

**In Re: A. Kanniah and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/799728](http://sooperkanoon.com/799728)

**Court :** Chennai

**Decided On :** Oct-13-1966

**Reported in :** 1967CriLJ1525

**Judge :** Krishnaswamy Reddy, J.

**Appellant :** In Re: A. Kanniah and ors.

**Judgement :**

ORDER

**Krishnaswamy Reddy, J.**

1. The petitioners in all these cases were charged for offence under Section 5 read with Section 7 of the Motor Vehicles Taxation Act by the Sub Inspector of Police, Uttukottai. The Sub Magistrate, Ponneri, took cognizance of the cases against the petitioners on a complaint filed by the Sub Inspector of Police. The petitioners did not appear in court for a long time in spite of steps taken by the prosecution. The proceedings were stayed under Section 249 CrI. P. C, with the sanction of the District Magistrate, Chingleput.

Subsequently, the case was revived and taken on file for trial by the Sub Magistrate, Ponneri. The petitioners raised several objections before the Sub Magistrate, and mainly contended that the stay of proceedings amounted to an acquittal and that the revival of the case against the petitioners was illegal. The learned Sub-Magistrate negated their contentions and held that stopping

proceedings under Section 249 Cr. P. C. with the sanction of the District Magistrate on the ground that the petitioners were absconding for a long time would not amount to an acquittal and that the revival of the proceedings were perfectly legal.

2. The learned Counsel for the petitioners contends that the order passed under Section 249, Cr. P.C. by the sub Magistrate in stopping the proceedings is illegal and the said order must be deemed to be the withdrawal of complaint under Section 248 Cr. P. C. and the consequences of which should have been an acquittal of the petitioners. Section 249, Cr. P. C. is as follows-

In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class or with the previous sanction of the District Magistrate, any other Magistrate, may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon release the accused.

This section can be invoked only in cases instituted otherwise than upon a complaint. Complaint is defined in Section 4 (h) of the Cr. P. C. as allegation made orally or in writing to a magistrate with a view to his taking action under this Code that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer. The report of a police officer is one that is contemplated under Sections 170 and 173 Cr. P. C. which is filed by a police officer as a result of investigation. Under Ch. XIV Cr. P. C. an officer in charge of a police station has got power to investigate in cognizable cases. In non-cognizable cases, a police officer can investigate only with the order of a Magistrate of the first or second class having power to try such cases or of a Presidency Magistrate. The offence for which the petitioners were charged is undoubtedly a non-cognizable offence. The Sub Inspector admittedly had not obtained orders from the concerned Magistrate to investigate the case under Ch. XIV Cr. P. C. The report by the police officer in a non-cognizable case without getting permission to investigate the case as required under Section 155 Cr. P. C., cannot be a police report contemplated under Section 173 Cr. P. C. Under Section 4 (h) a police report is excluded from the category of complaint. It is well

established by the decisions that report of a police officer in a non-cognizable offence without investigation as required under Section 155, Crl. P. C. will be a complaint as defined in Section 4 (h). Vide State G. S. S.I. v. Ramaswami : AIR1963 Mad160 , Chidambara Pillai v. Emperor ILR (1909) Mad 3, Public Prosecutor v. Ramiah AIR 1958 Andh Pra 392, Mallikarjuna Prasada Rao v. Emperor 1933 Mad WN 876.

3. Under Section 190 (1) (a) Crl. P. C. a Magistrate can take cognizance of an offence upon receiving a complaint of facts which constitute such offence, Under Section 200 Crl. P. C., if any complaint is made by a Public servant, he need not be examined on oath,

4. The learned Sub Magistrate took cognizance of the case under Section 190(1) (a) as a complaint. Section 249 Crl. P.C. excludes stopping proceedings in cases instituted on complaints. The order passed by the Sub Magistrate in stopping the proceedings is clearly wrong as the cases against the petitioners were instituted on a complaint contemplated under Section 4 (h) and Section 160 (1) (a) Crl. P.C. The order under Section 249 Crl. P.C. is therefore illegal.

5. Learned Counsel for the petitioners contends that these cases, being summons cases, the order passed by the Sub Magistrate slopping the proceedings must be deemed to be the withdrawal of the complaint. I am unable to agree with this contention. The order passed by the Sub Magistrate under Section 249 Crl. P.C, is an order passed without jurisdiction and therefore is void It should be taken for all purposes that the order is non est. The result is that there was a gap in the trial between the date of the proceedings and the revival of the proceedings, As the slopping of the proceedings itself is found to be void, the question of revival does not arise. The original trial started on the complaint filed by the police continues as there was no valid order preventing the course of the original trial.

Learned Counsel for the petitioners relied upon a decision in Public Prosecutor v. Rajagopala Naidu : AIR1959 Mad356 . That was a case where the accused was prosecuted for an offence under Section 14(c). Madras Entertainment Tax Act 1939. and the Public Prosecutor filed a Memo for staying of trial under Section 249 on the ground that a fresh charge sheet would be filed against the accused and

two others. The case was stayed and a fresh complaint was filed against the accused and his two partners Somasundaram, J., held that the case was instituted on a complaint and the result of the memo filed by the Public Prosecutor could amount to a withdrawal of the complaint under Section 494 and the only order that could be passed was acquittal and that the trial of the accused along with others would be barred by Section 403 CrI. P.C.

6. It is clear in that case that the memo filed by the Public Prosecutor that he would file a fresh charge sheet would show that he was not pressing the case instituted on the original complaint. That will certainly amount to an implied withdrawal. At the request of the learned Counsel for the petitioners, I directed the learned Magistrate to produce all the records concerned in the Case to find out whether there was any endorsement by the Public Prosecutor for stopping the proceedings under Section 249 CrI P.C. I find from the records that the proceedings were stopped on the initiation of the Magistrate himself as he found that the petitioners were absconding for a long time and that he could not proceed with the cases.

7. In the circumstances mentioned above, the learned Sub Magistrate is directed to proceed with the cases expeditiously and dispose of them according to law. The petitions are dismissed.