

(2009) 06 MAD CK 0242

In the Madras High Court

Case No : Criminal OP. No. 26084 of 2006 and Criminal MP. No. 1 of 2006

G. Prabakaran and Ginette @ Latha

APPELLANT

Vs

Dr. Selvaraj

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 202(1)
Penal Code, 1860 (IPC) — Section 192, 193, 194, 200, 34

Citation : (2009) 06 MAD CK 0242

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : Ilanthiraiyan, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—The petitioners are the Accused Nos.1 and 2 in CC. No. 133/2005, on the file the Judicial Magistrate II, Tindivanam and proceeded for the offences under Sections 192, 193, 194, 200, 499 and 500 read with 34 of IPC.

2. The facts of the case are that the private complaint was filed by the respondent u/s 200 of Code of Criminal Procedure against the petitioners for defamation, alleging that the complaint lodged by the 1st petitioner before the Inspector of Police, Marakkanam was enquired by the concerned Police and found to be false and hence, the allegation made therein amounts to defamation. It is seen that a legal notice was issued on 23.1.2004 and a reply notice was issued by the 1st petitioner on 15.2.2004 and thereafter, a rejoinder was sent on 28.2.2004 before lodging of the private complaint.

3. The facts leading to the filing of the private complaint by the Respondent are as follows:

The Respondent and the 2nd petitioner are the husband and wife and the respondent had made allegations that the second petitioner and the 1st

petitioner were living in adultery and he is stated to have distributed more than 500 copies of the said reply notice, contending adultery allegation against both of them. The 1st petitioner aggrieved over the same, lodged a complaint before the Sub Inspector of Police, Marakkanam on 4.1.2004, but the said complaint was closed after enquiry by the Police, as totally false and baseless and the result was communicated to the respondent vide letter dated 30.1.2004 by the Sub Inspector of Police, Marakkanam. Based on it, the respondent has lodged the present complaint before the learned Judicial Magistrate II, Tindivanam on 4.7.2005, who in turn has recorded, sworn the statement of the respondent/complainant, took the complaint on file as CC. No. 133/2005 and posted the same for enquiry u/s 202 of Code of Criminal Procedure on 20.7.2005. Process was issued to the accused and on service of summons, both the petitioners/accused appeared before the learned Judicial Magistrate II, Tindivanam and they were furnished with a copy of the complaint. That apart, enquiry u/s 202 of Code of Criminal Procedure was conducted and during such enquiry, the petitioners were required to cross-examine the witnesses as in the trial proceedings. Aggrieved over the said course of action by the learned Magistrate, the petitioners have filed this Criminal Original Petition to quash the said proceedings, contending that the proceedings are illegal and sheer abuse of process of law.

4. The learned Counsel for the petitioners has vehemently contended that enquiry u/s 202 of Code of Criminal Procedure can in no sense be characterised as a trial for an offence and the object of the enquiry u/s 202 of Code of Criminal Procedure is to ascertain the truth or falsehood of the complaint, the learned Magistrate, making the enquiry has to do this only with reference to the intrinsic quality of the statements recorded on oath made by the complainant and the statements made before him at the enquiry, which would naturally mean the complaint itself, the statement made before him by the persons examined at the instance of the complainant. He would further contend that it is irregular to issue notice to the accused before such issuance of process and conducting enquiry in the presence of the accused and allowing the accused to cross-examine the prosecution witnesses is totally not warranted.

5. The object of enquiry u/s 202 of Code of Criminal Procedure is to ensure that no person shall be compelled to answer a criminal charge unless the court is satisfied that there is a prima facie case for proceeding with issuance of process against the accused person. The learned Magistrate has got to find out as to what material there is to support the allegation made in the complaint against the person complained.

6. No doubt, one of the objects behind the provisions of Section 202 of Code of Criminal Procedure is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obvious frivolous complaint. That does not mean that the accused should be called upon to face an accusation, as

in an enquiry u/s 202 of Code of Criminal Procedure, the accused has no right to take part in the said proceedings nor has the learned Magistrate any jurisdiction to permit him to do so. It would follow from this that it would not be open to the learned Magistrate to put any question to the witnesses at the instance of the persons named as accused nor can he examine any witness at the instance of such a person.

7. In the case of Chandra Deo Singh Vs. Prokash Chandra Bose and Another, , the Hon''ble Supreme Court had, after fully considering the matter, observed as follows:

The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry u/s 202 is not to be linked to a trial which can only take place after process is issued and that there can be only one Trial. No doubt, as stated in subsection (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.

8. Indicating the scope and ambit of Section 202 of Code of Criminal Procedure, in the case of Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, , the Hon''ble Supreme Court had observed as follows:

...The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial.

9. It would be, thus, clear from the above said decisions of the Hon''ble Supreme Court that the scope of enquiry u/s 202 of Code of Criminal Procedure is extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint that is (i) on the materials placed by the complainant before the court, (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out and (iii) for deciding the question purely from the point of view of the complainant without at all advertent to any defence that the accused may have. In fact it is well settled that in proceedings u/s 202 of Code of Criminal Procedure, the accused has got absolutely no locus standi and is not entitled to be heard on the question

whether the process should be issued against him or not. The enquiry is not intended to supersede a regular trial.

10. In the case on hand, the learned Magistrate has misdirected himself as to the scope of the enquiry u/s 202 of Code of Criminal Procedure and has erroneously issued notice to the petitioners and allowed them to participate in the said enquiry. Therefore, I hold that the enquiry made by the learned Magistrate converting into a full process trial is illegal and the same stands vitiated. Hence, the proceedings in CC. No. 133/2005 on the file of the learned Judicial Magistrate II, Tindivanam deserves to be quashed and accordingly, the same is quashed. This criminal original petition stands allowed. Consequently, the connected MP is closed.