

Kaliappan Vs. Munisamy and ors.

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Court : Chennai

Decided On : Oct-25-1976

Reported in : 1977CriLJ2038

Judge : Natarajan, J.

Appellant : Kaliappan

Respondent : Munisamy and ors.

Judgement :

ORDER

Natarajan, J.

1. This criminal miscellaneous petition has been filed by the complainant in a private complaint pending before the Sub Divisional Judicial Magistrate, Hosur. The complaint was to the effect that the 13 respondents and two others, viz., the first and the fourth accused, formed themselves into an unlawful assembly and trespassed upon the land of the complainant, after arming themselves with deadly weapons, and criminally intimidated the complainant and also caused hurt (Praying the High Court to direct Sub-Divisional Judl. Magistrate, Hosur to frame charge against Respondent in C. C.JNTo. 292 of 1975)to him and had thereby committed offences punishable Under Sections 148, 447 and 324 end 506 (2) I. P. C. The Magistrate after examining the witnesses, framed charges only against accused 1 and 4 Under Section 324 I. P. C. and did not frame charge against the

respondents herein. The petitioner applied for a copy of the order of discharge in favour of these respondents. But, the copy application was returned stating that no formal order of discharge had been passed by the Magistrate. Hence the petitioner has come forward with this petition to direct the Sub Divisional Judicial Magistrate to frame charges against the respondents also.

2. For a proper appreciation of the petitioner's case it is necessary to refer to the changes that have been made by the Legislature to Section 253 Cr. P. C., 1898, when enacting the new Cr. P. C., 1973. Section 253(1) of the 1898 Code directed that after taking all the evidence referred to in Section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, if the Magistrate found that no case against the accused had been made out. which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Sub-section (2) of Section 253 stated that nothing in the section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. Section 245 in the Code of 1973, is the corresponding section. While Sub-section (2) of Section 245 is identical with Sub-section (2) of Section 253 of the old Code, the Legislature has made certain changes in Sub-section (1) of Section 253. The words 'and making such examination, if any, of the accused as the Magistrate thinks necessary' have been deleted in the new section. The Law Commission in its 41st Report has given the reasons for suggesting the deletion and they are contained in the following words--

We propose to make two amendments in Section 253(1). In view of the comprehensive provision in Section 342 (now Section 313) relating to the examination of the accused the words 'and making such examination (if any) of the accused as the Magistrate thinks necessary' are practically superfluous and may be omitted. When the Magistrate finds that, no prima facie case has been made out against the accused there will hardly be anything to examine him about....

The other change that has been made in the new section is the insertion of the words 'for reasons to be recorded,' The Law Commission has given its reasons for suggesting the addition of these words in the following manner--

Secondly, it is desirable to make it clear in Sub-section (1), as already done in Sub-section (2), that the Magistrate should record his reasons for discharging the accused. An order of discharge under either sub-section is a judicial order and subject to revision.

From a reading of the section itself it is obvious that an order of discharge passed by a Magistrate in a case instituted otherwise than on a police report should always be a written order and it should contain the reasons for the Magistrate discharging the accused. Whether the order is passed Under Section 245(1) or 245(2) makes no difference, so far as the Magistrate giving reasons for discharging the accused is concerned. The only difference between an order of discharge passed Under Sections 245(1) and 245(2) is that while in the former, the Magistrate must satisfy himself that no case against the accused has been made out which, if unrebutted, would warrant his conviction whereas in the latter, the Magistrate should consider the charge to be groundless. It, therefore, follows that the Sub Divisional Judicial Magistrate was not correct in not recording his reasons for not framing charges against the respondents. To that extent, the grievance of the petitioner has to be sustained as well-founded.

3. Miss D. Poppy, advocate appearing as amicus curiae advanced two arguments to contend that the petitioner's application is not a sustainable one. She relies on the decision in Jayaraman in re , to contend that a revision against an order of discharge can be preferred only after the court of enquiry or trial had finally disposed of the matter before it. Govinda Menon J. has laid down in the case referred to, that--

It would not be proper for a Magistrate discharging some accused and framing charges against others to express at that stage any definite opinion regarding the credibility or otherwise of the witnesses examined for the prosecution.' Till the charges against the other accused persons are disposed of by a final order the trial court should be deemed to be in seisin of the whole case and so long as it is in charge thereof the reasons in regard to the order of discharge can be given at the final stage.

and therefore, the proper time at which the propriety of the discharge could be agitated in revision was only after the court of enquiry or trial had finally disposed of the matter. This decision can no longer be pressed into service for we are now concerned with the procedure prescribed by Section 245(1) of the 1973 Cr. P. C., and not with the procedure prescribed Under Section 253(1) of the 1898 Code. In view of the changes in the new section, the Magistrate has to record his reasons if he is not framing charges against one or more accused persons in a case instituted otherwise than on a police report.

4. The further argument of Miss D. Poppy is that, in any event, the petitioner should have come to this Court by way of a revision petition and not by means of a criminal miscellaneous petition. No doubt, a formal order of discharge can be challenged only by means of a revision petition. But, in the instant case, there is no order of discharge at all. The copy application filed by the petitioner has been returned stating that no order of discharge has been passed by the Magistrate. In that situation, the petitioner cannot successfully file a revision petition. As a matter of fact, it is seen that the petitioner did file a revision but the office returned it saying that, without a written order of discharge, the revision cannot be entertained.

5. Coming now to the question whether the trial Magistrate should be directed to frame charges against the respondents, I do not think that such a direction can be given to the Magistrate. He has deemed it fit to frame charges only against accused 1 and 4 after assessing the evidence of the complainant's witnesses. Hence the only order that can be made is to bring to the Magistrate's notice its statutory liability to record his reasons for not framing charges against the accused 2, 3 and 5 to 15, who are the respondents herein, Under Section 245(1) Cr. P C. After the Magistrate records his reasons for discharge in a formal order and if the petitioner, still, feels aggrieved with the order, he can, then, prefer a revision petition by law. The criminal miscellaneous petition will stand allowed to the extent indicated above.