

(2005) 05 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 51569-M of 2004

Ramesh Kumar Jain and Others

APPELLANT

Vs

Sanmati Vimal Jain Public School, Jagraon

RESPONDENT

Date of Decision : 25-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482

Citation : (2005) 15 CriminalCC 502

Hon'ble Judges : Uma Nath Singh, J

Bench : Single Bench

Advocate : H.S. Gill with Mr. M.L. Saggarr, for the Appellant; D.S. Pheruman With Mr. P.L. Singla, for the Respondent

Final Decision : Allowed

Judgement

Uma Nath Singh, J.—Heard learned counsel for the parties and perused the record. This Court vide order dated 16.8.2004 had permitted withdrawal of the petition u/s 482 Code of Criminal Procedure with liberty to the petitioners to file an application for recalling the summoning order dated 14.6.2004, but it appears that before the Magistrate could decide the case, judgment of Hon"ble the Apex Court reported in 2005(1) CCC 570 (S.C.): 2004(4) RCR (Criminal) 1 equivalent to Adalat Prasad Vs. Rooplal Jindal and Others, , was rendered wherein it was held that since recalling of process would amount to review, the Magistrate was not competent to do so and only the High Court, in exercise of its inherent powers u/s 482 Cr.P.C. was competent to quash the order. It appears from the rival submissions that summons were issued after recording the statement of the complainant so also on considering the averments in the complaint u/s 202 Cr.P.C. It also appears that the judgment of Hon"ble the Apex Court is only with reference to Section 204 Cr.P.C. that, once a summon is issued, the Magistrate ceased to be competent to recall the order, however, the judgment does not refer to Sections 244, 245 and 246 of Code of Criminal Procedure, which exclusively deal with the question of discharge. It also appears that u/s 245(2) Cr.P.C., the

Magistrate can come to the conclusion at any earlier stage that the charge is baseless or transparently false. Thus recording of complete evidence or hearing on that is not necessary for exercise of powers under Sections 245(2) Cr.P.C. This power can be exercised even at the stage where the statement of the complainant is recorded or taken in the form of evidence. Thus, the petitioners may avail this remedy if there is a dearth of material in the statement of the complainant or the averments of the petition did not warrant their summoning. This power can also be exercised if the charges are found to be groundless, thus, without recording any evidence.

2. To clarify the position further, it would be appropriate to refer to a judgment of Hon'ble Andhra Pradesh High Court reported in 1990 (Criminal Law Journal) 762 Para Nos.4 and 5 of the judgment being relevant, on reproduction, read as under:-

4. As seen Section 244, Cr.P.C. contemplates discharge of the accused at two stages, viz., (i) after recording of all the evidence referred to in Section 244 and (ii) at any previous stage of the case. It is Section 246, Cr.P.C. that provides procedure in cases where the accused is not discharged. It runs as under:

246. Procedure where accused is not discharged: (1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him he shall frame in writing a charge against the accused.

Thus, we again come across the phrase "at any previous stage of the case" in Section 246(1). The phrase, as such was the subject-matter of interpretation by this Court in *Solomon v. Luke*, (1963) 1 An WR 173 : (1963 (1) Cri LJ 347). Referring to the phrase "at any previous stage of the case" occurring in Sections 253(2) and 254 of the old Code (corresponding to Sections 245(2) and 246 of the present Code), Justice Sharfuddin Ahmed held (at pp.348, 349 of Cri LJ):

Now, Section 253(1) provides for taking all the evidence referred to in Section 252 and the order of discharge has to follow in the event the Magistrate finds that no case against the accused has been made out. "Previous stage" in this context would be any stage before the recording of the entire evidence. To my mind, sub-section (2) empowers the Magistrate to discharge the accused if he finds the charge to be groundless on recording a few witnesses or even on examination of the complaint, (emphasis supplied). The restriction imposed in sub-section (1) has been relaxed as the Magistrate has been empowered to act under sub-section (2) if before completing the evidence he finds that charge to be groundless. It does not do away completely with the necessity of examining some witness or hearing the complaint to say the least before recording an order of discharge. The words "previous stage" also appear in Section 254, Cr.P.C. Therein the Magistrate has been empowered to frame a charge at any previous

stage of the case if there is ground for presuming that the accused has committed an offence. The interpretation I have placed on the words "previous stage" in Section 253(2), Cr.P.C. seems to be consistent with the use of the words and vesting of the power in the Magistrate to frame charge u/s 254, Cr.P.C.

Previous stage, thus, is a stage after recording some evidence. It is neither a stage before recording of any evidence at all nor a stage after recording of the entire evidence but is in between, (emphasis supplied). The interpretation, thus, placed on the words "any previous stage" of the case, occurring in Section 246(1) also appears to be more in consonance with the order of sections numbered in the Code and also with the heading given to Section 246 viz. "procedure where accused is not discharged". The very heading of the section in fact indicates that it would come into play only after the matter was examined in the light of Section 245 Cr.P.C. and the accused was not discharged thereunder. Therefore, it is incumbent upon the Magistrate to examine the matter for purposes of considering the question whether the accused would be discharged u/s 245 Cr.P.C. and it is only when he finds it otherwise he can have resort to Section 246, Cr.P.C. In other words, a valuable right for consideration of the case of the accused for purpose of discharge is conferred by Section 245. Cr.P.C. (emphasis supplied). Accordingly, he cannot jump over

Section 245, Cr.P.C. and frame charges u/s 246, Cr.P.C.

5. Again in Abdul Nabi Vs. Gulam Murthuza Khan and Another, his Court was to interpret the same phrase "at any previous stage" occurring in Section 253(2) (corresponding to Section 245 of the present Code). While so interpreting this Court held (para 7):

It can only mean that after the stage of Section 203 is passed, but some evidence is recorded u/s 253 (corresponding to Section 244 of the present Code) and before all the evidence referred to in Section 252 is recorded the Magistrate can discharge the accused. He cannot dismiss the complaint and discharge the accused before recording any evidence whatsoever u/s 252 Cr.P.C. That will not only militate against the natural conclusion which must follow from the reading of Sections 203 and 294 but would be contrary to Sections 252 and 253, Cr.P.C. themselves.

The Magistrate, thus, cannot discharge the accused before recording any evidence whatsoever u/s 244 of the present Code. Exactly same is the observation of the Supreme Court in Cricket Association of Bengal and Others Vs. State of West Bengal and Others, , while dealing with the phrase in question occurring in Section 253(2), Cr.P.C. of the old Code. In view of this case law, when even, for purposes of discharging the accused u/s 245, Cr.P.C., it is incumbent upon the Magistrate to record some evidence, though not the entire evidence, u/s 244 Cr.P.C. the case for framing of charges u/s 246 Cr.P.C. is an afortiori one and accordingly unless and until the matter receives consideration u/s 245, Cr.P.C. the charges contemplated by Section 246, Cr.P.C. cannot be

framed, (emphasis supplied).

Needless to say that vide the order dated 19.10.2004, learned Sub Divisional Judicial Magistrate, Jagraon, dismissed the earlier application u/s 245 Cr.P.C. under the impression that the petitioners had been granted liberty by this Court vide the order dated 28.9.2004 to file application for recalling the summoning order which, if considered, would amount to reviewing its order dated 16.4.2004 and also on the ground that an application u/s 245(2) Cr.P.C. is not maintainable in a summons case. If that be so the Magistrate can adopt the procedure as per Chapter XX of the Cr.P.C. However, looking to the nature of offences being u/s 420, 465, 467, 468, 469, 471 and 120-B IPC, if learned Magistrate at any stage decides to exercise powers u/s 259 Cr.P.C, then petitioners' application u/s 244 and 245 Cr.P.C. shall be considered on merits in terms of the aforesaid judgment of the A.P.High Court within 3 months from the date of filing of such application. Further, in both the cases of trial whether as a summons case or a warrant case the petitioners would be at liberty to raise all the relevant points as agitated herein including the one that in a civil revision, this Court has given a finding in their favour. That apart, in terms of prayer, the petitioners would be at liberty to appear before Court through counsel till before the stage of accused statement in summons case and till the application under Sections 244-245 Cr.P.C. is decided if treated as a warrant case. Thus, CrI.M.No.51569-M of 2004 is allowed in part to the extent of aforesaid directions and consequently the order dated 19.10.2004 passed by learned SDJM, Jagraon is set aside.