
(1988) 08 KL CK 0006
In the High Court Of Kerala
Case No : Criminal R.P.No. 66 of 1987

K. R. Balakrishnan Nambiar

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 17-08-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 250, 250(I), 313

Citation : (1988) 2 KLJ 463

Hon'ble Judges : K. J. Thomas, J

Bench : Single Bench

Advocate : P.V. Narayanan Nambiar, S. Radhakrishnan and K. Usha, for the Appellant;

Final Decision : Allowed

Judgement

K. J. Thomas, J.—On conclusion of trial in a summons case instituted on complaint, the trial Magistrate initiated steps under Sec. 250 of the Code of Criminal Procedure (for short "the Code") against the complainant. (After considering the cause shown by the complainant against the action proposed, the learned Magistrate passed the impugned order directing the complainant to pay compensation to the four accused at the rate of Rs.50/- each. The complainant is the petitioner in this revision. The petitioner, a retired Head Master, filed the complaint against the four accused alleging that the accused had trespassed into the land which was in the possession of the petitioner on 30-7-1985 and uprooted about 50 rubber plants therefrom, and criminally intimidated the petitioner who was present at the scene. The complaint was filed on 5-8-1985. The explanation for the delay in filing the complaint was that the complainant had lodged a petition in the local police station on the next day of the occurrence, but the police did not take any action thereon. A list of two witnesses was submitted by him along with the complaint. After recording the sworn statement of the complainant, the Judicial Magistrate of First Class took cognizance of the offences revealed in the complaint and issued process to the

accused. Petitioner was examined as P. W.] and one of the persons named in the list was examined as P. W. 2. Three documents marked for prosecution include the certified copy of final decree passed in a civil suit in favour of the complainant. The accused, when questioned under Sec.313 of the Code, denied having done any of the acts alleged in the complaint. The first accused, a lady aged 35 and a close relative of the complainant, has stated that the complaint was filed falsely to wreak vengeance against her for filing a civil case and a criminal case against the petitioner. D. W. is the advocate commissioner appointed in the civil case. The evidence of D.W. shows that he had submitted the commission report and plan in the civil court. But no document was marked on the defence side.

2. Before closing the prosecution evidence, the petitioner filed an application on 8-9-1986 for excusing the absence of the remaining witness in the list, as the said person was then under treatment in the Government Hospital. The application was supported by a medical certificate. But the learned Magistrate rejected the application and closed the evidence for prosecution and adjourned the case to question the accused under Sec. 313 of the Code. Learned Magistrate has found in the judgment acquitting the accused that "this is a false case foisted against the accused by the complainant and there are no reasonable grounds for making the accusation against the accused and this is a frivolous and vexatious complaint,.....". Notice was issued to the petitioner to show cause why he should not be ordered to pay compensation to the accused. In answer to the notice, the petitioner submitted a written explanation, but the said explanation was not accepted by the learned Magistrate. Hence he passed the impugned order.

3. Learned counsel for the petitioner mainly raised two contentions. As the Magistrate has already arrived at a finding that the complaint was filed without reasonable grounds, he has already prejudged the issue and the notice requiring him to show cause against the proposed order was done only as a formality. The other contention is that the Magistrate ought not have entered upon such a finding when the complainant was denied of a reasonable opportunity to examine the remaining important witness cited in the list.

4. Sec. 250 (I) is extracted below: "

If in any case instituted upon complaint or upon information given to Police Officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid. at the same section in the Code of.

Criminal Procedure 1898 (for short "the Repealed Code"). Under the corresponding provision in the repealed Code the Magistrate should be of opinion that the accusation "was false and either frivolous or vexatious for initiating action against the complainant. Under the present Code the Magistrate is empowered to take action if he is of opinion that "there was no reasonable ground for making the accusation" against the accused. Evidently, the scope of Sec. 250 has been widened. Law Commission of India which suggested the change thought it necessary to widen the scope of the provision. However, the principal object in incorporating such a provision remains basically the same in the repealed Code and in the present Code. The object is to deter persons from resorting to prosecution steps without reasonable ground. It is meant to serve as a check on propensities to rush to criminal court recklessly or to make accusation against innocent persons. At the same time, it should not be forgotten that indiscriminate invocation of the powers under this section might often deter a timid person from approaching the portals of law courts, lest genuinely aggrieved persons disowned by witnesses would be exposed to the possibility of being mulcted with compensatory fine. The power under the section should" therefore be exercised only in fit and proper cases. Ramaswami, J. in *Fatesa Kanagasahat* (AIR 1954 Madras 279) made a survey of the various decisions on the subject and struck a note of caution that-"indiscriminate use of the provision might deter a timid person from approaching the portals of law courts for fear that if pa: chance his witnesses turned round or some how did not inspire confidence in the fcourts he may be mulcted in fine.

5. The mere fact that the Magistrate is not inclined to believe the prosecution evidence is not sufficient to take action under this section. There must be satisfaction of the Magistrate that, over and above his inability to accept the prosecution case, the complainant had no reasonable ground for making the accusation. Satisfaction of the Magistrate is not merely subjective. The main thrust behind the change in the section is to make an objective approach to the issue and give good reasons for concluding that the complainant had no reasonable ground to make the accusation. Inability to rely on the prosecution evidence is hardly sufficient to hold that the complainant did not have reasonable grounds to complain. It is basic principle that criminal court can acquit the accused if the prosecution has failed to prove the case beyond reasonable doubt. But a finding that the complainant had no reasonable grounds cannot be made merely because the complainant failed to prove his case. The pendulum must swing to the extreme other end for the court to say that the complainant had no reasonable grounds to make the accusation. There must be evidence, or materials or atleast circumstances to reach the said conclusion.. Otherwise, the court should refrain from resorting to the emergency provision like sec. 250. If a Magistrate has arrived at a finding in the judgment that the complainant had no reasonable grounds for making the accusation, it only amounts to expression of his opinion because the finding at the final stage can be made only. on; satisfaction, after considering the cause shown, by the complainant he is iiable to

be mulcted with compensatory fine. Bhaskaran, J (as he then was) in *Prabhakaranv. Sukumaran Nair* (1979 K.. L. T 531) pointed out that the expression "if he is satisfied" if sub-section (2) has to be distinguished from "is of opinion" in sub section (2) and it would indicate that before passing final-order the Magistrate is required to give a more anxious and careful consideration to the question involved.

6. Learned Magistrate has stated in the impugned order that even if the remaining witness in the list was examined, it would not have improved the case "because his evidence will not cure the contradictions brought out in the evidence-- of P.W. 2". According to the learned Magistrate, "P. W. 2 in cross-examination has put forward an entirely different version from the prosecution case" Those two are the main reasons which persuaded the Magistrate to conclude that the petitioner had no reasonable grounds to make the accusation. : The evidence of P. W. 2 is substantially the same as that of the petitioner ((P.W.I) except on one fact that P. W.2 did not see the second accused. If Pw. 2 failed to see one of the four accused at the place of occurrence, does it mean that the petitioner had no reasonable grounds to make the accusation. The aforesaid omission in the evidence of P. W. 2 perhaps be used to reject prosecution case. But it is wholly insufficient to conclude that the petitioner had no reasonable grounds to come to the criminal court.

7. Equally unsustainable, is the reasoning of the learned Magistrate that examination of the remaining witness in the list would not have improved the prosecution case: How could such an advance finding be made about the testimony of a particular person without having evidence recorded? There is no bar in law for relying on the testimony of a single witness" if it appears to the court to be reliable and acceptable. Hence a conclusion ought not have been made by the Magistrate that the complainant had no reasonable grounds to make the accusation without "affording an opportunity to the complainant to examine the witnesses" who he wanted to examine. The records in this case show that the petitioner wanted to examine the remaining witness but his indisposition made the complainant to apply, for excusing his absence on 8-9-1986. The rejection of that application and closing of the prosecution; evidence prevented the complainant from examining...that witness subsequently. before. proceeding against the complainant under Sec. 250 of the Code, the court has a duty to afford all reasonable opportunities to the complainant to complete his evidence. The Madras High Court had held in *Parthasarathi Naicker v. Krishnaswami Ayyar* (AIR 1928 Madras 169) that awarding compensation under Sec. 250 without hearing all the evidence which the complainant wants to adduce is illegal, even though the Magistrate is entitled to discharge accused at any stage. The said dictum was followed by Vasudevamurthy, J. in *Halappa v. State of Mysore* (AIR 1953 Mysore 91), Hombe Gowda, J. in *Vjnkatarameiah v. Channiah* (AIR 1955 Mysore 144) has followed the same ratio. Those decisions support the view taken "by me."

In the result, I allow this revision and set aside the impugned order.