

(1988) 11 MAD CK 0037

In the Madras High Court

Case No : Criminal M.P. No. 2947 of 1988

R. Krishnamurthy and R. Lakshmipathy

APPELLANT

Vs

M.P. Raja and R. Selvaraj

RESPONDENT

Date of Decision : 25-11-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 482

Citation : (1988) 11 MAD CK 0037

Hon'ble Judges : David Annoussamy, J

Bench : Single Bench

Advocate : L. Ramaswami for M/s. K.V. Sridharan and R. Elango Ramachandran, for the Appellant; N. Natarajan for D. Subbarajan, N. Guna(sic) Seelam, for the Respondent

Final Decision : Allowed

Judgement

David Annoussamy, J.—This is a petition filed u/s 482 of the Code of Criminal Procedure by the accused.

2. A complaint was filed by two Advocates from Dindugal against the editor and publisher of the Tamil daily. "Dinamalar". According to them, the issue dated 29-2-1988. would have published a report from a co-respondent containing defamatory statements against Advocates. The complaint was filed on 1-3-1988, taken on file 14-3-1988 on which date, the complainant was examined and summons was issued to the accused. The accused appeared on 4-4-1988. They were asked to plead whether they were guilty or not, they pleaded that they were not guilty. The matter stands at that stage before the learned Magistrate.

3. These points were raised by the learned Counsel for the Petitioners and they are:

(i) A complaint cannot be filed by two persons and as such the same is invalid;

(ii) The article read as a whole is not defamatory in nature; and

(iii) The complainants are not the aggrieved persons and therefore, they are not entitled to file the complaint.

4. As regards the validity of the complaint is concerned, it is contended that one complaint cannot be filed by two persons; the learned Counsel appearing for the Petitioners would contend that the complaint filed by two persons jointly is not in the contemplation of the scheme of the Code of Criminal Procedure and produced before me two decisions.

(1) Sashadhar Acharjya and Another Vs. Sir Charles Tegart and Others, wherein it was held that "A joint complaint by two persons is not contemplated by the Code." and

(2) Narayanaswami v. Egappa Reddi 1962 M.W.N. (Cri.) 129 : 75 L.W. 357, wherein it was held that "A complaint could be tiled by only one person. There is no provision in the Code of Criminal Procedure for joint complaints.

The learned Counsel appearing for the other side would concede that the complaint filed as such was not in order and that it will be possible either to file fresh complaints or to see that one of the complainants withdraws from the complaint.

5. The resulting position is that the complaint as it was filed is not valid; all the subsequent steps taken by the learned Magistrate on the complaint are to be considered as not legal and are thereby quashed. If the complaint is revised in a legal manner in one way or the other, the learned Magistrate will deal with it afresh in accordance with law.

6. The learned Counsel appearing for the Petitioners herein nurtured the apprehension that since the case was of a summons nature, the learned Magistrate may proceed with the trial without giving an opportunity to the Petitioners to put forward the other pleas raised by them before this Court. It is true that as per Section 251 of the Code of Criminal Procedure, it is not necessary to frame a formal charge against the accused. But nothing prevents the Magistrate to frame a formal charge if in the circumstances of the case he finds it useful. Even if a formal charge is not framed the Magistrate before asking the accused whether they plead guilty or not has to state in clear terms to the accused the particulars of the offence. At that stage the accused is at liberty to plead for his discharge. Of course, the Magistrate at that stage need not go into all the merits of the case, but will satisfy himself whether there is ground to proceed further or not, after hearing the accused.

7. With these observations, this petition is allowed and the proceedings are quashed with liberty to the complainant to take such steps as he is entitled to in law.