
(1985) 02 MAD CK 0059
In the Madras High Court

E. Mohammed Hussain and Others

APPELLANT

Vs

F. Jagbar Nachiar and Another

RESPONDENT

Date of Decision : 01-02-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203, 398

Citation : (1985) CriLJ 1307

Hon'ble Judges : Singaravelu, J

Bench : Single Bench

Judgement

Singaravelu, J.—This is a revision petition by the accused against the order of the learned Sessions Judge, East Thanjavur in Cr. R. C. No. 26 of 1982 reversing the order of the learned Sub-Divisional Judicial Magistrate, Nagapattinam in C. C. No. 1021 of 1982, without giving notice to the petitioners.

2. The facts of the case are not in dispute. The 1st respondent preferred a complaint against the petitioners herein on 4-1-1980. The case was investigated and referred as false. Thereafter the 1st respondent filed a private complaint on the file of the Sub-Divisional Judicial Magistrate, Nagapattinam. It was dismissed on 5-10-1982. Against that order, the respondents filed Cr. R. C. No. 26 of 1982, on the file of the Sessions Judge, East Thanjavur who set aside the order of the learned Magistrate and ordered an enquiry u/s 398 of the Cri. P.C. Now the case has been charge-sheeted and is pending as C. C. No. 365 of 1983, on the file of the Judicial First Class Magistrate, Mayiladuthurai. The petitioners/accused had entered appearance. Their grievance is that no notice was given to them by the learned Sessions Judge while disposing of the revision case and, therefore, the order remitting the case to the learned Magistrate is not maintainable.

3. I have heard learned Counsel for all parties. The short point for adjudication is, whether notice is necessary to the petitioners/accused in the proceedings before the learned Sessions Judge. This question has come up for decision before this Court and it has already been decided. Even as early as in 1926, a Full Bench of our High Court has held in Appa Rao Mudaliar v. Janaki Ammal ILR

(1926) Mad 918 : 1927 Cri LJ 129 that sending notice to the accused at the stage of enquiry contemplated u/s 202 of the Cr. P.C. is not necessary. What is more, the Full Bench has held that any such practice of sending a notice is improper and must be discontinued. In the decision reported in Thiyagarajan, S. v. Ayyamperumal 1983 MLW 212 also, it has been observed that in a revision filed against an order of dismissal u/s 203 of the Cr. P.C., the Sessions Judge need not give notice to the accused.

4. In a similar matter, I have also taken the same view and held that the petitioners do not get the status of accused unless summonses are issued and served on them. The proceedings before the Sessions Judge were before taking cognizance of the case, and therefore, the petitioners have no right of audience and are not entitled to hearing. Of course, my attention was drawn to an unreported decision in Cri. R. C. No. 460 of 1980 wherein a contrary view was taken on the ground that on the principles of natural justice, notice must go to the accused even in the revision proceedings. With respect to the learned Judges, this appears to be contrary to the spirit of the decision rendered by the Full Bench in Appa Rao Mudaliar v. Janaki Ammal ILR (1926) Mad 918 : 1927 Cri LJ 129. As pointed out by M. N. Moorthy, J. in Thiyagarajan, S. v. Ayyamperumal 1983 MLW 212, the concept of natural justice has got its own natural limitation and no person has a vested right in any course of procedure. The learned Judge has observed that no restraints and conditions which the legislature itself did not think proper or necessary to impose can be brought in by the backdoor on the concept of natural justice. I am in agreement with the learned Judge, since the petitioners are not accused persons at all till the case is taken on file and summonses are issued to them. Consequently, the order of the learned Sessions Judge, in Cri. R. C. No. 26. of 1982 is correct and no interference is called for in revision.

5. In the result, the Criminal Revision Petition is dismissed