
(1972) 03 KAR CK 0017
In the Karnataka High Court

Y.V. Shanthamurthy (Accused No. 1) and Another	APPELLANT
Vs	
The State of Mysore	RESPONDENT

Date of Decision : 10-03-1972

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 537, 68
Penal Code, 1860 (IPC) — Section 500

Citation : (1973) CriLJ 355

Hon'ble Judges : K. Bhimiah, J

Bench : Single Bench

Judgement

K. Bhimiah, J.—Criminal revision petitions Nos. 85, 86 and 87 of 1972 arise from the order issuing process against the petitioners who are arrayed as the accused in C.C. Nos. 102, 130 and 207 of 1972 on the file of the Judicial Magistrate, First Class. First Court. Dharwar.

2. The first petitioner is the printer and publisher and the second petitioner is the editor of a Weekly Newspaper called "Janapragathi" printed and published at 8th Cross, Malleswaram, Bangalore 3. The contention urged on behalf of the petitioners by Mr. N.H. Naik, learned advocate for the petitioners that the summons issued by the J.M.F.C. First Court Dharwar and served on them is without the name of the complainant, the offence alleged, and also which did not accompany with a copy of the complaint as required under Rule 7 of the Mysore Criminal Rules of Practice of 1968 (to be hereinafter referred to as the Criminal Rules of Practice) is improper and illegal. His second contention is that the petitioners who are arrayed as the accused in those criminal cases are residents of Bangalore and the Weekly newspaper "Janapragathi" was printed and published in Bangalore. Therefore, the J.M.F.C. First Court, Dharwar, has no jurisdiction to take cognizance of an offence u/s 500 of the Indian Penal Code. His third contention is that the complainants being public servants are not entitled to file complaint u/s 500 I.P.C. without previous permission of the Government.

2(a). Mr. Naik during the course of argument did not press for a decision on the last two contentions as he wanted those contentions to be kept open for being urged before the Magistrate in the event of his first contention not being accepted and the proceedings before the learned Magistrate not being quashed. In view of this submission, I am not called upon to decide those questions but it is necessary to deal with the first contention to find out whether on that ground the proceedings before the Magistrate could be quashed.

3. In Chapter HI of Criminal Rules of Practice rule 2 reads as under:

Every summons relating to a case shall state the place of hearing and the date and time when the presence of the persons summoned is required.

Rule 7 of the said Rules, reads as under:

In a case instituted upon a complaint, a copy of the complaint shall be served on the accused along with the summons.

It is clear from Rule 2 that the details, namely, the name of the complainant need not be mentioned in the summons. This is in conformity with the form prescribed u/s 68 Cr.P.C. In schedule V. what is required to be mentioned in the summons is to state the place of hearing the date and time when the presence of the persons summoned is required and also shortly, the offence charged. In the three summonses now produced before the court, it is clear that they are in conformity with the form and the rules prescribed in this behalf. Rule 7 requires that a copy of the complaint shall be served on the accused along with the summons. This has not been complied with in this case. The question for determination is whether the non-compliance with the rules vitiates the proceedings. The answer to this question is that it is purely a procedural irregularity curable u/s 537 Cr.P.C. which lays down as under:

Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account

(a) of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code....

The omission to comply with the requirements of the rules is a mere irregularity not affecting the legality of the criminal proceedings pending before the Magistrate. In view of the above provisions, it is not possible to say that by non-compliance with the requirements of Rule 7 of the Criminal Rules of Practice, the proceedings instituted before the J.M.F.C.. First Court, Dharwar, against the petitioners are vitiated and therefore the proceedings are not liable to be quashed.

4. However it must be observed that it is the duty of the Presiding Officer and also of the Chief Ministerial Officer of the Court to observe these rules without

fail. This rule is intended to give the required information to a person who is accused of an offence to come prepared before the court on the date of hearing. It is hoped that such mistakes will not be repeated by those who have been charged with the duty of complying with the rules. The Magistrate is now directed to send copies of the complaint to the petitioners forthwith intimating the next date of hearing in order to facilitate them to appear before the court and to make arrangements for their defence.

5. With the above observations, the Criminal Revision Petitions are dismissed as unsustainable.