

CASE NO.:
Appeal (crl.) 245 of 2008

PETITIONER:
Subrayappa

RESPONDENT:
D. Palakshaiah

DATE OF JUDGMENT: 01/02/2008

BENCH:
CJI K. G. Balakrishnan & R. V. Raveendran

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO.245 OF 2008
(@ SPECIAL LEAVE PETITION (CRL.) NO. 1447 OF 2005)

Delay condoned. Leave granted. Though notice has been served on respondents 2 to 4, they have not chosen to enter appearance and contest these proceedings. Heard the counsel for appellant and first respondent.

2. The Appellant herein, who was the complainant, filed a private complaint against Respondents 1 to 4 herein (Accused Nos. 1, 2, 4 & 5) and Accused No. 3 who is stated to have died during the pendency of the proceedings. The complainant alleged that the accused 2 to 5 who were police constables came to his house, assaulted his wife and neighbours and damaged the household articles; and that when he went to the police station

to lodge a complaint, the Sub-Inspector (Accused No.1) assaulted him and subjected him to illegal detention. The learned Magistrate took cognizance and directed registration of a case against accused for offences punishable under section 448, 427, 341, 342, 354, 506(B) read with 34 IPC and ordered issue of summons.

3. The first accused (D. Palakshiah) filed an application under section 482 of the Criminal Procedure Code before the High Court to quash the proceedings on the ground that he was a public servant and the Magistrate was not justified in taking cognizance of the offences alleged against him as there was no sanction to prosecute him. His plea was accepted by the High Court. The High Court, instead of quashing the proceedings as against the first respondent herein, quashed the entire proceedings pending before the JMFC, Neelamangala, by the impugned order dated 6.9.2004.

4. The contention of the appellant is that as Respondents 2 to 4 did not challenge the proceedings before JMFC and only the first accused approached the High Court, the High Court ought to have quashed the proceedings only in regard to first accused and not against all the accused.

5. The offence alleged against Accused Nos. 2, 4 and 5 is different from the offence alleged against Accused No.1. Accused Nos. 2, 4 and 5 did not challenge the proceedings on the ground of want of sanction. Therefore, High Court ought not to have quashed the entire proceedings.

6. In the result, we set aside the judgment of the learned Single Judge in

so far as Accused Nos. 2, 4 and 5 are concerned. The appellant-complainant would be at liberty to proceed with the case against Accused Nos.2, 4 and 5 and the learned Magistrate may proceed in the matter in accordance with law. Appeal is disposed of accordingly.

JUDIS