
(1971) 01 KAR CK 0005
In the Karnataka High Court

H.R. Gurappa

APPELLANT

Vs

Bannur Venktappa and Others

RESPONDENT

Date of Decision : 11-01-1971

Acts Referred:

Citation : (1971) 01 KAR CK 0005

Hon'ble Judges : M. S. Nesargi, J

Bench : Single Bench

Judgement

M. S. Nesargi, J.—In this petition, the petitioner is the complainant in the Court of the Special First Class Magistrate, Ramanagaram in Criminal Case No. 1444 of 1968. He has challenged the correctness and legality of the order of discharge of the accused respondents passed by the learned Special First Class Magistrate in the said case on 15.9.1970.

2. The facts giving rise of this petition may be briefly narrated as follows:

The petitioner, as complainant, complained of offences falling Under Sections 143, 447 and 427, Penal Code against respondents as accused and the police, after investigating into the complaint, submitted "B" report to the learned Magistrate. The learned Magistrate accepted the report. The complainant appeared before the learned Magistrate and offered to substantiate his complaint allegations and an opportunity was given by the learned Magistrate. Thereafter, the learned Magistrate dismissed the complaint u/s 203, Criminal P.C.

The complainant preferred Criminal Revision Petition No. 1 of 1968 in the Sessions Court at Bangalore and the learned Second Additional District Judge allowed the petition and thereafter the records were sent back to the Court of the learned Magistrate where further proceedings took place. Ultimately, the learned Magistrate framed charges for offences punishable Under Sections 447 and 427, Penal Code only as against the present respondent-1 and discharged the remaining 7 respondents. It is to be noted at this stage that the learned Magistrate did not frame the charge for an offence punishable u/s 143, Penal

Code against the present respondent-1.

Then the complainant moved this Court in Cr. R. P. No. 483 of 1969 challenging the said order of discharge passed by the learned Magistrate. The said revision petition was disposed of by this Court on 10-8-1970. It was directed therein by this Court that the learned Magistrate should frame charges Under Sections 113, 447 and 427. Penal Code against all the accused who are the present respondents. The order sheet maintained in the Court of the Special First Class Magistrate, Ramanagaram discloses that on 25.7.1870, when the case was called out both the complainant and the accused persons were present but since the order of the High Court was not received, it was adjourned to 25.8.1970. On 25.8.1970 the complainant was present and accused 1 was present but since the order of the High Court was not received the case was adjourned to 15.9.1970.

It is to be noted at this stage that the first portion viz., complainant present. Accused: A.I present. Orders not received has been written by the Clerk, and the remaining portion, viz.,

A.I present. Orders received. In pursuance of the direction of the Honourable High Court of Mysore, summons are ordered to be issued to all the accused persons. Issue Summons to all the accused by 15-9-1970.

has been written by the learned Magistrate himself. Then on 15-9-1970, the learned Magistrate found that the complainant was absent and the accused were present. Therefore, he passed an order as follows :

Complainant absent. Accused present Complaint petition dismissed. Accused discharged.

It is this order that is now challenged in this revision petition.

3. Sri M. S. Gopal, learned Counsel for the petitioner contended that the impugned order is unsustainable in law inasmuch as it is contrary to the provisions of S. 259, Criminal P. C. He urged in the first instance that the learned Magistrate had no jurisdiction to dismiss the complaint petition under the said provision and in the next instance that the learned Magistrate had no jurisdiction to pass an order of discharge of the accused persons when the High Court had specifically directed by its order dated 10-8-1970 in Cr. R. P. 483/ 69 that charges for the said offences were to be framed against all the accused and therefore the physical presence of the complainant. petitioner and his witnesses was not at all necessary on 15.9.1970. He lastly pointed out that the offence punishable u/s 143, IPC is not compoundable and cognizable and therefore, no order of discharge could have been passed by the learned Magistrate u/s 259 of the Criminal Procedure Code.

4. Sri K. Ramachandra Rao, learned Counsel appearing for the respondents, contended that on 25-8-1970 the complainant was present in the Court of the Special First Class Magistrate, Ramanagaram, and it was the duty of the complainant to have ascertained the next date of hearing and he ought to have

been present in the Court on 15.9.1970, i.e., the next date of hearing and that he cannot now claim that no order of discharge should have been passed by the learned Magistrate in his absence.

5. Section 259, Criminal P.C., clearly lays down that discretion is vested in a Magistrate to pass an order of discharge of the accused at any time before the charge or charges is or have been framed only when the offence complained against is one lawfully compoundable or is non-cognizable. The offence u/s 143, IPC is not compoundable and is cognizable. It is manifest that when the offence in question in a criminal case before the Magistrate is one of this type, the provisions of S. 259, IPC are not attracted. The learned Magistrate has failed to see this aspect of the matter while passing the impugned order. This is one of the reasons why the order passed by the learned Magistrate is illegal.

6. This Court, while passing the order in Cr. R. P. 483 of 1969, specifically directed the learned Magistrate to setting aside the order of discharge passed by him to frame the charges against all these respondents-accused for offences punishable Under Sections 143, 447 and 427, IPC. On receipt of the orders of this Court and on requiring the presence of all the accused-respondents, the learned Magistrate ought to have proceeded to frame the charges as directed by this Court. That clearly was the duty to be performed by the learned Magistrate on 15-9-70 when, in response to the summons issued by him on 25-8-1970 all the accused persons were present before him. He could not have taken this step on 25.8. 1970 because, only accused-1 (respondent. 1) was present on that day and the remaining accused were absent.

Instead of following this direction issued by this Court, the learned Magistrate, it appears, caught hold of the fact that the complainant was not present before him on 15-9-1970 and passed an order of discharge which is now questioned. This act of the learned Magistrate gives an impression that the absence of the complainant was treated by him as an opportunity to dispose of the case. When this impression is gathered, it can certainly be said that the learned Magistrate has failed in his duty. Moreover, no order of discharge could have been passed against respondent-1 because he already stood charged for offences Under Sections 427 and 447 of the Indian Penal Code.

7. The order sheet dated 25-8-1970 though shows in the earlier part that the respondent was present, it does not show that fact in the later part which is recorded in the hand of the learned Magistrate. It is anyhow clear that in the earlier part of that day, the order in Cr. R. P. 483 of 1969 had not been received and the same might have been received in the Court of the learned Magistrate later in the day. In view of these facts, it appears that the complainant, Siding that the orders in Cr. R. P. had not been received from the High Court, might have left the Court and only A-1 remained present.

It is understandable as to why the learned Magistrate passed the impugned order in such circumstances. As contended by Sri M. S. Gopal learned Counsel for

the petitioner, it appears, that the physical presence of the complainant or his witnesses was not necessary on 15-9-1970 in view of the specific direction issued by this Court in Cr. R. P. 483/69, to frame the charges Under Sections 143, 447 and 427, IPC against all the accused persons.

Even for the sake of argument, if it is held, that the provisions of Section 259, Criminal P. C, are applicable, it is to be seen that such power is to be exercised not arbitrarily but judicially. In my opinion, the learned Magistrate has not exercised his power judicially in passing the impugned order of discharge because there was a direction of this Court that he should frame charges for the offence cited above against all the accused. He could have very well, even in the absence of the complainant, proceeded to frame charge against all the respondents-accused on 15.9.1970.

8. In view of the foregoing discussions, it is seen that the order of discharge passed by the Special First Class Magistrate, Ramanagaram, is unsustainable and hence this petition is allowed and the impugned order is set aside.

9. The learned Magistrate will, on receipt of the records in this case, proceed to dispose of the case according to law bearing in mind the observations made in the body of the order.