

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.869 of 2017

S.Mukanchand Bothra
Rep by its P.O.A
M.Ganan Bothra

.. Petitioner/Complainant

Vs.

Shivaji Rao Gaikwad @ Rajinikanth

.. Respondent/Accused

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, against the Order / Judgment dated 12.04.2017 made in Crl.M.P.No.5412 of 2015, on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai, for setting aside the same.

For Petitioner : Mr.M.Gagan Bothra
Party-in-Person

For Respondent : Mr.D.Ravichander

O R D E R

One Mr.S.Mukanchand Bothra, through his Power Agent Mr.Gagan Bothra has filed this Criminal Revision Case, challenging the order of the learned Magistrate in unnumbered C.C.No. of 2015, dated 12.04.2017 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

2.It is the case of the petitioner is that he has filed the complaint and sworn statement recorded by the learned VIIIth Metropolitan Magistrate, George Town, Chennai and thereafter, when the petitioner has filed a Transfer Petition against unnumbered C.C.No. of 2015 before the learned Chief Metropolitan Magistrate, Chennai and while pending the same he has dismissed the complaint in unnumbered C.C.No. of 2015.

3.The petitioner has filed the petition before the learned Chief Metropolitan Magistrate, Chennai to transfer the said complaint which was numbered in Crl.M.P.No.5412 of 2015 pending before the learned VIIIth Metropolitan Magistrate, George Town,

Chennai under Section 410 of Cr.P.C., but the learned Magistrate stated in the said order that the complainant has not produced any stay order, therefore, he proceed the case. Apart from this, the learned Magistrate also states that there are several occasions the petitioner has not appeared before the learned VIIIth Metropolitan Magistrate and also not advanced any oral evidence, therefore, the learned Magistrate has dismissed the complaint under Section 203 of Cr.P.C., which is not proper and the learned Magistrate without following the procedure under Section 203 of Cr.P.C. passed the order. Therefore, the petitioner prays for set aside the order and remand back to the learned Magistrate for fresh consideration.

4.I heard Mr.M.Gagan Bothra, who alleged to be appeared as Power Agent on behalf of the petitioner Mr.Mukanchand Bothra and Mr.D.Ravichander, learned counsel for the respondent.

5.Admittedly, the learned VIIIth Metropolitan Magistrate has passed the orders by dismissing the complaint under Section 203 of Cr.P.C. Section 203 of Criminal Procedure Code provided as follows:

"203. Dismissal of complaint. - If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

As per the procedure of Section 203 of Cr.P.C., the learned Magistrate should act that after taking the complaint on file, he should record the statement on oath of the complainant, if any, he should examine the witnesses if any produced by the complainant and any enquiry or investigation under Section 202 of Cr.P.C., thereafter, the learned Magistrate is having power or opinion to proceed the complaint filed by the complainant.

6.Mr.Gagan Bothra, who representing the alleged petitioner as Power Agent and also states that he is the son of the petitioner has produced the judgment in the case of Balraj Khanna & ors. v. Moti Ram reported in 1971 AIR 1389, it is held as follows:

"The Magistrate dismissed the complaint on the ground that there is no evidence on record as to which of the appellant made which allegation against the respondent and in the absence of such an important ingredient, no prima facie case against any of the appellants can be said to have been made out. This, in our opinion, is a fallacious approach made by the Magistrate in the face of the allegation made by the respondent that all the seven appellants made the

statements referred to in Ex. P. W. 3/B. In our opinion, the High Court has made a correct approach when it held that the evidence, as it stands implicates all the members of the Standing Committee, including the appellants in the charge of making the statements alleged to be defamatory and contained in Ex. PI W. 3 / B. We are in, entire agreement with the reasoning of the High Court on this aspect. Before concluding, the discussion, it is, to be stated that the trial Magistrate has given an additional reason for dismissing the complaint That, reason is that the resolution passed by the Standing Committee an December 11, 1964 and the discussion preceding it by the members of the Standing Committee including the,- appellants is covered by the Exceptions to Section 499 I. P. C. Unfortunately, the High Court also has touched upon this aspect and made certain observations. In our opinion, the question of, the application of the Exceptions to Section 499 I. P. C. does not arise at this stage. Rejection of the complaint by the Magistrate on the second ground mentioned above cannot be sustained. It was also unnecessary for the High Court to have considered this aspect and differed from the trial Magistrate. It is needless to state that the question of applicability of the Exceptions to Section 499 I. P. C. as well as all other defences that may be available to the appellants will have to be gone into during the trial of the complaint.

To conclude we are satisfied that the High Court's order setting aside the order of the Magistrate dismissing the complaint under Section 203 Cr. P. C. and directing further inquiry to be made in the complaint of the respondent is correct."

7. On fair reading of the order in unnumbered C.C.No. of 2015 dated 12.04.2015 in paragraph-2, it is stated that one Mr. Gagan Bothra, the Power Agent of the complainant has appeared on 21.09.2015 and sworn the statement was recorded. Thereafter, the learned Magistrate states that though the complainant has mentioned before the learned VIII Metropolitan Magistrate that he has filed the petition to transfer the complaint in unnumbered C.C.No. of 2015 pending before the learned VIIIth Metropolitan Magistrate, but without any interim order, the said transfer petition is pending. The learned Magistrate also states that on several hearings the complainant has not appeared before the Court and not advanced his oral evidence. Therefore, the learned Magistrate has dismissed the complaint under Section 203 of Cr.P.C.

8. Per contra the learned counsel for the respondent has states that the order of the learned Magistrate dated 12.04.2017 is well considered order since when the petitioner, who is the complainant has not appeared and advanced his oral evidence, the learned Magistrate is no other go except to dismiss the complaint. To support his case, he has produced the judgment in the case of D.N.Bhattacharjee and others v. State of West Bengal and Another reported in (1972) 3 SCC 414, it is stated in para 7 is as follows:

"It has to be remembered that an order of dismissal of a complaint under Section 203 , Criminal Procedure Code has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction. It is true that the Magistrate is not debarred, at this stage, from going into the merits of the evidence produced by the complainant. But, the object of such consideration of the merits of the case, at this stage, could only be to determine whether there are sufficient grounds for proceeding further or not. The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show that essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under Section 203, Criminal Procedure Code."

9. Both the Judgments of the Hon'ble Supreme Court made clear that when the order has been passed under Section 203 of Cr.P.C., the learned Magistrate should have follow the procedure under Section 203 of Cr.P.C. and thereafter should pass appropriate orders. Admittedly, in the case on hand, the learned Magistrate has not followed the procedure as per Section 203 of Cr.P.C., but simply dismissed the same even after taken the sworn statement.

10. It is my absolute view that the learned Magistrate has not followed the procedure as per Section 203 of Cr.P.C., since once the learned Magistrate has recorded the sworn statement on 21.09.2015, he should take further course of action by directing the complainant to produce the witnesses, oral enquiry or enquiry, thereafter, should pass appropriate orders about the

complaint either to taking cognizance or rejection of the complaint. But, it is totally lack on the part of the learned VIII Metropolitan Magistrate. Therefore, this Court warranting interference in the order passed by the learned VIII Metropolitan Magistrate in unnumbered C.C.No. of 2015 dated 12.04.2017 and the same is liable to be set aside.

11.In the result:

(a) this Criminal Revision Case is allowed by setting aside the order passed in unnumbered C.C.No. of 2015 dated 12.04.2017 by the learned VIII Metropolitan Magistrate, George Town, Chennai;

(b) the learned VIII Metropolitan Magistrate, George Town, Chennai, is directed to follow the procedure under Section 203 of Cr.P.C. and thereafter to pass appropriate orders in the unnumbered C.C.No. of 2015;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order;

(d) the complainant is hereby directed to give his fullest co-operation for early orders to be passed by the learned Magistrate within a period stipulated by this Court;

(e) if the learned Magistrate is taking cognizance of the complaint and issuance of any summon to the respondent, the appearance of the respondent is dispensed with, except the hearings to be ordered by the learned Magistrate.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

1.The VIII Metropolitan Magistrate,
George Town, Chennai.

2.do thro
The Chief Metropolitan Magistrate,
George Town, Chennai.

+ 2 cc to M/s.S.Mukanchand Bothra. Party-in-Person,SR.8560
(07/02/18)

+ 1 cc to M/s.D.Ravichander Advocate,SR.8381

Cr1.R.C.No.869 of 2017

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