SUPREME COURT OF INDIA

Renuka

Vs.

State of karnataka

Crl.A.No.329 of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

18.02.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. One Smt. Manjula on or about 23.12.2001 made a complaint alleging that ten days prior thereto, i.e., on 13.12.2001 a quarrel had taken place by and between the complainant and appellant, during course of which, the appellant trespassed in her compound, restrained her, pulled her hair, assaulted her with chappal, removed the mangalsutra and damaged the bangles causing loss of Rs.200/- to her.

3. A first information report on the said basis was lodged for commission of offences punishable under Sections 447, 341, 323 and 427 of the *Indian Penal Code* (for short, "the IPC"). A charge-sheet was submitted on 15.2.2002 upon completion of investigation. Cognizance of offences was taken on 28.9.2002. Processes were issued against the accused. The same having not been served, non-bailable warrant was issued. The matter was listed on various dates. The learned Magistrate on or about 14.10.2004 in view of non-service of non-bailable warrant passed the following order:

> "Accused absent. It is noted that accused vacated her address and her whereabouts are not known. Offence are triable as summons case. Hence further proceedings stopped U/s 258 Cr. P.C."

4. It, however, appears that on or about 19.4.2006, a requisition was filed praying for issuance of non-bailable warrant of arrest to the accused upon reopening the case. The said application is not on record. On the basis of the said purported requisition, the case was reopened and a non- bailable warrant of arrest was issued against the appellant. She filed an application under Section 482 of the Code of Criminal Procedure (for short, "the Code") before the High Court of Karnataka at Bangalore, which by reason of the impugned judgment has been dismissed, stating that as the order of the trial court dated 14.10.2004 was

clear that further proceedings had been stopped on the premise that whereabouts of the appellant were not known and as the case had not been closed and having regard to the fact that she has now been traced out, the trial court could permit the prosecution to reopen its case.

5. Mr. R.S. Hegde, learned counsel appearing on behalf of the appellant would contend that when an order is passed under Section 258 of the Code in a case where evidence had not been recorded, the consequence thereof would be that of discharge.

6. Ms. Anitha Shenoy, learned counsel appearing on behalf of the respondents, on the other hand, would urge that as no order of acquittal has been recorded, the court had ample jurisdiction to revive the proceedings. Our attention in this behalf has been drawn to Sections 258 and 300(1) & (5) of the Code.

7. Indisputably in this matter, the procedure laid down for summons case was adopted by the learned trial judge. Section 258 of the Code reads thus:

> "258. Power to stop proceedings in certain cases.- In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge."
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> Section 258 of the Code corresponds to Section 249 of the Code of Criminal Procedure, 1898 with minor changes. Section 249 of the Code of Criminal Procedure, 1898 reads as under:
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> "249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused."
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> In the new Section, the word "summons" has been added and the words "a Presidency Magistrate" after "complaint" have been omitted. The words `District Magistrate, any other Magistrate' have been substituted by the words `Chief Judicial Magistrate, any other Judicial Magistrate'. The words `either of acquittal or conviction and may thereupon release the accused' have been substituted by the words "and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge."

8. In this case, no order for release of the accused was passed. No order of releasing the accused was necessary to be passed as the appellant was not before the court. She had not even been arrested. Non-bailable warrant of arrest issued against her had not been executed. Article 20 of the Constitution of India provides that a person acquitted for an offence shall not be tried again for the same offence. Section 300 of the Code was enacted to give effect thereto. We may notice sub-Sections (1) and (5) thereof:

> "300. Person once convicted or acquitted not to be tried for same offence.- (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.
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> xxx xxx xxx
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> (5) A person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate."

9. The proceedings were stopped by the learned Magistrate in terms of the order dated 14.10.2004. No consequential order was passed and indeed could not have been passed. The benefit of effect of discharge could have been claimed by the appellant had she been directed to be released, the effect of discharge being correlated with release. If she had not been released, the question of her obtaining the benefit of the effect of discharge does not arise. An order of discharge can be passed in terms of Section 245 of the Code. For passing an order under the aforesaid provision, reasons are required to be recorded. {See *Sheonandan Paswan vs. State of Bihar & Ors.*[1]}

10. The learned Magistrate in this case did not record any reason. Mandatorily reasons were required to be recorded. The learned Magistrate, thus, although has power to revive the proceedings, he should have passed an appropriate order upon application of mind. He did not do so. He has directed reopening of the case and directed issuance of non-bailable warrants of arrest again without recording any reason. It appears from the Order Sheet dated 19.4.2006 that some reasons have been stated in the requisition made by PSI, B. Nagar, Police Station, Bangalore for issuance of non-bailable warrant of arrest upon reopening the case. It was obligatory on the part of the learned Magistrate to apply his mind with regard thereto.

11. For the reasons aforementioned, although the High court was correct that the learned Magistrate in a situation of this nature could revive the proceedings, in our opinion, the learned Magistrate committed an error in not recording reasons therefor. We, therefore, while setting aside the impugned order passed by the High Court as well as the order passed by the

learned Magistrate reopening the case, direct the learned Magistrate to pass an appropriate order upon consideration of the requisition filed by the Police Authorities afresh. The appeal is disposed of accordingly.

[1] *[(1987) 1 SCC 288, Para 81]*