Smt. Nagawwa vs Veeranna Shivallngappa Konjalgi on 23 April, 1976

Equivalent citations: 1976 AIR 1947, 1976 SCR 123, AIR 1976 SUPREME COURT 1947, (1976) 3 SCC 736, 1976 2 SCJ 458, (1976) 2 SCWR 1, 1976 CRI APP R (SC) 189, 1976 SCC(CRI) 507, 1976 ALLCRIC 224, 1976 (2) KANTLJ 1, 1976 SC CRI R 313, 1976 MADLJ(CRI) 593, ILR (1976) KANT 1199

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, A.C. Gupta

PETITIONER:
SMT. NAGAWWA

Vs.

RESPONDENT:
VEERANNA SHIVALlNGAPPA KONJALGI

DATE OF JUDGMENT23/04/1976

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
GUPTA, A.C.

CITATION:
1976 AIR 1947 1976 SCR 123
1976 SCC (3) 736
CITATOR INFO :
R 1978 SC1568 (5,9)
F 1983 SC 67 (8)
R 1984 SC 718 (31)
R 1985 SC 628 (55,68)
RF 1989 SC 885 (7)
RF 1992 SC 604 (103)
F 1992 SC1894 (8)

ACT:
Code of Criminal Procedure, ss. 202, 204-Enquiry under s. 202-Scope of -Accused if had locus standi.

HEADNOTE:
The appellant filed a complaint before the Magistrate

alleging that the police did not deliberately charge-sheet unrespondents 1 and 2 despite the fact that they abetted in the murder of her son because they were influential persons. After the inquiry the Magistrate issued a process to respondents 1 under 2 under s. 204(1)(b) of the Code of Criminal Procedure, 1973. The revision petition of respondents I and 2 filed under s. 482 Cr.P.C. was allowed by the High Court. in appeal to this Court it was contended for. the appellant that the High Court was in error in examining the order of the Magistrate on merits after taking into consideration the documents filed by the respondents, which did not form part of the complaint or evidence recorded in support thereof before the Magistrate.

Allowing the appeal,

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HELD: The order of the High Court suffers from a serious legal infirmity and the High Court has exceeded its jurisdiction in interfering in revision by question the order of the Magistrate. [129 H]

(1) In the following cases an order or the Magistrate can be quashed or set aside:

(a) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(b) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(c) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(d) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like. [128 C-E]

(2) (a) At the stage of issuing the process the Magistrate is mainly concerned with allegations made in the complaint or the evidence led and he is only. to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. The scope of the inquiry under s. 202 Cr.P.C. is extremely limited -limited to the ascertainment of the truth or falsehood of the allegations made in the complaint: (1) on the materials placed by the complainant before the court (ii) for the limited purpose of finding out whether a prima facie case for issue of process had been made out and (iii) for deciding the question purely from the point of view of the complainant without at all

adverting to any defence that the accused may have. In proceedings under s. 202 the accused has got absolutely no locus standing and is not entitled to be heard on the question whether the process should be issued against him or not. [126 F; 127 E-F]

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Chandra Deo Singh v. Prokash Chandra Bose, [1964] 1 S.C.R. 63.9 and Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and Another, [1961] 1 S.C.R. 1. followed.

(b) In coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in evidence led by the complainant in support of the allegations. Once the Magistrate has exercised judicially the discretion given to him it is not for the High Court or even this Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of inquiry under 5. 202 of the Code of Criminal Procedure, which culminates in an order under s. 204 of the Code. [127G-H; 128A-B]

(3) In the instant case the High Court should not have quashed the proceedings. The order of the Magistrate was a reasoned one which took into consideration the allegations in the complaint as also the evidence adduced in support of it. It was not a case where the Magistrate had passed an order ill a mechanical manner or just by way of routine. The High Court could not to into this matter in its revisional jurisdiction which is a very limited one. [128 F-G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 99 of 1976.

Appeal by Special Leave from the Judgment and order dated 16-12-75 of the Karnataka High Court in Criminal Petition No. 50 of 1975.

N. B. Datar and R. B. Datar for the Appellant. M. C. Bhandare, (Mrs.) S. Bhandare, M. S. Narsimhan Sharma, and A. K. Mathur for Respondents I and 2.

Narayan Nettar for Respondent No. 3.

The Judgment of the Court was delivered by FAZAL ALI, J. This appeal by special leave is directed against the judgment of the Karnataka High Court by which it set aside the order of the Additional Judicial Magistrate, First Class, Gokak issuing process against respondents 1 & 2 in exercise of his discretion under s. 204 of the Code of Criminal Procedure. The facts of the case lie within a very

narrow compass and although the High Court has taken great pains to write a laboured judgment the point involved is short and simple and does not merit a detailed discussion. The police of Gokak Police Station submitted a charge-sheet against Nagappa Giddannavar and seven others under ss. 302, 114, 148, 147 and other sections on the allegations that on July 19, 1973 the accused persons had waylaid and murdered one Nagappa son of the appellant in this Court. The appellant, who had filed the report before the police does not appear to have bean satisfied with the investigation by the police which according to her was tainted and had suppressed some important materials, filed a complaint before the Magistrate at Gokak on October 4, 1973 alleging that respondents 1 & 2 had in fact abetted the offence of murder committed by the other accused but as they were influential persons their names were deliberately left out in the report as also in the dying declaration. On receiving the complaint on October 4, 1973 the Magistrate decided to hold an inquiry into the complaint himself and in pursuance of his decision he recorded some evidence on October 8, 1973. Thereafter the case was posted for October 10, 1973 for arguments and further evidence, if any. On October 10, 1973 the Magistrate observed that six witnesses had been examined and the evidence recorded so far was sufficient for the Court to determine the question as to whether or not process should be issued to respondents 1 & 2. He then adjourned the case for argument for October 12, 1973. On that day arguments were heard but before any order could be passed the Magistrate who had recorded the evidence was transferred and therefore the case had to be adjourned. The new Magistrate took up the matter on November 26, 1973 and after hearing the complainant he adjourned the case to December 3, 1973 and on this day he directed that further inquiry may be made by Superintendent of Police, Belgaum and he accordingly referred the matter for inquiry and report to the Superintendent of Police, Belgaum asking him to submit his report within six weeks. It seems to us that in view of the change of the Magistrate the successor Magistrate was not able to grasp the implications of the proceedings which had been taken by . his predecessor who had in fact first decided to hold an inquiry himself and after recording the evidence had decided to pass an order under s. 204 of the Code of Criminal Procedure. Before however he could pass any order he was succeeded by the present Magistrate. The appellant filed an application in revision to the High Court on December 11, 1973 against the order of the Magistrate dated December 3, 1973 referring the matter to the Superintendent of Police for inquiry and report. While the application was pending before the High Court, respondents 1 & 2 filed a petition before the High Court praying for an early hearing of the revision and for vacation of the stay order. Along with this petition the respondents filed a number of documents including the copies of the petitions sent by the appellant to the Chief Minister and the Speaker. We might indicate here that there was absolutely no occasion for the respondents to have filed the documents before the High Court in a miscellaneous petition nor did they obtain any permission of the Court for filing those documents. The High Court, after hearing the revision application filed be the appellant, allowed the same mainly on the ground that as the Magistrate had ultimately decided to hold an inquiry into the truth or falsehood of the complaint himself he had no jurisdiction to stop that inquiry and then make a reference to the police afresh. The High Court accordingly quashed the order of the Magistrate and directed him to decide the case in accordance with the law after recording further evidence, if any. It appears that the High Court did not give any directions to the Magistrate for considering the documents which had been filed by the respondents before it but by a subsequent order merely forwarded the documents to the Magistrate. The papers were sent back to the Magistrate on January 7, 1975 and by his order dated January 27, 1975 the Magistrate was informed that the appellant did not want to adduce any further

evidence. The matter was accordingly posted for argument on February 7, 1975 and after hearing the arguments and considering the evidence recorded by the Magistrate he by his order dated February 11, 1975 directed process to be issued against respondents 1 & 2 under s. 204(1) (b) of the Code of Criminal Procedure. Respondents 1 & 2 then preferred a revision against this order to the High Court under s. 482 of the Code of Criminal Procedure praying that the order of the Magistrate may be quashed. This revision was allowed by the High Court by the impugned order against which special leave was granted by this Court at the instance of the appellant.

In support of the appeal Mr. H. B. Datar submitted that the Magistrate had given cogent reasons for holding that there were sufficient grounds for proceeding against respondents 1 & 2 and the High Court was in error in interfering with the order of the Magistrate by examining the merits of the case after taking into consideration the documents filed by the respondents which could not be looked into by the Magistrate as they did not form part of the complaint or the evidence recorded in support thereof. In our opinion the contention raised by the learned counsel for the appellant is well-founded and must prevail. Mr. M. C. Bhandare sought to repel the argument of the appellant on the ground that the order of the Magistrate was perverse and as the case was full of patent absurdities and was politically motivated the prosecution of respondents 1 & 2 would amount to unnecessary harassment resulting in abuse of the process of the Court. In the view we take in the instant case it is not necessary for us to enter into the merits of the case at this stage. It is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one.

In Chandra Deo Singh v. Prokash Chandra Bose(1) this Court had after fully considering the matter observed as follows:

> "The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under s. 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-s. (1) of s. 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant (1) (1964)1 S. C. R. 639, 648 and the statements made before him by persons examined at the instance of the complainant."

Indicating the scope, ambit of s. 202 of the Code of Criminal Procedure this Court in Vadilal Panchal v. Dattatrya Dulaji Ghadigaonker and Another(1) observed as follows:

> "Section 202 says that the Magistrate may, if he thinks lit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify. the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can` be legally called upon to answer; the accusation made against him only when a process has issued and he is put on trial."

It would thus be clear from the two decisions of this Court that the scope of the inquiry under s. 202 of the. Code of Criminal Procedure is extremely limited-limited only to the ascertainment of the truth of falsehood, of the allegations made in the complaint-(1) on the materials placed by the complaint before the Court. (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that, the accused may have. In fact it is well settled that in proceedings under s. 202 the accused has got absolutely no locus us standi and is not entitled to be heard on the question whether the process should be issued against him or not.

Mr. Bhandare laid great stress on the words "the truth or falsehood of the complaint" and contended that in determining whether the complaint is false the Court can go into the question of the broad probabilities of the case or intrinsic infirmities appearing in the evidence. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant ill support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercise his discretion it is not for (1) [1961] 1 S. C. R. 1, 9.

the High Court, or even this Court, to substitute its own discretion for. that of the Magistrate or to examine the case on merits with view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under s. 202 of the Code of Criminal Procedure which culminates into an order under s. 2042 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

> (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case

against the accused or the complaint does net disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

Applying these principles to the facts of facts present case it seems to US that the present case is not one in which the High Court should have quashed the proceedings. To begin with, the order of the Magistrate dated February 11, 1975 issuing process against respondents 1 and `2 is a very well reasoned one which takes into consideration the allegations in the complaint as also the evidence adduced in support of it. The Magistrate clearly applied his mind and has analysed the evidence into three categories-(1) those witnesses who have deposed as eye witnesses regarding the actual occurrence and the part attributed to respondents 1 and 2. The Magistrate then refers to other witnesses who corroborated the evidence of the complainant, and thirdly the Magistrate relied on the evidence of witnesses who were admittedly signatories to the dying declaration and had clearly stated on oath that the names of respondents 1 and 2 were mentioned in their presence by the deceased but were not recorded by the Police Patel in the dying declaration and in spite of the protest by the witnesses they were made to sign the dying declaration as attesting witnesses under threat and duress. On a consideration of this evidence the Magistrate was satis-

fied that a prima facie case against respondents 1 and 2 was made out and he accordingly issued process against them. It was not a case where the Magistrate had passed an order issuing process In a mechanical manner or just by way of routine. The High Court appears to have gone into the whole history of the case, examined the merits of the evidence, the contradictions and what it called the improbabilities and after a detailed discussion not only of the materials produced before the Magistrate but also of the document which had been filed by the defence and which should not have been looked into at the stage when the matter was pending under s. 202, has held that the order of the Magistrate was illegal and was fit to be quashed. In the first place the High Court ought not to have considered the document filed by respondents 1 and 2 in the previous revision without obtaining the permission of the Court and` particularly when the High Court itself gave no directions whatsoever to the Magistrate to consider those documents. In fact the Magistrate considering the question as to whether process should be issued against the accused or not cannot be into the materials placed by the accused and therefore the High Court could not have given any

such directions while disposing of the previous, revision. The impugned order of the High Court proceeds on the basis that it was incumbent on the Magistrate to have considered the documents and their effect on the truth or falsehood of the allegations made by the complainant. This was an entirely wrong approach As we arc clearly of the opinion that the Magistrate was fully justified in completely excluding the documents from consideration, we refrain from making any observation regarding the, effect of those documents. In fact the documents filed by the respondents were mere copies and they were, therefore, not admissible. At any rate, at the stage of s. 202, or s. 204 of the Code of Criminal Procedure as the accused had no locus standi the Magistrate had absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused who could be present only to watch the proceedings and not to participate in them. Indeed if the documents or the evidence produced by the accused is allowed to be taken by the Magistrate then an inquiry under s. 202 would have to be converted into a full dress trial defeating the very object for which this section has been engrafted he High Court in quashing the order of the Magistrate completely failed. to consider the limited scope of an inquiry under s. 202. Having gone through the order of the Magistrate we do not find any error or law committed by him. The Magistrate was exercises' his discretion and has given cogent reasons for his conclusion. Whether the reasons were, good or bad, sufficient or insufficient, is not a matter which could have been examined by the High Court ill revision. We are constrained to observe that the High Court went out of its way write a laboured judgment highlighting certain aspect of the case of the accused as appearing from the documents filed 'of them which they were not entitled to file and which were not entitled in law to be considered.

For these reasons, therefore, we arc satisfied that the order of the High Court suffers from a serious legal infirmity and the High Court 11-833 SCI/76 has exceeded its jurisdiction in interfering in revision by quashing the order of the Magistrate. We, therefore, allow the appeal, set aside the order of the High Court dated December 16, 1975 and restore the order of the Magistrate issuing process against respondents 1 and 2.

At the time of granting the special leave, we has directed the Sessions Judge who was trying the original case resulting from the F.I.R. lodged before the police to stay proceedings to the extent that the judgment was not to be pronounced until this appeal was disposed of. We understand that the Sessions case is now concluded before the learned Sessions Judge and arguments have also been heard. 1 view of the order of the Magistrate issuing process against respondents 1 and 2 which has been confirmed by us, the respondents will have to face a supplementary trial and it is not conducive in the interests of justice to allow the other trial to be stayed any further. The Sessions Judge is therefore directed to dispose of the Sessions Case and the stay granted by this Court earlier is Vacated.

Appeal allowed.