
(1988) 12 MAD CK 0030

In the Madras High Court

Case No : Criminal R.C. No. 208 of 1985 and Criminal R.P. No. 207 of 1985

Kanagasabai Ammal

APPELLANT

Vs

P. Subramaniam and 19 Others

RESPONDENT

Date of Decision : 15-12-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 244, 245(1)

Citation : (1989) LW(Cri) 462

Hon'ble Judges : David Annoussamy, J

Bench : Single Bench

Advocate : V. Gopinath, for the Appellant; K. Sukumaran, for Respondent 2, 8, 9 to 14, for the Respondent

Final Decision : Allowed

Judgement

David Annoussamy, J.—This is a Criminal revision case against, the order passed by the Magistrate.

2. The Petitioner filed a complaint against the Respondents alleging that she is first wife of the first Respondent and that the first Respondent has married the 2nd Respondent with the complicity of other Respondents on 26-1-1983. After the sworn statement of the Petitioner the Magistrate has taken the case on file and issued summonses to the accused. It appears also that summonses were issued to some of the witnesses cited by the Petitioner. The case was adjourned several times and the witness as cited by the Petitioner did not appear. There is nothing to show that the summons have been effectively served upon the witnesses. However, the Magistrate by order dated 6-7-1984 finding that no evidence was forthcoming on the side of the Petitioner that as per the deposition of the Petitioner she was not eye witness to the alleged second marriage, when the marriage was witnessed only by persons whom she has arrayed as witnesses and who have not come forward to depose, discharged the accused u/s 245(1), CrI. P.C.

3. Learned Counsel for the revision Petitioner would contend that it was not for her to bring the witnesses that she has applied for issue of summonses, that summonses were effectively issued, that therefore, it was the duty of the Magistrate to secure the witnesses and that, at any rate, the order of discharge for the non-appearance of the witnesses, under the circumstances, was not just and proper.

4. The magistrate as per Section 244, Crl. P.C. may issue summons to any of the witnesses on the application of the prosecution directing him to attend or produce any document or other thing. Therefore, the accused cannot be discharged without ascertaining whether summonses have been served or not and without taking all possible steps for securing those witnesses. If the particulars given by the complainant are not sufficient to spot the witnesses and bring them before the Court, the latter would be justified in discharging the accused. It is not so in this case. It appears from the case diary that summonses have been issued and services were awaited. It is true that the case has been adjourned several times, but before the Magistrate taking all the steps necessary to secure the witnesses, he cannot discharge the accused.

5. At this stage, learned Counsel for the accused would point out that the Magistrate was wrong in this case to have issued prematurely summons to the accused. He would say that the Magistrate was possessed only with the complaint and the evidence of the complainant, who is not an eye witness to the second marriage, and therefore there was no sufficient ground for the issue of summons to the accused. The Magistrate should have postponed the issue of process and noted u/s 202, Code of Criminal Procedure and should have dismissed the complaint, if there was not ground for proceeding, or issued summons only if there was such ground, it was argued. His contention is correct. From the order of the Magistrate itself it appears that there is nothing in the deposition of the Petitioner complained to incriminate the accused prima facie. He should not have issued process and put the accused persons into unnecessary harassment. He should have postponed the issue of process and acted under S. 202 , Cr.P.C., If not evidence was forthcoming on the part of the Petitioner in the enquiry or investigation contemplated u/s 202 , Cr.P.C., the Magistrate should have dismissed the complaint. If on the contrary sufficient evidence was forthcoming issue of summons to the accused could have taken place and then there would not have been ground for discharge later on for non appearance of witnesses.

6. In the circumstances the revision is allowed, the order of discharge is set aside and the order of the Magistrate directing issue of process is also set aside. The Magistrate is directed to take the matter again on file and process the matter as indicated-under Section 202, Cr.P.C.