken on file on a police report, the position has altered and whether in such cases, the magistrate can automatically acquit the accused where the prosecution has not been diligent in producing the evidence in support of its case. The learned Public Prosecutor referred me to a decision of the Assam High Court in *Nathuram v. Pannalal*, AIR 1961 Assam 97 and the decision of the Kerala High Court in *State of Kerala v. Aboobaker*, 1961 MLJ 123 (Kerala) both of which have been followed by the Orissa High Court in *State of Orissa v. Sibcharan Singh*, : AIR1962 Ori157 . A different view was taken by the Calcutta High Court in *Jyotirmoyee Bose v. Birendranath*, : AIR1960 Cal263 . In this last mentioned decision there is a short observation that in a case tried under S. 251-A of the Code, the magistrate was not compelled, as he would be if the case was tried as a warrant case instituted otherwise than on the police report, to proceed in terms of Ss. 256 and 257 of the Code. The Calcutta High Court observed that the case had been pending for over two years and had passed through various vicissitudes and consequently the magistrate was perfectly right in acquitting the accused persons and thereby saving them from further aforesaid decision of the Calcutta High Court really turned on the circumstances of the case, and therefore, did not enter into a detailed discussion of the scope of the Magistrate's power under s. 251-A (11) Cr. P. C. and the circumstances under which it can be exercised.

Taking into account the scheme provided in the several sub-divisions of s. 251-A Cr. P. C. it can be stated that the intention of the legislature as expressed in these provisions was not to extend the provision of acquittal under S. 25-A (11) to cases where the prosecution had been default. Under the scheme of S. 251-A Cr. P. C. the magistrate has to consider the statements recorded in the case diary, and if he finds the charge to be groundless he can discharge the accused. But when he finds the charges to be prima facie substantiated, he is required to frame a charge and then follow the procedure indicated in the several sub-sections from (4) to (9) of S. 251-A. It is after this stage has been reached that he is permitted to acquit the accused under S. 251-A (11). What the magistrate has done in this case is that when he found that the prosecution had failed to produce their witnesses as required under sub-section (7) of S. 251-A Cr. P. C. he has proceeded to record a finding of acquittal under S. 251-A (11). The magistrate had already passed a charge against the accused which implies that there is prima facie case against him which if unrebutted would warrant his convictions. That would necessitate calling upon the accused in any event to enter upon his defense under Section 251-A (8) before S. 251-A (11) is applied in his case.

(3) The Kerala High Court has observed in 1961 MLJ 1213 (Kerala):

'On a perusal of the relevant papers under S. 173 Cr. P. C. the District Magistrate found that there was prima facie case to frame charges of cognizable offence. So even if the police failed to perform their duties and produce the witnesses, the court has the duty to enquire into the offence disclosed and to find out whether the accused was guilty or not and for that purpose to examine the witnesses.'

In making the above observation the learned judges of the Kerala High Court referred to the decision of this High Court in Rangaswami Naicker v. Muruga Naicker, : AIR1954 Mad169 where Ramaswami J. has observed:

'A Judge is not placed in the high situation merely as a passive instrument of the parties. He has a duty of his own, independent of them and that duty is to investigate the truth.'

In the present case, the court had consider date papers under S. 173 Cr. P. C. and held that they warranted the framing of a charge and framed a charge accordingly. In such circumstances before holding the charge to be unsubstantiated, and acquitting the accused, the court had a duty to consider whether the interests of justice did require the summoning of the witnesses on the court's own motion under S. 540 Cr. P. C. I am therefore of the opinion that this is a case where the order of acquittal cannot be permitted to stand.

(4) The learned counsel for the respondent referred to the ample powers of the prosecution under S. 170, Cr. P. C. and S. 495, Cr. P. C. to put forward its case and summon its witnesses. But the reference to these two sections is beside the point for the question now under consideration. The real question is whether the application of S. 251-A (11) to warrant cases instituted on a police complaint is justified for the sole reason that the prosecution has failed to produce its evidence as required under S. 251-A (7). I am of the opinion that such a procedure is permitted by law only under S. 247 Cr. P. C. in summons cases. In warrant cases where the court has already framed a charge under Section 251-A Cr. P. C. against the accused, an important duty is laid on it to see that all the powers available to the court for the examination of witnesses are exercised for a just decision of the case irrespective of the laches of the complaint. Such powers include the powers under S. 540 Cr. P. C. to summon witnesses on the motion of the court. I therefore allow the appeals and set aside the acquittal of the accused and direct the cases to be disposed of according to law by the lower court.

(5) Appeals allowed.