

(1986) 11 MAD CK 0018

In the Madras High Court

Case No : Criminal R.C. 572 of 1984 and Criminal R.P. 571 of 1984

Sankari Ammal by her power agent, P.L. Meenakshisundaram APPELLANT

Vs

R. Ranganathan, through his local counsel S.R. Sathivel RESPONDENT

Date of Decision : 05-11-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 204(4), 244, 244(2), 245
Penal Code, 1860 (IPC) — Section 420

Citation : (1987) LW(Cri) 338

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : V. Nicholas, for the Appellant; N. Baskaran, for the Respondent

Final Decision : Dismissed

Judgement

Padmini Jesudurai, J.—The criminal revision is by the complainant in a private complaint filed against the respondent for an offence under S.

420, I.P.C., and is directed against the order of the Judicial First Class Magistrate, Coimbatore, dismissing complaint under S. 204(4), CrI.P.C.

2. The facts giving rise to the present revision briefly are as follows: The petitioner herein preferred a private complaint against the respondent on

the allegation that a diamond necklace belonging to her had been sold to the respondent, who subsequent to the sale in lieu of the price amount,

issued three cheques, in all amounting to Rs. 75,000 all of which were dishonoured and that as a result of this transaction she had been induced to

part with the diamond necklace and had been cheated thereby making out an offence under S. 420, I.P.C.

3. The learned Judicial First Class Magistrate, Coimbatore, took the the complaint on file for an offence under S. 420, I.P.C., and issued process

to the respondent herein. The respondent entered appearance. Thereafter the case underwent several adjournments and finally on 22.6.1984 on

behalf of the petitioner, a request for adjournment was made which was turned down by the learned Magistrate who finally passed the impugned

order that though the case had been taken on file as early as on 28.6.1982 no witnesses had yet been examined on behalf of the petitioner, that the

petitioner had not taken any steps for examination of her witnesses and that, therefore, there was no justifiable reason for granting a further

adjournment. The learned Magistrate on these grounds dismissed the complaint under S. 204(4), CrI.P.C. Hence the present revision by the

aggrieved complainant.

4. Thiru V. Nicholas, Learned Counsel appearing for the petitioner, submitted that the Court below was not justified in passing the impugned

order. Since between the period 28.6.1982 when the case was taken on file and 22.6.1984, when the complaint was dismissed under S. 204(4),

CrI.P.C., the petitioner's witnesses had been present on four different occasions and they had not been examined because there was a talk of

compromise between the parties and that, therefore, the Court below ought not to have dismissed the complaint but should have granted a further

adjournment to enable the petitioner to produce her witnesses.

5. Per contra, Thiru N. Baskaran, Learned Counsel for the respondents submitted that from the records there is nothing to substantiate the

contention of the petitioner's counsel that the reason for the periodical adjournments was compromise talks between the parties that though the

case had been pending for nearly two years after the respondent had entered appearance, no progress had been made by the petitioner and that,

therefore, the court below was justified in dismissing the complaint and thereby giving a finality to the proceedings already protracted.

6. The question that arises for consideration is whether the order of the court below rejecting the request for an adjournment dismissing the

complaint under S. 204(4), CrI.P.C., for failure of the petitioner to produce her witnesses suffers from any illegality or error or impropriety calling

for interference by this Court sitting in revision?

7. As far as the facts are concerned, it is seen that the case has been taken on file on 28.6.1982 and process had been issued to the respondent.

On 29.9.1982, the respondent has entered appearance through counsel and a petition under S. 317, CrI.P.C., has been filed on his behalf by his

counsel seeking condonation of his absence. Thereafter, the case has undergone 31 adjournments till the complaint was dismissed on 22.6.1984.

In between on certain occasions the respondent has been present and on the remaining occasions petitions under S. 317, CrI.P.C., have been filed

on his behalf and his absence has been condoned. Periodically the power agent of the petitioner has been present and it is also seen that on certain

days one or two witnesses have also been present. However, on most of the occasions the witnesses on behalf of the complainant have been

absent and the case had been adjourned on that ground. As rightly contended by the Learned Counsel for the respondent, there is nothing to show

that no progress was made because of any compromise talk between the parties. Naturally therefore, on 22.6.1984, when a further request for

adjournment has been made by the petitioner, the Court below felt that a stage was reached when the matter should not be allowed to be

adjourned any longer. In the above circumstances, the court below held that there was no justification for any further adjournment in view of the

fact that though the complaint had been pending from 28.2.1982 to 22.6.1984, the petitioner had not taken any steps to examine her witnesses

and had dismissed the complaint. Courts have to protect the accused from harassment from private complaints dilatorily prosecuted. The discretion

exercised by the learned Magistrate in refusing to grant a further adjournment could not be described as arbitrary, calling for interference by this

Court under its revisional jurisdiction.

8. However, it is seen from the order of the Court below that the complaint is sought to be dismissed under S. 204(4), CrI.P.C. The above section

is in Chapter 16 of the Code of Criminal Procedure under the heading ""commencement of proceeding before Magistrate."" S. 204, CrI.P.C., deals

with issue of process. That is the stage the court arrives at after finding that there are sufficient grounds in the complaint for further proceeding and

for issuing process to secure the attendance of the accused. S. 204, CrI.P.C., therefore, deals with the way in which the attendance of the accused

hat to be secured in summons case and in warrant case. S. 204(4), CrI.P.C., therefore can have reference only to the process fee or other fees

that are payable to secure the presence of the accused giving a right to the court to dismiss the complaint on the complainant's failure to pay the

same within reasonable time. In the instant case, the attendance of the accused, the respondent herein, had already been procured. The respondent

had entered appearance as early as on 29.9.1982. The stage of S. 204, CrI.P.C., therefore, was over. Thereafter, the procedure that had to be

followed was the one indicated in Chapter 19. CrI.P.C The case on hand is a warrant case and S. 244, CrI.P.C., would be the section that would

apply to the stage after the accused had appeared. Thereafter, the court has to hear the prosecution and take all such evidence as may be

produced in support of the prosecution. The complainant is given an opportunity under S. 244(2), CrI.P.C., to apply to the Court to issue

summons to his witnesses if he so desires. The Magistrate then has to pass suitable orders under S. 245, CrI.P.C. If the complainant has chosen to

produce evidence in support of the prosecution and if a case is made out against the accused which, if unrebutted, would warrant his conviction the

Court shall frame a charge against him under S. 246, CrI.P.C. However, if the evidence produced by the complainant does not warrant framing of

the charge, the court shall discharge the accused under, S. 245(1), CrI.P.C A case where despite several adjournments the complainant fails to

produce any evidence in support of the prosecution and consequently there is no evidence which, if unrebutted, would warrant a conviction, would

also come under S. 245(1) , CrI.P.C., it would be open to the Magistrate under those circumstances to pass an order of discharge in favour of the

accused on the ground that there is no evidence which if unrebutted, would warrant his conviction. That is what the court below has done in the

instant case. When the complaint has not produced any evidence in support of the prosecution for nearly two years, the court below had rightly

passed the impugned order. No doubt, the learned Magistrate has quoted S. 204(4) CrI.P.C., as the provision under which he was dismissing the

complaint. As already indicated, the stage under S. 204(4), CrI.P.C., was over when the accused appeared before Court and the order which the

Court could pass under such circumstances could be an order of discharge under S. 245(1) CrI.P.C The order of the learned Magistrate, therefore

has to be taken as an order of discharge passed under S. 245(1) CrI.P.C., and not as an order of dismissal passed under S. 204(4), CrI.P.C Since

the order of the learned Magistrate suffers from an illegality, on merits it has to be sustained. However, the order of dismissal of the complaint under S. 204(4), CrI.P.C. is set aside and instead the accused is discharged under S. 245(1), CrI.P.C With the above modification, the revision fails and is dismissed.