
(1969) 08 MAD CK 0005
In the Madras High Court

S. Marichamy Pillai

APPELLANT

Vs

Meenakshisundaram Pillai and Another

RESPONDENT

Date of Decision : 04-08-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 323

Citation : (1970) 1 MLJ 406

Hon'ble Judges : N. Krishnaswamy Reddy, J

Bench : Single Bench

Judgement

N. Krishnaswamy Reddy, J.—This is a very simple case. A Head Constable filed a complaint u/s 323, Indian Penal Code, which is a non-

cognizable case before the Special First Class Magistrate. The process was issued to the respondents and as the police officer who filed the

complaint was absent on the day when the trial was posted, the respondents were acquitted u/s 247, Criminal Procedure Code. It is true u/s 247,

Criminal Procedure Code, in a summons case on a private complaint, the absence of the complainant would be sufficient reason for acquitting the

accused unless for some other reason the case is adjourned to some other date. This is a peculiar case where the Head Constable filed a complaint

which was taken cognizance of u/s 323, Indian Penal Code, but the victims are private parties. It is not known as to why the Head Constable filed

a private complaint without referring the victims to file a complaint u/s 323, Indian Penal Code as the offence is undoubtedly a non-cognizable one.

The complaint filed by him is not as a result of investigation under Chapter XIV of the Code of Criminal Procedure. The Special First Class

Magistrate must have exercised his discretion provided under the proviso to Section 247 in this case. The Head Constable is a public servant. He

need not be examined on oath before taking cognizance of the case as provided in proviso (aa) to Section 200, Criminal Procedure Code. His evidence is not at all necessary for deciding a case. In such a case when the examination of the complainant, a public servant, is dispensed with under proviso (aa) to Section 200, Criminal Procedure Code, applying the same principle, unless his evidence is necessary for the purpose of a decision, his attendance in the Court for the purpose of trial will be practically of no use. In a private complaint, normally the complainant being the main witness whose evidence has to be corroborated by other witnesses, his attendance would be necessary and without him the trial could not proceed as his presence not only at the time when he is examined and even subsequently would be necessary, for, a necessity for his re-examination may arise, for identification and for other similar purposes. Proviso to Section 247, Criminal Procedure Code, makes it clear that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case. This is a fit case where the Magistrate could have applied the proviso as the personal attendance of the Head Constable who merely filed a complaint, not being a witness to the occurrence, was not necessary and could have dispensed with his attendance. I therefore set aside the order of acquittal holding that the attendance of the Head Constable was not at all necessary and order retrial. The case is remanded to the District Magistrate of Mathurai, who may himself take up the case and try or may direct any Sub-Magistrate to try and dispose of the case in accordance with law.