

In Re: Jayaraman and ors.

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Court : Chennai

Decided On : Feb-20-1948

Reported in : (1948)1MLJ341

Appellant : In Re: Jayaraman and ors.

Judgement :

ORDER

Govinda Menon, J.

1. The First Information Report regarding the offences alleged to have been committed under Sections 147, 148, 149 332, 224, 225, and 379 of the Indian Penal Code was filed against the 8 petitioners and 4 others before the Additional First Class Magistrate of Tiruvannamalai and after examining the witnesses for the prosecution the learned Magistrate discharged the 8 petitioners, who were accused 5 to 12, before him stating that no case which, if unrebutted, would warrant a conviction of these accused has been made out. As regards the other four he framed charges under various sections of the Code. At this stage the prosecution filed an application before the District Magistrate under Sections 435 and 436 of the Criminal Procedure Code requesting that the order of discharge be set aside; the learned Additional District Magistrate in a brief order has set aside the order of discharge and directed the Additional First Class Magistrate to enquire into the matter afresh.

2. In my opinion, the proper time at which the propriety of a discharge like the one in question here, can be agitated in revision is only after the Court of enquiry or trial has finally disposed of the matter. It would not be proper for a Magistrate discharging some accused and framing charges against others to express any definite opinion regarding the credibility or otherwise of the witnesses examined for the prosecution. It may be that a Magistrate may be inclined to believe the evidence as against some of the accused and not believe the same as regards the others. It is very embarrassing for a Magistrate to give reasons at such a stage and therefore the Court of First Instance, in this case, was perfectly justified in not giving any reason for discharging the accused at that stage. Of course he is bound to give his reasons when he finally either acquits or convicts the other accused persons against whom charges have been framed. In a similar case in *Govindaraj v. Emperor*, Venkataramana Rao, J., has laid down that it would be competent to a Magistrate to discharge some accused and frame charges against others without giving any reasons. Till the charge against the remaining accused is 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. There is nothing in the language of Section 253, Criminal Procedure Code which precludes the court from doing so. The learned Judge further goes on to observe:

Of course the language of the section would plainly indicate that a Magistrate should give his reasons at the time he pronounces the order of discharge and if it is the final order in the case, he is bound to give his reasons. The moment he pronounces the final order, he becomes *functus officio* and he is no longer in charge of the case. But in a case of this nature (where the charges have been framed in the case of some) I am inclined to think that he has not become *functus officio* and it would be open to him to defer his reasons.

I am in entire agreement with the observations made by the learned Judge. I would therefore hold that the Additional District Magistrate was not justified in setting aside the order of discharge in the present case.

3. As a matter of practice and convenience it would always be better if the applications by the prosecution for setting aside orders of discharge in cases where charges have been framed against some of the accused alone, or against all the accused under some sections alone, were made only after the Court finally disposes of the matter. In this case, the First Class Magistrate is bound to give reasons when he finally disposes the case against the other accused persons and if the reasons are not sufficient or acceptable the prosecution may, then, move the District Magistrate for such orders as he thinks fit. Interfering at this stage makes the Court acting under Sections 435 and 439, Criminal Procedure Code, more like a Court of appeal than like a Court of revision because it has to go into the entire evidence as if it were an appeal before setting aside an order of discharge. Such a Procedure is not contemplated by the Code at all. The order of Additional District Magistrate is set aside.

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