

(1927) 08 MAD CK 0032
In the Madras High Court

Muhammad Sheriff Sahib

APPELLANT

Vs

Moulvi Abdul Karim Sahib and Others

RESPONDENT

Date of Decision : 19-08-1927

Acts Referred:

Citation : (1928) ILR (Mad) 185 : (1927) 26 LW 553 : (1927) 53 MLJ 757(1)

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The Magistrate in this case has discharged the accused refusing to examine all the witnesses cited by the complainant. Now,

while Section 253 authorises the Magistrate to discharge an accused person before all the witnesses are examined, if, for reasons to be recorded

by him, he considers the charge to be groundless, there are two reasons why his procedure cannot be supported by that section. First, he does not

say he finds the charge to be groundless, and I do not agree with the Sessions Judge in his revision order that to say that no case is made out is

tantamount to saying the charge is groundless. In fact, the section itself uses both phrases, evidently not in the same sense.

2. Secondly, where a complaint prima facie discloses an offence, a Magistrate cannot hold the charge to be groundless unless he knows what is the

sort of evidence that is going to be adduced to prove it, and he cannot for example examine . one or two witnesses or, for the matter of that, no

witness at all, and then, without knowing what the other witnesses are going to say, hold that the charge is groundless. He can only judicially come

to such a conclusion when he has at least ascertained, from the complainant what is the nature of the evidence that the other witnesses are going to

give. If he then finds that, even if that evidence was given, the charge would be groundless, it is open to him to discharge the accused on that ground.

3. In the present case, the Magistrate has, so far as appears, made no attempt to find out what the other witnesses were going to say and it was not therefore open to him to discharge the accused. I am informed that two of the witnesses, not examined by him, compositors of the press, are prepared to give evidence of value against accused 4, 5 and 8. That evidence cannot be shut out by the arbitrary method of discharging the accused before these witnesses have been heard.

4. The discharge of accused 4, 5 and 8 therefore is not in accordance with law and is set aside. The case will be further enquired into and decided on the full evidence proffered by complainant, unless, for reasons to be recorded, the Magistrate refuses to examine any witnesses on the ground that his evidence even, if taken, will not materially help the case of the complainant.

5. The further enquiry will be held by the present Sub-divisional Magistrate, Mayavaram.