

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.255 Of 2015

Lakshmipathy

.. Petitioner

Vs

1. Vengayan

2. Kumar

Inspector of Police (Law and Order) (then),
Vellore South Police Station,
Vellore - 632 001.

3. Kannan,

Asst. Egnineer, TNEB,
Sainadhpuram,
Vellore - 632 001

.. Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order of the Judicial Magistrate No.1 made in CMP No.1848 of 2013 dated 09.05.2014 and remand back the case.

For Petitioner : Mr.G.Vinod Kumar

For Respondents: Mr.P.Govindarajan (for R2)
Additional Public Prosecutor.
Mr.V.Viswanathan (for R3)
Standing Counsel, TNEB

O R D E R

Being aggrieved by the order made in CMP No.1848 of 2013 dated 09.05.2014 on the file of the learned Judicial Magistrate No.I, Vellore, the present criminal revision case, is filed.

2. Material on record discloses that a complaint has been filed on the file of the learned Judicial Magistrate No.I, Vellore alleging that private respondent No.1 and the official respondent Nos.2 and 3 viz., the then Inspector of Police, Law & Order, Vellore South Police Station, Vellore and the then Assistant Engineer, Tamilnadu Electricity Board, Maintenance Division, Sainadhpuram, Vellore, respectively, impleaded in their individual capacity, have committed offences under Sections 22, 202, 285 r/w Section 34 of the Indian Penal Code.

3. As per the averments made in the private complaint, Respondent No.1, was a tenant in commercial complex owned by the complainant. Tenancy was in respect of a AC Mechanic shop. On 27.01.2014, there was a fire accident in the shop. According to the petitioner, the tenant had kept hazardous substances in the rented premises without permission from the competent authority. He had a gas cylinder in the commercial complex and used the same, which according to the petitioner is an offence under Section 285 IPC.

4. Petitioner/complainant has further submitted that though a case in Cr.No.58 of 2014 was registered on his report against Respondent No.1, under Section 285 IPC on the file of the Vellore South Police Station and when the petitioner approached Mr.Kumar, the then Inspector of Police, Law & Order, Vellore South Police Station, Vellore, to make a visit to the site.

5. Petitioner in his complaint has further alleged that on account of the failure of the Inspector of Police, in taking immediate steps, in visiting the shop, and taking up further investigation, evidence for commission of the offence under Section 285 IPC by Respondent No.1, has been erased. As against Respondent No.3, Mr.Kannan, the then Assistant Engineer, Tamilnadu Electricity Board, Sainadhpuram, Vellore, in the complaint, the petitioner has alleged that he has failed to take adequate precautionary measures and also inspect the site. He had also provided service connection even after the fire accident. Thus, he had alleged inaction on the part of the official respondents, impleaded in their individual capacity and also alleged that there was an excess of executive power. He has also alleged that Respondent Nos.2 and 3 have not conducted proper investigation into the crime registered against Respondent No.1, under section 285 IPC.

6. Material on record discloses that complaint has been taken on file and sworn statement of the petitioner has been recorded. The learned Judicial Magistrate No.I, Vellore, after considering the averments, made in the affidavit, documents and the sworn statement found that the evidence has been adduced by the petitioner was not sufficient to make out a case under Section 285 IPC against Respondent No.1. When the private complaint was adjudged, Court below has taken note of an indisputable fact that on the report of the petitioner, a police case in Cr.No.58 of 2014 under Section 285 IPC had already been registered and pending investigation.

7. Having regard to Article 22 of the Constitution of India, the Court below, by observing that when a case in Cr.No.58 of 2014 under Section 285 IPC was pending investigation by the police, in the interest of justice, it would be inappropriate to take cognizance of the very same offence under Section 190 Cr.P.C. As regards the allegations against Mr.Kumar, then Inspector of Police, Law & Order, Vellore South Police Station, Vellore, the Court below after

considering the averments made in the complaint and the documents, found that the said police officer, had already registered a complaint in Cr.No.58 of 2045 under Section 285 IPC and on the alleged inaction, on the part of the said police, the Court below has held that the same has not been substantiated. Taking note of the offence under Section 166 IPC, Court below has also held that merely because the then then Inspector of Police, Law & Order, Vellore South Police Station, Vellore, had not visited the place of occurrence, that would not constitute an offence. At this juncture, this Court deems it fit to incorporate Section 166 IPC.

"166. Public servant disobeying law, with intent to cause injury to any person:

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

8. In so far as Mr.Kannan, the then Assistant Engineer, Tamilnadu Electricity Board, Maintenance Division, Sainadhpuram, Vellore,- Respondent No.3, is concerned, it is the grievance of the petitioner that despite his objections to the said officer, he has permitted the tenant/respondent No.1 to have a new electricity service connection, Court below, on the indisputable fact that the Respondent No.1 was a tenant of the complainant, has observed that when the tenant had submitted an application for change of electricity meter, it is the duty of the official of the Board, to consider and change the meter, if there is a requirement. So saying, the Court below has further observed that Respondent No.3, had only discharged his duties and for the said a Act, complaint filed to prosecute him, is inappropriate. Finally, when Cr.NO.58 of 2014, under Section 285 IPC registered against Respondent No.1/tenant was pending investigation, in the interest of justice, by observing that no prima facie was made out, the Court below has dismissed the private complaint filed under Section 200 Cr.P.C.

9. Material on record discloses that subsequent to the passing of the order in CMP No.1848 of 2013 dated 09.05.2014, Cr.No.58 of 2014 registered under Section 285 IPC against Respondent No.1 on the file of Vellore South Police Station, Vellore, has been closed as 'Mistake of Fact'.

10. Though, Mr.G.Vinod Kumar, learned counsel for the petitioner, assailed the correctness of the order made in CMP No.1848 of 2013 dated 09.05.2014 on the file of learned Judicial Magistrate No.I, Vellore, that the Court below has failed to consider that due to the inaction on the part of the official respondents impleaded in

their individual capacity in the private complaint, an offence under Section 202 IPC, has been committed by 1st respondent, this Court is not inclined to accept the said contention.

11. At this juncture, it is also worthwhile to incorporate Section 202 IPC, which deals with intentional omission to give information of offence by person bound to inform, and the same is extracted hereunder:

"Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

12. Offence under Section 34 IPC, is acts done by several persons in furtherance of common intention, which reads that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. Material on record discloses that the purpose of impleading Mr.Kumar, then Inspector of Police, Law & Order, Vellore South Police Station, Vellore and Mr.Kannan, the then Assistant Engineer, Tamilnadu Electricity Board, Maintenance Division, Sainadhpuram, Vellore, as respondents in the private complaint is to make them punishable under Section 34 IPC, read with the other provisions, as if, there was a common intention by them to commit offences.

13. As stated supra, information of the offence under Section alleged to have been committed by Respondent No.1, had already been given to the complainant and on that basis, a case in Cr.No.58 of 2014, under Section 285 IPC had already been registered and was pending investigation as on the date of passing of the orders in CMP No.1848 of 2013 on the file of the learned Judicial Magistrate No.I, Vellore.

14. Reading of the complaint also discloses that the allegations made against the respondents 2 and 3 is that they were not diligent, neglected in the discharge of their duties in visiting the site, after the fire accident. Complaint does not disclose any common intention, which is the requirement under Section 34 IPC.

15. Negligence or inaction or proper diligence expected on the part of Respondents No.2 and 3, cannot at any stretch of imagination be brought under the definition of a common intention for commission of an offence by the respondent No.1, against whom a case in Cr.No.58 of 2014 under Section 285 IPC had already been registered and pending investigation

16. Going through the impugned order, this Court is of the view that no manifest illegality has been committed by the learned Judicial Magistrate No.I, Vellore, in dismissing the private complaint. As stated supra, subsequently on investigation Cr.No.58 of 2014 registered under Section 285 IPC against Respondent No.1, has also been closed as mistake of fact, if for any reason, the petitioner is aggrieved, it is always open to the petitioner to take recourse under the Code of Criminal Procedure against the final report in closing the crime as 'mistake of fact'. The Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I, Vellore.
2. The Public Prosecutor, High Court, Madras
3. The Inspector of Police (Law and Order) (then),
Vellore South Police Station,
Vellore - 632 001.

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MP (CO)

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