

Rajendran Vs. Paravasudevan.

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Court : Chennai

Decided On : Mar-27-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure (CrPC), - Section 397, 401, 249;

Appeal No. : CRL.R.C(MD)No.1001 of 2011 and M.P(MD)No.1 of 2011

Appellant : Rajendran

Respondent : Paravasudevan.

Advocate for Pet/Ap. : Ms.P.Ganapathi Subramanian , Adv.

Judgement :

Prayer

Criminal Revision case filed under Sections 397 and 401 Cr.P.C., praying this Court to call for the records in C.C.No.13 of 2007,dated 14.12.2011 on the file of the Chief Judicial Magistrate, Pudukkottai thereby discharging the accused under Section 249 Cr.P.C and to reverse the order passed by the Court below and to restore the complaint on file and direct the trial court to dispose of the same in accordance with law.

ORDER

1. This Criminal Revision Case has been filed against the order of the learned Chief Judicial Magistrate, Pudukkottai made in C.C.No.13 of 2007, on the file of his Court. The said order was passed on 14.12.2011 under Section 249 Cr.P.C., discharging the accused therein, who are the respondents in the revision case and dismissing the complaint. Questioning the correctness and legality of the said order passed by the learned Chief Judicial Magistrate, the present revision case has been filed. The revision petitioner is the complainant on whose private complaint the said calendar case came to be instituted.

2. The submissions made by Mr.P.Ganapathi Subramanian, learned counsel for the petitioner and by Mr.J.Anand Kumar, learned counsel for the respondents 1 to 3 are heard. The materials placed in the form of typed-set of papers and also the records sent for from the court below are also perused.

3. The learned counsel for the petitioner would submit that without knowing the scope and applicability of the provision found in Section 249 Cr.P.C., the learned Chief Judicial Magistrate arbitrarily dismissed the complaint and discharged the accused/respondents herein and that on the said ground alone, the order is liable to be set aside. It is the further contention of the learned counsel for the petitioner that both the parties informed the learned Chief Judicial Magistrate that a Criminal Original Petition had been filed in this Court as CrI.O.P.No.12565 of 2011, praying for the transfer of the case pending before the learned Chief Judicial Magistrate, Pudukkottai, namely C.C.No.13 of 2007 to the file of the learned Additional District and Sessions Judge, Fast Track Court, Pudukkottai, for a simultaneous trial with S.C.No.99 of 2009 and an interim order of stay for a limited period had been granted, that despite the same, without waiting for the result and taking advantage of the fact that a limited stay granted was not subsequently extended as the Criminal Original Petition had not been listed after the expiry of the limited period upto which the stay had been granted, the learned Chief Judicial Magistrate dismissed the complaint and discharged the accused under Section 249 Cr.P.C. The said factual matrix placed before the Court by the learned counsel for the revision petitioner is not disputed by the respondents and the learned counsel for the respondents admitted the correctness of the said factual submission.

4. It is the further contention of the learned counsel for the petitioner that an order of discharge under Section 249 Cr.P.C., can be passed only when the offence alleged is either compoundable or non-cognizable and that one of the offences alleged, namely an offence under Section 326 IPC is non-compoundable and hence the question of discharging the accused under Section 249 Cr.P.C., will not arise. The learned counsel for the petitioner also pointed out the fact that the offence under Section 326 is a cognizable one. Section 249 Cr.P.C which gives power to the Magistrate to discharge the accused due to the absence of the complainant, reads as follows:

249. Absence of Complainant:-- When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed discharge the accused.

5. A reading of the section will show that such an order of discharge can be passed at any time before charge has been framed and in respect of a case instituted on private complaint, where the offence alleged can be lawfully compounded or is not a cognizable one. As rightly pointed out by the learned counsel for the petitioner, the offence under Section 326 IPC is neither compoundable nor non-cognizable and hence the power given to the Magistrate under Section 249 Cr.P.C., cannot be exercised.

6. In addition, this Court also accepts the contention of the learned counsel for the petitioner despite the fact that both parties informed the trial Court of the pendency of the petition for transfer of the case to the Sessions Judge(FTC),Pudukottai, for being tried along with S.C.No.99 of 2009, the learned Chief Judicial Magistrate chose to dismiss the complaint under the wrong provision of law. Therefore, this Court does have no hesitation in coming to the conclusion that the order of the learned Chief Judicial Magistrate, Pudukkottai suffers from infirmity and illegality and the same deserves to be set aside.

7. Accordingly, the Criminal Revision Case is allowed and the impugned order, dated 14.12.2011 passed in C.C.No.13 of 2007, on the file of the learned Chief Judicial Magistrate, Pudukkottai is set aside. The C.C.No.13 of 2007 stands restored. Consequently, connected Miscellaneous Petition is closed.

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