

A. Raman Vs. Ramar and ors.

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Court : Chennai

Decided On : Aug-25-1998

Reported in : 1999CriLJ814

Judge : M. Karpagavinaygam, J.

Acts : Indian Penal Code (IPC) - Sections 323, 325 and 341; Code of Criminal Procedure (CrPC) , 1974 - Sections 240 and 248(1)

Appeal No. : Crl. R.C. No. 629 of 1997

Appellant : A. Raman

Respondent : Ramar and ors.

Advocate for Def. : M.V. Venkateshan, Adv. and ;C.M. Gunasekaran, Govt. Adv.

Advocate for Pet/Ap. : A. Raghul, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Karpagavinaygam, J.

1. This revision has been filed challenging the impugned order acquitting the respondents 1 and 2 in respect of the offences, under Sections 341, 323 and 325 IPC in C.C. No 1041/96 on the file of the Judicial Magistrate, Usilampatti.

2. This Revision has got to be allowed on a short ground.

3. The petitioner was attacked on 22-11 -94 by the respondents 1 and 2 and thereby he sustained grievous injuries. With reference to the said incident, he lodged a complaint with the police, who investigated and tiled the charge sheet before the learned Judicial Magistrate, Usilampatti on 31-1-95 for the offences as referred to above against the respondents 1 and 2. :

4. After service of summons, the respondents 1 and 2 appeared before the Court on 31-1-95. The charges were framed to which they pleaded not guilty. Thereafter, since on a number of hearings the witnesses were not produced, the learned Judicial Magistrate, Usilampatti acquitted the accused under Section 248(1) Cr.P.C. holding that this case was pending for more than 2 years and therefore, the respondents 1 and 2 were liable to be acquitted on the strength of the direction given by the Apex Court reported in : 1996 CriLJ2380 (Common Cause v. Union of India).

5. This order is being challenged before this Court by the petitioner, the aggrieved party, on the ground that the direction issued by the Apex Court would not. cover the instant case and as such, the learned Judicial Magistrals has committed illegality in acquitting the respondents and 2.

6. Arguing contra, Mr. Venkataseshan, the counsel appearing for the respondents 1 and 2, in justification of the impugned order, would sutmit that the direction of the Apex Court would cover this case also under paragraph 2 (b) as mentioned in the decision as referred to above.

7. I have carefully considered the submissions made on either side.

8. I am of the view, as correctly pointed out by the learned counsel for the petitioner, that the directions issued by the Apex Court would not cover the instant case for the following reasons. It is mentioned in paragraph 2 (b) in the-Apex Court

judgment which is as follows at page 2381 of Cri LJ:-

Where the cases pending in criminal Courts for more than two years under IPC or any other law for the time being in force are compoundable with permission of the Court and if in such cases trials have still not commenced, the criminal Court shall after hearing the public prosecutor and other parties represented before it or their advocates, discharge or acquit the accused, as the case may be, and close such cases.

9. The instant case relates to the offences under Section 341, 323 and 325 IPC. No doubt, it is true that it is compoundable. But, the lower Court had passed the impugned order on 25-4-97 without hearing the aggrieved party, namely, the petitioner. The words 'after hearing the public prosecutor and other parties represented before it' would mean the aggrieved party as well. This is the reason as to why the directions have been issued by the Apex Court with reference to the offences compoundable with the permission of the Court. Therefore, in respect of the compoundable offences, the aggrieved party or the necessary parties have to be heard before invoking paragraph 2 (b) of the judgment of the Apex Court (supra).

10. As admitted by the learned counsel for the respondent 1 and 2 in the instant case, the petitioner was not heard. So, on this reason, the learned counsel for the respondents would request the Court to remit back the matter to the trial Court for hearing the aggrieved party and dispose of the matter. However, I am not inclined to agree with this concession given by the counsel for the following reasons.

11. The words in paragraph 2(b) of the judgment of the Apex Court (supra) is that only with reference to the case where the trials have not commenced. Admittedly, in this case, charges have been framed by the lower Court and the accused were questioned and their plea of not guilty was recorded as early as 25-4-97.

12. In the decision *Common Cause v. Union of India* : AIR 1996 SC3538 , the Apex Court in clarification of the earlier judgment would specifically hold that in cases of trials of warrant cases by the Magistrates if the cases are instituted upon police reports, the trial shall be treated to have commenced when the charges are

framed under Section 240 Cr.P.C.

13. So, in this context, it could be very well concluded that the trial in the instant case had already been commenced on 25-4-97, namely, the date of framing of charges. Therefore, on both the reasons the direction issued by the Apex Court would not cover the instant case. Consequently, this impugned order is liable to be set aside and the matter is to be remitted back to the trial Court for disposal of the same in accordance with law.

14. At this juncture, I shall point out that there is a Full Bench decision of this Court reported in 1980 MLW 187 1980 Cri LJ 155, State v. Veerappan, wherein it has been held that if the witnesses are not produced, the Magistrate shall take coercive steps by issuing warrant, if necessary, and then dispose of the matter.

15. Therefore, the trial Court should bear in mind the principles laid down in the judgments supra and proceed with the trial and dispose of the same.

16. In the result, the Revision is allowed and the impugned order is set aside. The matter is remitted back to the trial Court to dispose of the same in accordance with law as expeditiously as possible.

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