

(1998) 06 MAD CK 0110

In the Madras High Court

Case No : Criminal R.C. No. 399 of 1997

Ponnal alias Kalaiyarasi

APPELLANT

Vs

Rajamanickam and Others

RESPONDENT

Date of Decision : 09-06-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203, 204
Penal Code, 1860 (IPC) — Section 109, 494

Citation : (1998) CriLJ 4333

Hon'ble Judges : M. karpagavinayagam, J

Bench : Single Bench

Advocate : P. Mani, for the Appellant; R. Subramania Aiyar, for the Respondent

Final Decision : Allowed

Judgement

M. karpagavinayagam, J.—Ponnal alias Kalaiyarasi has filed this revision against the order, dated 10-1-1997 passed in C.M.P. No. 670 of 1996 on the file of the Judicial Magistrate-II's Court, Metturdam, dismissing her private complaint u/s 203, Cr.P.C.

2. Mr. Mani, the learned counsel appearing for the petitioner would submit that the learned Magistrate dismissed the complaint as if no case has been made out u/s 494, I.P.C., merely because the complainant and her witnesses have not deposed about the place and manner of the performance of the marriage, which approach is erroneous inasmuch as the lower Court should not conduct the enquiry at the trial and ask the complainant to establish her case beyond reasonable doubt, at the preliminary enquiry itself.

3. Mr. R. Subramania Aiyar, the learned counsel appearing for the respondents 1 to 12 would submit in justification of the impugned order passed by the lower Court, that order is valid.

4. I have carefully considered the submissions made on the either side and gone through the records.

5. This revision has got to be allowed on a short ground.

6. The learned Magistrate, after recording the sworn statements from the complainant and two other witnesses in the private complaint filed by the petitioner u/s 494 and 494 read with Section 109, I.P.C. against the respondents 1 to 12, dismissed the complaint on the ground that none of the witnesses examined in Section 202, Cr.P.C. enquiry speak about the details about the place and manner of the performance of the second marriage and that there was also contradiction between the statements of complainant/Kalaiyarasi and one Govindan, another witness. As rightly pointed out by the learned counsel for the petitioner, this approach of the lower Court in appreciation of the evidence in Section 202, Cr.P.C. enquiry is not permissible under law.

7. No doubt, it is true that the complaint filed by a private party can be dismissed by the learned Magistrate u/s 203, Cr.P.C, if he thinks that there is no sufficient ground for proceeding. While exercising his discretionary powers, the learned Magistrate should not allow himself to evaluate and appreciate the sworn statements recorded by him u/s 202, Cr.P.C. All that he could do would be, to consider as to whether there is a prima facie case for a criminal offence, which, in his judgment, would be sufficient to call upon the alleged offender to answer. At the stage of Section 202, Cr.P.C. enquiry, the standard of proof which is required finally before finding the accused guilty or otherwise should not be applied at the initial stage. This is what exactly done by the learned Magistrate in the instant case.

8. The principle which has to be followed while dealing with the private complaint in accordance with the provisions under Sections 202 and 204, Cr.P.C. have been elaborately dealt with by this Court by Honourable Justice Arunachalam, (as he then was) in *Ashok Kumar v. Mariappan*, 1993 Cri LJ 2780 and in *A. Chellappa v. Kulasekaran and State*, 1990 LW (Cri) 41.

9. The Apex Court also under similar circumstances, in *Dhanalakshmi Vs. R. Prasanna Kumar and Others*, while dealing with proceedings u/s 494, I.P.C. would hold that when there are specific allegations in the complaint disclosing the ingredients of the offence, the Court shall give liberty to the complainant to substantiate the allegations by evidence at a later stage.

10. While referring to the scope of Section 202, Cr.P.C. enquiry, the Apex Court observed in *Mohinder Singh Vs. Gulwant Singh and others*, as follows :

11. This Court as well as various High Courts in a catena of decisions have examined the gamut and significance of Section 202 of the Code and settled the principle of law, the substance of which is as follows :

The scope of enquiry u/s 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not u/s 204 of the Code or whether the complain should be dismissed by resorting to Section 203 of the "Code on the footing that

there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage, does not partake the character of a full dress trial which can only take place after process is issued u/s 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated u/s 202 of the Code. To say in other words, during the course of the enquiry u/s 202 of the Code, the Enquiry Officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. Vide *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another*, and *Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*, .

11. In the light of the above principles, enunciated by the Apex Court in the decisions referred to above, I am of the view that: in the instant case, the learned Magistrate exceeded the scope of enquiry contemplated u/s 202, Cr.P.C. and has gone to the realm of appreciation and to the question of sufficiency of the evidence for conviction of the accused. Careful perusal of the complaint and the sworn statements given by the complainant and two witnesses would make it clear that there were allegations to the effect that the first respondent/first accused married second accused, while the marriage between the complainant and the first accused was in subsistence. When such of those averments were available, it was not proper on the part of the learned Magistrate to cull out the variations and contradictions between the statements of the witnesses from whom the sworn statements have been recorded and then hold that the complaint is liable to be dismissed. Therefore, in my view, the impugned order suffers from the infirmity, which is liable to be set aside and accordingly, it is set aside.

12. However, Mr. R. Subramania Aiyar, the learned counsel for the respondent would contend that though there are allegations with reference to the offence under Sections 494, 494 read with Section 109, I.P.C. there is no specific overt act alleged against 5th and 6th accused in the complaint. Under these circumstances, he requests this Court to direct the learned Magistrate to take the complaint on file as against the accused/respondents, except respondents 5 and 6. Mr. Mani, the learned counsel for the petitioner also would concede that there is no specific allegation given in the complaint as against the fifth and sixth accused.

13. In the light of the above submissions, I deem it fit to give a direction to the lower Court to take the complaint on file in respect of the respondents/accused, except respondents 5 and 6 and issue summons and proceed with the trial in accordance with the law.

14. The revision is allowed.