

(1989) 02 MAD CK 0050

In the Madras High Court

Case No : Criminal M.P. No. 10034 of 1985

C.K. Raghunath and 4 Others

APPELLANT

Vs

S. Ganapathi

RESPONDENT

Date of Decision : 23-02-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 200, 202, 203, 204

Citation : (1989) LW(Cri) 423

Hon'ble Judges : David Annoussamy, J

Bench : Single Bench

Advocate : N. Chandrasekaran, for the Appellant; S. Kanagasobat and Premaraj, for the Respondent

Final Decision : Allowed

Judgement

David Annoussamy, J.—This is a petition u/s 482 of the Code of Criminal Procedure to quash the proceedings in C.C. No. 11465 of 1985 on the file of the XIV Metropolitan Magistrate, Madras.

2. The accused, five in number, belonged to the Tamil Nadu Electricity Board; accused 1 is the Chief Engineer/Personnel, accused 2 is the Director of Training, accused 3 is the Divl. Engineer Training accused 5 is the Asst. Divisional Engineers/Training and accused 4 is the Inspector of Vigilance. It appears that the Respondent/complainant, who was employed as Assistant Divisional Engineer (Training), was transferred twice and ultimately was dismissed from service. It appears also that there has been some writ proceedings in respect of his transfers. The case of the complainant is that the accused have all wrongfully restrained him from occupying his seat on 11-9-1984, inflicted hurts and also have intimidated him. As far as the first accused is concerned, he is alleged to have given and fabricated false evidence. Upon the receipt of this complaint, the Magistrate has taken the sworn statement of the complainant and issued summonses to all the accused. Thereupon the accused have preferred the present petition.

3. Learned Counsel for the Petitioners would urge that in respect of offences against the officers of the Tamil Nadu Electricity Board is concerned, sanction has to be obtained from the Board under Ss. 81 and 82 of the Electricity (Supply) Act, 1948 and also u/s 197 Code of Criminal Procedure to prosecute the said officers, that the Petitioners/accused were acting bona fide in the discharge of their normal duties and that the Magistrate acted hastily in issuing summonses against them. When a private complaint is filed and if the Magistrate has taken cognizance thereof, he will examine upon oath the complainant and the witnesses present, if any, u/s 200 Code of Criminal Procedure After doing so, he will have to ascertain whether further enquiry is necessary for the purpose of deciding whether or not there is sufficient ground for proceeding u/s 202 Code of Criminal Procedure and take action accordingly, if further investigation is necessary. Upon being possessed with all the information necessary he will either dismiss the complaint u/s 203 Code of Criminal Procedure or issue summons u/s 204 CrI.P.C., if he finds that there is sufficient ground for proceeding. The fact of issuing process to a person to appear before a Court is an important act, which should not be performed perfunctorily and automatically. The Magistrate should apply his mind before taking such a step.

4. In the present case the complain does not bear any date, except to show that it is filed in November 1985. While the complaint runs into seven pages the sworn statement is only one and a half pages. The Magistrate can act only upon the content of the sworn statement and not on the complaint in its totality. It is further seen that the sworn statement does not bear the mention that it was recorded by the Magistrate and also does not bear his signature. When the allegations made by the complainant are of so serious in nature and are directed against his previous colleagues (accused 5) and his superiors (accused 1 to 4), the Magistrate should not have automatically ordered issue of summonses. There is nothing to show that he has applied his mind as required by law. Therefore, the summonses issued have to be set aside.

5. It has been pointed out by the learned Counsel for the Petitioners that sanction of the Board is necessary under Ss. 81 and 82 of the Electricity (Supply) Act, 1948 and also u/s 197 Code of Criminal Procedure It will be incumbent upon the Magistrate to ascertain whether such sanction is necessary and if so, whether the sanction has been filed by the complainant in order to ascertain whether taking cognizance of the offense is in order.

6. In the result, the summonses issued to the accused are quashed. The Magistrate is directed whether to issue summons upon the complaint filed by the complainant in observing scrupulously the procedural laws, including the requirement of sanction if necessary. The petition is allowed in part to the extent indicated above.