

Somu Alias Somasundaram and ors. Vs. the State and anr.

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SooperKanoon Citation : sooperkanoon.com/794891

Court : Chennai

Decided On : Jan-08-1985

Reported in : 1985CriLJ1309

Judge : T.N. Singaravelu, J.

Appellant : Somu Alias Somasundaram and ors.

Respondent : The State and anr.

Judgement :

ORDER

T.N. Singaravelu, J.

1. The revision petitioners herein are aggrieved by the order of the Additional Sessions Judge, Ramnad in Cr. R.C. No. 48 of 1983 setting aside the order of dismissal under Section 203 CrI. P.C. and remanding the matter to the trial Court for enquiry. The grievance of the petitioners herein is that the learned Sessions Judge who enquired into the revision case did not issue any notice of that petition and therefore, the order was passed in their absence and without giving them an opportunity. This is the essence of the contention in this petition.

2. I have heard learned Counsel for both sides. It is common ground that the criminal complaint preferred by the second respondent was dismissed by the trial Court under Section 203 Cr. P.C. .In other words, till the process is issued by the

trial court, the petitioners do not get the status of the accused. Consequently, they have no right of audience before the revisional authority. The proviso under Section 398 Cr. P.C. merely states that no Court shall make any direction under this section for enquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause. But that contingency does not arise in this case as this is not a case of discharge by the trial court.

3. In this connection learned Counsel for the second respondent drew my attention to a few rulings of our High Court on this point In *M. Jalaluddin v. Syed Ibrahim* 1978 MLW 178 : 1979 Cri LJ NOC 68 the learned Judge has held that the accused has no locus standi to appear unless the process under section 204 Cr. P.C. is issued to him. An earlier case reported in *Ramabhadra Odayar v. Emperor* : AIR1928 Mad1198 is also produced before me and it clearly lays down that the accused persons have no locus standi to appear for an enquiry under Chapter 16 of the Code and it even went to the extent of stating that the sessions Judge's action in issuing notice to the accused was improper and even undesirable.

4. Of course learned Counsel for the petitioners drew my attention to the decision reported in *Gopalakrishnan v. Ramasubramania Raja* 1972 MLW (Cri) 39 wherein Ramaprasad Rao J. (as he then was) tried to distinguish it from the case reported in *Chandra Deo v. Prakash Chandra* : [1964]1SCR639 wherein it was held that the court ought not to hear the respondents or their counsel though they may be permitted to sit in Court. The Supreme Court had observed that any attempt on the part of the respondents to participate in the proceedings is prohibited. However, the learned Judge who decided the case in 1972 L.W. 39 found that the principles of natural justice were violated in the case before him and that the ban imposed by the Supreme Court was not total. Obviously there was a very long delay of two years and six months in that case and in those circumstances, the learned Judge held that the doctrine of natural justice should not be eliminated. That has no relevance to the facts of our case. Therefore my findings is that the petitioners herein have no right of hearing and this revision petition in anticipation of the issue of summons is premature. On this ground this revision petition is dismissed.

