

Elumalai Vs. K. Sukumar

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Court : Chennai

Decided On : Aug-16-1996

Reported in : 1996(2)CTC555

Judge : Karpagavinayagam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 204(4)

Appeal No. : Crl. R.C. No. 504 and Crl. R.P. No. 504 of 1993

Appellant : Elumalai

Respondent : K. Sukumar

Advocate for Def. : R. Narayanan, Adv.

Advocate for Pet/Ap. : S.S. Kumar, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Karpagavinayagam, J.

1. This is the revision preferred by the petitioner Elumalai against the order passed in C.C.No.126 of 1993 on the file of Judicial Magistrate I, Villupuram, dismissing his complaint under Section 204(4) of Criminal Procedure Code.

2. Mr. S.S. Kumar, counsel appearing for the petitioner/complainant submits that the order passed by the Magistrate on 13.5.1993 dismissing the complaint under Section 204(4) of Cr.P.C. is not sustainable in law, for the reasons that on two previous hearings he paid the process fee and he did not pay process fee only for the third hearing. Under such circumstances, the complaint was dismissed without giving reasonable time as provide under Section 204(4) of Cr.P.C.

3. The counsel for the respondent is absent. I have gone through the records and Order. The diary extract filed in this case would make it clear that the complaint was filed on 2.4.1993 and the same was taken on file and the summons were issued to the respondent-accused on payment of process fee. The process fee was paid on that day. The next hearing date i.e. on 19.4.1993, the complainant was present but the accused was not present. So fresh summons were ordered. On payment of fresh process fees again summons were issued and the case was posed on 30.4.1993. Even on that day, the complainant was present but the accused was not present. So again summons were directed to be issued to the accused. On 13.5.93 the complainant was present but the accused did not appear: On that date the complaint was dismissed by the Magistrate on the ground that the process fee was not paid for the issuance of fresh summons on 30.4.1993.

4. Mr. Kumar, appearing for the petitioner contends the very fact that on 2.4.93 and on 19.4.93 the complainant took steps and paid process fee promptly would reveal that he was vigilant in taking steps for sending the summons to the accused. Even on 30.4.93 he obtained the permission from the court to take private notice to the accused and sent the same. So, on the basis of this he contends that he did not pay process fees only on 30.4.93 under the impression he has been permitted to take private notice which has been done in this case promptly by the petitioner.

I feel the order passed by the lower court is to be set aside on the simple ground.

The impugned order does not show any valid reason for dismissing the complaint it is merely stated

This reason may not be a valid reason; more so, it is also not factually correct according to the records. As per the submissions made by the counsel Mr. Kumar, already process fees paid for the summons issued on 2.4.93 and 19.4.93. So the Magistrate ought to have given one more opportunity on 13.5.93 to enable the petitioner to pay process fees, especially private notice was already sent. Since sufficient opportunity had not been given, I feel the order suffers from illegality and the same is liable to be set aside. Accordingly, the order is set aside and I remand the matter to the trial court to give opportunity to the petitioner to pay process fees and then issue process to the accused and go on with the proceedings and dispose the same as expeditiously as possible. With these observations, the revision is allowed.

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