

In Re: Rajangam and anr.

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Court : Chennai

Decided On : Jul-29-1957

Reported in : AIR1958Mad523; 1958CriLJ1323

Judge : Ramaswami, J

Appellant : In Re: Rajangam and anr.

Judgement :

ORDER

Ramaswami, J.

1. This is a revision sought to be preferred against the order of the learned District Magistrate of Tanjore in C. R. P. No. 11 of 1957, setting aside the order dismissing the complaint in C, C. No. 448 of 1957 under Section 203, Cr.PC by the Second Class Magistrate, Tiruvayaru.

2. The facts are : Dharmaraja Bapu Reddiar filed a private complaint against two persons for an offence under Section 498, I, P.C. This complaint was taken on file as C.C. No. 23 of 1957. Nino witnesses were examined on behalf of the complainant. Then the enquiry was posted for the examination of the accused on 29-3-1957. On that date the complainant was absent. The complaint was dismissed under Section 259, Gr. P.C.

Then the complainant on the same facts filed a second complaint which was numbered as C.C. No. 448 of 1957. The Sub-Magistrate discussed the evidence already taken on the prior complaint and taking into consideration certain facts appearing in the case-diary it will be remembered that in this case there was no reference under Section 202, Cr.PC but the party had preferred a complaint after the police had refused to take action dismissed the complaint. To quote his own words

On a very careful review of the evidence let in in this case already, I have no hesitation to hold that no case for 'in offence under Section 498 has been made out ... I therefore take this case on file under Section 498 and dismiss it under Section 203, Cr.PC

The learned District Magistrate was moved in revision and he following the decision in Venkatasubba Ayyar v. Soundararaja Ayyangar : AIR1929 Mad260 , held that the procedure adopted by the learned Sub-Magistrate was wholly illegal and he should not have disposed of the present complaint on the evidence already recorded by him and he should not have relied on any part of the case-diary as substantive evidence, and ordered further inquiry by the Sub-Magistrate, Tanjore, de novo according to law in the light of the observations made by him. Hence tills revision.

3. There cannot be the slightest doubt that this revision petition is thoroughly frivolous and the further enquiry ordered by the learned District Magistrate is irreproachable. Here are my reasons.

4. When a complaint is presented, the Subordinate Magistrate must then and there examine the complainant, record his statement and then take one of the following three courses (1) bring the accused to trial (2) for reasons to be recorded direct a local investigation under Section 202, Cr.PC or (3) dismiss the complaint under Section 203, Cr. P, C. The object of the examination, which must be thorough, should be to ascertain whether reasonable grounds exist for issuing process against the accused and Section 203 has been devised to prevent an accused person being brought to Court on an ill-founded charge to protect accused from unnecessary harassment and worry; to prevent parties from utilising the machinery

of the criminal Court to establish claims which ought to be adjudicated upon by civil Courts alone; and to eliminate grave and gross exaggerations.

But at the same time where the Criminal Procedure Code has given aggrieved citizens the right to approach the Courts directly as well as through the police Courts should not make use of Section 203 to stifle just complaints of serious offences and to substitute the police for the Courts as the sole authority on whose decision the initiation for criminal proceedings for cognisable cases shall begin.

It is incumbent on the Courts to take care that any favouritism by the police should be prevented; besides it is nowhere stated that Section 203 should be used when disputes disclose both civil and criminal liability. The criminal liability portion has got to be adjudicated by criminal Courts, 'Dispute of a civil nature' cannot be made use of as a magical formula to short-circuit magisterial work. It is the refuge of mentally bankrupt and lazy magistrates.

5. The materials on which the Magistrate has to act are expressly limited by the section to (1) the statement on oath, if any, of the complainant; and (2) the result of any investigation or enquiry under Section 202; anything outside it must be discarded.

6. Thus, the Court cannot take into consideration the statements of witnesses examined by the police or the evidence adduced in a counter-case or the result of police enquiry not ordered by the Magistrate, or the result of an inquiry on a previous petition or the result of an investigation ordered under Section 202 but not held in compliance with its terms; and again the Court cannot ordinarily permit the opposite party to argue that a process should not issue. Where process has been issued the proceedings in such a case fall under the next Chapter of the Code. Nor does Section 203 apply where the proceeding is not one which is initiated on a complaint, i.e., proceedings Under Sections 107, 552 or 145 of the Code.

7. A subordinate Magistrate has power under Section 203 reasons to be recorded after the examination of the complainant on oath .to direct an investigation by the police. This section is liable to be easily abused and hence great discretion should

be observed in having recourse to this section. An indiscriminate use of this section is looked upon with great displeasure by the Government and the High Court.

In fact one of the topics of review in the Annual Criminal Administration of Justice report is whether proper use has been made of Section 203, Cr.PC to prevent Courts being flooded with ill-founded charges and whether indiscriminate use is being made of reference under Section 202, Cr.PC because such references are peculiarly liable to be abused by the Police and secondly, the Police orders themselves enjoin on the police not to waste their time upon matters which are and should generally be agitated by means of private complaints. Petty cases should not be referred to the police. Complaints making serious allegations against police officers should not be forwarded to the police for inquiry under Section 202. Recording of reasons is absolutely essential. This is intended to prevent frivolous, vexatious and indiscriminate references.

8. In this connection my attention has been drawn to a decision obviously come to on a misapprehension and the attention of the learned Judge not being drawn to the distinction between pre-amended Code and the amended Code in regard to Section 203, viz., *Chinna Konda Reddi v. Seshi Reddi* : AIR1954 Mad889 . In that case Chandra Reddy, J. held that the pre-requisite for taking action under Section 203 is an investigation or enquiry under Section 202 and therefore where there has been no investigation or inquiry under Section 202, it is incompetent for the Magistrate to act under Section 203. The key words in Section 203 are 'the result of the investigation or inquiry if any under Section 202.'

9. The words 'if any' clearly show that this section empowers the Magistrate to dismiss a complaint without any investigation or inquiry under Section 202, if after examining the complainant he considers there is no sufficient reason for proceeding : *Dukhiram Rant v. Jamuna Kuer* A.I.R. 1925 Pat 704 (C).

10. The words 'if any' were omitted from the Code by the Amending Act 18 of 1923, but were restored to the Section by the Amending Act 2 of 1926. The reasons for re-insertion are given in the Statement of Objects and Reasons of the Amending Act of 1926 as follows:

The Calcutta High Court in a recent decision (in the case of *Srishchandra Bose v. Madanlal Surma*) has held that under Section 203, an investigation or an inquiry under Section 202 is necessary in all cases because the words 'if any' have been omitted from Section 203 after the words 'investigation or inquiry'. No such change was intended by the amendment made by Act XVIII of 1932 and the proposed addition is made to clear this matter.

11. Nowhere is it stated that a magistrate before dismissing a complaint must direct an investigation or inquiry, if any, under Section 202. In fact even if he had directed such an investigation to examine any witness or hold inquiry, the Magistrate is not bound after receipt of report of such investigation to examine any witness or hold inquiry before he dismisses the complaint.

It is sufficient if he takes into consideration the result of the investigation arrived at under Section 202. To sum up the scope of an inquiry under Section 202 is to separate unfounded from substantial cases at the outset and the provision is enabling and not obligatory and the enquiry is not intended to supersede a regular trial and it is not necessary that a magistrate shall call for an inquiry under Section 202. It is only when he thinks fit that he may do so.

12. The grounds of dismissal under Section 203 must of course be proper, viz, the magistrate should have been able to come to the conclusion that there is no sufficient ground for proceeding with the complaint. The expression 'sufficient ground' in this section points exclusively to the facts which the complainant brings to the knowledge of the magistrate to his establishing *prima facie* case against the accused.

In exercising this discretionary power of summary dismissal of complaint, a magistrate should not allow himself to be influenced by other considerations apart from the facts alleged by the complainant on oath and the result of the investigation or inquiry, if any, if it had been ordered under Section 202 CrI. P.C. The Magistrate cannot look into the other materials at this stage.

That is why the accused has no right at this stage to be heard or participate though there is nothing objectionable if the accused at his request is allowed to be

present or even an advocate holding a watching brief for him is on request allowed to be present : Mustafa v. Motilal : AIR1949 Pat36 p>

13. It is now well-settled that where there is dismissal of a complaint for default of appearance of the complainant, two courses are open, viz, restoration. of the original complaint or the filing of a fresh complaint on the same facts . Arasappa Mudaliar v. Padmavathi 1955 MWN 28 (J); Lekharam Agarwalla v. Pannalal Aggarwalla A.I.R. 1951 Assam 129 (K); Subramania v. Rama-swami : (1948)1MLJ406 Kumariah v. Chinna Naicker : AIR1946 Mad167 Mt. Har-bai v. Premji A.I.R. 1939 Sind. 193: 40 Cri LJ 745 (N); Ponnuswami v. Emperor 1931 MWN 1149; 35 Mad LW 478 : A.I.R. 1932 Mad 369 (O)- Emperor v. Chinna Kaliappa Goundan 16 MLJ 79 : ILR 29 Mad 126 (P).

14. Bearing these principles in mind, if we examine the facts of this case, we find that the -dismissal of the prior complaint has not been under 'S. 203 Cri P.C. On the other hand, process had been issued and witnesses had been examined and the dismissal was under Section 259 CrI. P.C. Then. when a fresh complaint had been filed on the same facts instead of there being a restoration, lit is certainly not open to the Magistrate to dismiss the complaint under Section 203.

The only two normal terminations will be the discharge of the accused under Section 253 CrI. P.C. and acquittal or conviction. In addition, materials into which the Magistrate cannot look into have been made use of for the dismissal under Section 203 CrI. P.C. In the result the order of the learned District Magistrate directing further enquiry is irreproachable. This revision is dismissed.

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