
(1929) 04 MAD CK 0032

Madras High Court

Case No: None

Kasinatha Pillai

APPELLANT

Vs

Shanmugam Pillai and
Another

RESPONDENT

Date of Decision: April 30, 1929

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 253

Citation: (1929) ILR (Mad) 987 : 121 Ind. Cas. 617 : (1929) 30 LW 273 : (1929) 57 MLJ 490

Hon'ble Judges: Waller, J; Krishnan Pandalai, J

Bench: Full Bench

Judgement

@JUDGMENTTAG-ORDER

Waller, J.

No doubt, the language used in the three parts of Section 253, Criminal Procedure Code, is different, but it is, I think,

impossible to lay down any general principle Or to attempt to define what precisely is meant by the word ""groundless."" Probably, as good a

definition as any, is that the evidence must be such that no conviction could be rested on it. It obviously does not mean that the evidence discloses

no offence whatever.

2. In this particular case, I see no reason to dissent from the view taken by the Courts below. It is most unlikely that any Court would have

convicted after hearing the evidence of the only witness examined. The petition is dismissed.

Krishnan Pandalai, J.

3. This is a petition to revise the order of discharge passed by the Second Class Magistrate of Tuticorin u/s 253(2) of the Criminal Procedure

Code. The complaint was brought by the father-in-law of one Sankaragomati Chettiar who had recently died against the cousins of the deceased

and alleged that the daughter of the complainant (widow of the deceased) entrusted her own and her children's jewels worth about Rs. 4,000 and

her husband's account books to the accused soon after the 15th day ceremony, for the purpose of selling the jewels and realising the outstanding

and investing the proceeds for the benefit of the widow and her children and that when the accused were later questioned they denied the receipt

of the jewels and accounts. The complainant stated that he presented the complaint as per his daughter's instructions and charged that the accused

committed an offence u/s 403 of the Indian Penal Code.. The Magistrate having summoned the accused, the complainant was examined and cross-

examined at length on 21st December, 1927 and 11th January, 1928. The complainant had been previously informed that his daughter, a resident

of Tuticorin and the real complainant should be brought to Court to be examined on the 11th January. On that day she was absent. The

complainant asked for a commission to examine her which was refused, the Magistrate remarking that the application was not bona fide. Then the

complainant asked for an adjournment which was also refused. The defence, as appeared from the cross-examination of the complainant, was that

the deceased Sankaragomati Chettiar had left a will under which first accused was executor and that he was in possession of the estate as such and

not under any entrustment by the widow and that the complainant, an impecunious person, was using his daughter or her name as a tool to coerce

the accused to part with the estate.

4. The Magistrate came to the conclusion that the story told by the complainant was highly improbable, that at the best, the dispute appeared to be

one of a civil nature to settle which the complaint was brought as a criminal case, that examination of further witnesses will not in these

circumstances be of any use and therefore he discharged the accused. The District Magistrate to whom the complainant preferred a revision

petition upheld the Sub-Magistrate's order and dismissed the petition being of opinion that it was frivolous. The learned Advocate for the petitioner

has urged before us that the Sub-Magistrate had no power to discharge u/s 253(2) before examining all the complainant's witnesses and that he

could not consider the charge to be groundless before he had heard all the evidence. I wish to lay down no general rule as to whether a Magistrate

should in practice examine all witnesses available or how many of them, before acting u/s 253(2). That depends entirely on the circumstances of

each case for which no general rule can be laid down. But on the question of legal competence, there is no warrant for saying that Magistrates are

bound to examine all witnesses that may be offered or available before taking action under that sub-section. The words of Sub-Sections (1) and

(2) of Section 253 are as plain as any words can be on that point. The first sub-section states that if on taking all the evidence referred to in

Section 252 and if necessary examining the accused, no case is made out against the accused, the Magistrate shall discharge him. The second sub-

section says that nothing in that section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case,

that is, before all the evidence referred to in Section 252 has been taken, if for reasons to be recorded the Magistrate considers the charge to be

groundless. Authority for supporting such a plain statutory provision would be needless. But authority there is: see *Narasamma v. Venkatarayudu*

(1911) 1 M.W.N. 149 and *Kunj Behari Lal v. Emperor* (1911) 1 M.W.N. 149. The amount of evidence which would enable a Magistrate to say

that a particular charge was groundless is so entirely dependent on circumstances that no general rule or direction except that he is required to

arrive at his conclusion judicially and not capriciously is likely to be of any use. If, acting
judicially, a Magistrate has come to the conclusion on

grounds to be recorded, that the charge must fail either because the allegations are false
or because they disclose a dispute of a civil nature which is

distorted into a criminal case or for any other reason, then there is nothing to prevent him
from discharging the accused before all the complainant's

witnesses have been examined. It follows that the action taken by the Sub-Magistrate
was fully within his competence. In revision we are not

accustomed to enquire into the merits to see whether the conclusions of the Lower Court
are correct on the facts. But I see nothing in the facts

which would enable me to say that the order of the Magistrate was not a proper and
judicial order. The petition is dismissed.