

RENUKA

V.

STATE OF KARNATAKA & ANR.

Criminal Appeal No. 329 of 2009

FEBRUARY 18, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973 :

*ss.258, 245 and 300 – Complaint against appellant – Charge sheet submitted – Processes issued – Further proceedings stopped by trial court on the premise that whereabouts of appellant were not known – Appellant subsequently traced out whereupon trial court permitted the prosecution to re-open the case and a non-bailable warrant of arrest was issued against her – Challenge to – Held: Although the Magistrate could revive the proceedings, it erred in not recording reasons therefor – As some reasons were stated in the requisition made by police authorities for issuance of non-bailable warrant of arrest upon reopening the case, it was obligatory on the part of Magistrate to apply his mind with regard thereto – Magistrate directed to pass appropriate order upon consideration of the requisition filed by Police Authorities afresh – Constitution of India, 1950 – Article 20.*

**A complaint was lodged alleging that a quarrel had taken place by and between the complainant and the accused-appellant, during course of which, the appellant trespassed in her compound, restrained her, pulled her hair, assaulted her with chappal, removed her mangalsutra and damaged her bangles causing loss of Rs.200/- to her. Charge sheet was submitted on completion of investigation and processes were issued against the appellant. However, further proceedings were stopped by the trial court on the premise that the whereabouts of the appellant were not known. The appellant was subse-**

A frequently traced out whereupon the trial court permitted the prosecution to re-open the case and a non-bailable warrant of arrest was issued against her. Appellant filed petition under s.482 CrPC which was dismissed by the High Court. Hence the present appeal.

B Disposing of the appeal, the Court

HELD:1. In the present 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. After the proceedings were stopped by the Magistrate, 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 s.245 CrPC. For passing an order under the aforesaid provision, reasons are required to be recorded. [Paras 8, 9] [628-B; 628-H; 629-A-B]

*Sheonandan Paswan vs. State of Bihar & Ors.* (1987) 1 SCC 288 – relied on.

F 2. The Magistrate in this case did not record any reason. Mandatorily reasons were required to be recorded. The 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 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 Magistrate to apply his mind with regard thereto. [Para 10] [629-C-D] A

3. Although the High court was correct that the Magistrate in a situation of this nature could revive the proceedings, the Magistrate committed an error in not recording reasons therefor. Therefore, while setting aside the impugned order passed by the High Court as well as the order passed by the Magistrate reopening the case, the Magistrate is directed to pass an appropriate order upon consideration of the requisition filed by the Police Authorities afresh. [Para 11] [629-E-F] B C

#### Case Law Reference

(1987) 1 SCC 288                      relied on                      Para 9

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 329 of 2009 D

From the Order dated 20.6.2008 of the High Court of Karnataka at Bangalore in CrI. Petition No. 3037 of 2006.

R.S. Hegde, Chandra Prakash, J.K. Nayyar, Rahul Tyagi, Ashwani Garg (for P.P. Singh), for the Appellant. E

Anitha Shenoy, for the Respondent.

The Judgement of the Court was delivered by

**S.B. SINHA, J.** F

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. G

3. A first information report on the said basis was lodged H

A 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  
B 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:

C "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  
D 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  
E 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  
F 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  
G 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  
H of the respondents, on the other hand, would urge that as no

order of acquittal has been recorded, the court had ample A  
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: B

**"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 C  
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 D  
acquittal, and in any other case, release the accused, and  
such release shall have the effect of discharge."

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: E

**"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, F  
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."

In the new Section, the word "summons" has been added G  
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' H



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

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.

B.B.B.

Appeal disposed of.