IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.10.2015

Pronounced on : 27-11-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 289 of 2015

1. C.K. Rajappa
2. C.K. Krishnamurthy
3. R. Mohan

Petitioners 1 to 3 are having
office at New No.78, Old No.30
53rd Street, Ashok Nagar
Chennai - 600 083 ... Petitioners

Versus

1. M. Ganesan

2. The State
represented by the
Inspector of Police
Central Crime Branch
E.D.F.-2, Team III
Vepery, Chennai - 600 007 ... Respondents

Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. to set aside the order dated 25.03.2015 passed in Crl.M.P. No. 6375 of 2014 on the file of XI Metropolitan Magistrate, Saidapet, Chennai

For Petitioners : Mr.N.Murali Kumaran for M/s. McGan Law Firm

For Respondents : Mr. M. Mohammed Rafi for R1

Mr. V. Arul, Government Advocate (Crl.side) for R2

ORDER

The first respondent herein has filed a Complaint under Section 190 (1) (a) of the Code of Criminal Procedure Code before the trial Court in Crl.M.P. No. 6375 of 2014 praying to direct the second respondent herein to register a first information report against the revision petitioners herein for the offence under Section 417, 485, 487, 468 and 471 of IPC. The said application was allowed by the Court below on 25.03.2015 directing the Deputy Commissioner of Police to depute an Inspector of Police to register a first information report, carry out investigation thereof and to file a final report before the Court below. Aggrieved by the said order dated 25.03.2015 of the Court below, the present Criminal Revision Case is filed by the revision petitioners.

2. The facts of the case which culminated in the order dated 25.03.2015 passed by the Court below is that earlier, the first respondent approached the revision petitioners by representing that he is having lot of contacts with the government officials and he will be in a position to obtain a lifting contract to the first revision petitioner herein. To this effect, a memorandum of understanding dated 01.08.2011 came to be executed between the first respondent and the first revision petitioner herein and on execution of the same, the first revision petitioner herein paid a sum of Rs.3 crores to the first respondent herein initially out of Rs.10 crores agreed to be paid by the first revision petitioner. However, the first respondent could not get through the contract, as promised. Therefore, the first respondent decided to repay the amount of Rs.3 crores received by him. However, the first respondent came to know that the revision petitioners herein have entered into a criminal conspiracy and forged his signature to make it as if the first respondent received an additional amount of Rs.7 crores. In this connection, the first respondent has given a complaint dated 07.08.2014 to the Commissioner of Police, Chennai praying to register a first information report against the revision petitioners for the offences punishable under Section 406, 420 and 506 (ii) of IPC. On receipt of the complaint dated 07.08.2014, the Inspector of Police, Central Crime Branch sent a reply dated 22.09.2014 to the first respondent herein stating that already a case in Crime No.247 of 2014 was registered in connection with the very same transaction and therefore, the complaint given by the first respondent will also be investigated at the time of causing investigation in Crime No. 247 of 2014. Aggrieved by the same, the first respondent has filed the complaint under Section 190 (1) (a) of Criminal Procedure Code in which the order dated 25.03.2015 was passed by the Court below.

3. The learned counsel for the revision petitioners would contend that the complaint dated 07.08.2014 given by the first respondent is not maintainable inasmuch as already a case in Crime No.247 of 2014 was registered against the first respondent herein, his son and wife at the instance of first revision petitioner herein. Pursuant to registration of the case, the first respondent and his son were arrested and remanded to judicial custody and thereafter, they were let off on bail. Aggrieved by the same, as a counter-blast to the registration of the case in Crime No. 247 of 2014, the present complaint has been filed by the first respondent herein before the Court below. The Court below, without taking note of the fact that already a case in Crime No. 247 of 2014 has been registered in connection with the same transaction, directed the Deputy Commissioner of Police to depute an Inspector of Police to register a first information report on the basis of the complaint given by the first respondent herein, which is legally not sustainable. According to the counsel for the revision petitioners, the case in Crime No. 247 of 2014 came to be registered on a specific complaint that the first respondent herein has obtained an additional sum of Rs.7 crores in cash from the revision petitioners and this amount was not repaid by the first respondent herein. The first respondent, on being released on bail, has issued four cheques and also gave 4 promisory notes in the presence of his counsel towards part payment and assured that the cheques will be honoured. However, contrary to the same, the cheques were returned for want of funds. In fact, the wife of the first respondent herein has filed Crl.OP No. 29669 of 2014 before this Court to quash the first information report registered in Crime No. 247 of 2014, but it was dismissed on 10.11.2014. At any rate, the directions given by the court below to register a fresh first information report on the basis of the complaint given by the first respondent is unwarranted and he prayed for setting aside the order passed by the Court below.

4. The learned counsel for the revision petitioners placed reliance on the decision of the Honourable Supreme Court in the case of (Dharmeshbhai Vasudevbhai and others vs. State of Gujarat and others) (2009) 6 SCC 576 for the proposition that the powers of the Magistrate to issue direction under Section 156 (3) of Cr.P.C. are limited and he has no inherent powers. The Magistrate can exercise his powers on two situation (i) when first information report is refused to be registered and (ii) when statutory power of investigation for some reason or the other is not exercised. Relying on this decision, the learned counsel for the petitioners contend that when once a first information report is registered in respect of a particular transaction, the registration of a second first

information report on the same cause of action is legally not permissible.

5. The learned counsel for the revision petitioners also relied on the decision in (Gangadhar Janardan Mhatre vs. State of Maharashtra and others) (2004) 7 Supreme Court Cases 768 to contend that the Magistrate is entitled to take cognisance even if the police report is to the effect that no case is made out against the accused. However, such power has to be resorted to sparingly and to sub-serve the interest of justice. In the present case,the court below failed to take note of the fact that already a case was registered in Crime No. 247 of 2014 at the instance of the first revision petitioner herein in connection with the very same transaction between the parties and therefore, issuing direction to register another first information report is legally impermissible.

6. Reliance was also placed on the decision of the Honourable Supreme Court in the case of (Anju Chaudhary vs. State of Uttar Pradesh and another) (2013) 8 Supreme Court Cases 384 to contend that 2nd first information report in respect of same offence or incident forming part of same transaction as contained in the first FIR is legally impermissible.

7. Contra, the learned counsel for the first respondent would contend that in the complaint given by the first respondent, it was specifically stated that the first respondent had only received Rs.3 crores and therefore, the receipts for having received another sum of Rs.7 crores is forged, fabricated and bogus. This has to be enquired independently by the investigation officer without being carried away by the case registered in Crime No. 247 of 2014. In such circumstances, the complaint given by him has to be investigated with reference to the forgery and fabrication of record to cheat the first respondent herein. The complaint given by the first respondent cannot be said to be a case in counter and the matter has to be independently investigated by an investigation officer. The original receipts which are in the custody of the first respondent has to be sent to forensic sciences expert to prove whether it was really signed by the first respondent or not. The report received from the forensic experts by the revision petitioner on their own would clearly indicate that only the photocopy of the receipt was produced for their perusal and it will not reveal the correct status. Even as per the decision of the Honourable Supreme Court in the case of (Anju Chaudhary vs. State of Uttar Pradesh and another) (2013) 8 Supreme Court Cases 384 relied on by the counsel for the petitioners, it is clearly stated that once it is found that there are two different and distinct offences committed by

different persons and there was no commonality of transaction between the two, registration of a 2nd first information report is permissible.

8. The learned counsel for the first respondent also relied on the decision in the case of (S. Jayakumar vs. Baskaran and others) (2014) 4 MLJ (Crl) 589 relied on by the trial Court to contend that when once a direction is issued by the Magistrate in exercise of powers under Section 156 (3) ofCr.P.C. after arriving at a subjective satisfaction that there exists an element of certain cognisable offence and it has to be investigated, the police have no choice except to register a case under Section 154 of Cr.P.C. and the police cannot refuse to register a case. The Court below also placed reliance on the decision in the case of (Vetri Medical Agency vs. State, rep. by Inspector of Police, T-3, Korattur Police Station, Chennai - 600 050((2014) 1 MLJ Criminal 39 to conclude that if the complaint discloses a cognisable offence, first information report has to be registered. After arriving at such a subjective satisfaction, the Court below issued the direction to register a fresh case. Therefore, the learned counsel for the first respondent would pray for dismissing the present Criminal Revision Case.

9. The learned Government Advocate (Crl.side) appearing for the second respondent would contend that the second respondent has already registered a case in Crime No. 247 of 2014 in which investigation is being conducted. The complaint of the first respondent will also be investigated during the course of investigation in Crime No. 247 of 2014. However, if any specific direction is issued by this Court, the second respondent will abide by such direction that may be issued by this Court.

10. I heard the counsel on either side and perused the materials placed on record. The complainant/first respondent herein would specifically complain that he never received additional sum of Rs.7 crores from the revision petitioners herein and such amount is being claimed by them on the basis of forged and fabricated receipts alleged to have been signed by him. In connection with the conspiracy on the part of the revision petitioners in allegedly creating and fabricating forged receipts as though the first respondent/complainant had received Rs.7 crores from them additionally in cash, he seeks for an investigation to be conducted dehors the registration of the case in Crime No. 247 of 2014 at the instance of the first revision petitioner herein. According to the first respondent, a separate complaint has to be registered and investigated especially to obtain the report from the forensic sciences expert to conclude whether the complainant/first respondent

herein has signed such receipts for having received Rs.7 crores or not. The signatures found in the fabricated document is clearly different from that of the admitted signatures and the difference is visible. Further, it is not enough if the signature is compared and verified, but the details with regard to the stamp paper needs to be investigated. Therefore, the first respondent seeks for registration of a separate first information report against the revision petitioners herein and to carry out appropriate investigation thereof.

11. It is seen from the records that the case registered in Crime No. 247 of 2014 at the instance of the first revision petitioner herein has nothing to do with the complaint given by the first respondent herein. The complaint given by the first respondent is not a case in counter. Even in respect of the same occurrence, if the parties to the case are aggrieved by certain action of the other which warrants a separate investigation, it can be treated as a case and counter and investigation can be separately done. In this complaint given by the first respondent, he seeks to investigate as to whether his signatures in the receipts for having allegedly received Rs.7 crores are genuine or not through a scientific process. In other words, it has to be investigated as to whether the receipts allegedly issued by the first respondent herein are forged and fabricated one. For such investigation, the trial Court has rightly directed the Deputy Commissioner of Police to appoint an Inspector of Police to investigate the complaint given by the first respondent dehors the case in Crime No. 247 of 2014.

12. On a reading of the decision of the Honourable Supreme Court in the case of (Anju Chaudhary vs. State of Uttar Pradesh and another) (2013) 8 Supreme Court Cases 384 it is evident that registering two first information reports having regard to the nature of the transaction is legally permissible. In Para No. 43 to 45 of this decision, the Honourable Supreme Court held as follows:-

> "43. It is true that law recognises common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straightjacket formula, but this question has to be answered on the facts of each case. This Court in Mohan Baitha vs. State of Bihar (Scc.pp 534-55, para-4) held that the expression "same transaction" from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in

the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.

44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case, indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances. It will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all these persons involved can be accused of the same or different offences "committed in the course of the same transaction".

13. An argument was raised on behalf of the revision petitioners that already, the wife of the first respondent herein has filed Criminal Original Petition No. 29669 of 2014 to direct the second respondent police to register a first information report on the basis of the complaint given by her on 07.08.2014 against the revision petitioners herein and to take necessary action against them. The said Original Petition was dismissed by this Court on10.11.2014 with liberty to the petitioner therein to work out her remedy in a manner known to law. Thereafter, the wife of the first respondent herein has filed Crl.OP No. 17074 of 2014 before this Court for a direction to the respondent police to register a case on the basis of her complaint dated 07.08.2014, to investigate the case and to file a final report before the appropriate Court. By an order dated 09.07.2015, this Court observed that the respondent police have conducted an enquiry in her comploaint

and closed the same on 09.10.2014. Therefore, while recording the same, this Court, while disposing of the Criminal Original Petition, gave liberty to the petitioner therein to work out her remedy in a manner known to law. When it was brought to the notice of this Court that a letter dated 29.04.2014 received from the Treasury Officer, Purasawalkam which says that the stamp paper in question in Crime No. 247 of 2014 was issued on a particular date, this Court directed the respondent to take in to account the letter dated 29.04.2015 at the time of investigation in Crime No. 247 of 2014.

14. In the present complaint given by the first respondent herein, the very receipt said to have been given by him to show that he has received an additional sum of Rs.7 crores is sought to be investigated. The trial court also, having regard to the above facts, rightly directed the Deputy Commissioner of Police to nominate an Inspector to register a first information report on the basis of the complaint given by the first respondent herein, carry out appropriate investigation and to file a final report before the Court. The trial Court, in exercise of power conferred under Section 158 of the Code of Criminal Procedure, after arriving at a subjective satisfaction, issued such direction to the respondent police to register a fresh case. In this context, the trial court placed reliance on the decision rendered in (S. Jeyakumar vs. Baskaran and others) (2014) 4 MLJ (Crl) 589 wherein it was held as follows:-

> "Once a direction is issued under Section 156 (3) Cr.P.C., the police, have no choice except to register a case under Section 154 Cr.P.C. Police cannot refuse to register a case.
>
> The said direction has been issued by the learned Magistrate, after having satisfied that the complaint discloses commission of cognisable offences"
>
> "In the Scheme of administration of Criminal justice devised under the Code of Criminal Procedure, a whip has been given to the Magistrate to control the police at every stage of investigation. At the stage of submitting copy of the F.I.R. and submitting of statements under 161 Cr.P.C. and every recovered item without delay must be produced to the Magistrate. It is intended to have a check on the police work and prevent possibility of interpolation and concoction. There should be somebody to have a whip to control them. That is why these provisions have been embodied in the Code of Criminal Procedure Code."

15. Further, in the decision of this Court rendered in (Vetri Medical Agency vs. State, represented by Inspector of Police, T-3, Kundrathur Police Station, Chennai - 600 080) (2014) 1 MLJ (Crl) 39 it was held as follows:-

> "If the information received does not disclose a cognisable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognisable offence is disclosed or not."
>
> "If the inquiry discloses the commission of a cognisable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further."
>
> "The Police Officer cannot avoid his duty of registering offences if cognisable offence is disclosed. Action must be taken against erring officials who do not register the FIR if information received by him discloses a cognisable offence."
>
> "The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognisable offence."
>
> "While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the cause of it must be reflected in the General Diary entry."

16. The Honourable Supreme Court inthe case of (Lalitha Kumar vs. Government of Uttar Pradesh and others) (2013) 4 MLJ (Crl) 579 held as follows:-

> "they may move the concerned Magistrates by filing complaint petitions to give direction to the police to register case immediately upon receipt/production of copy of the orders and make over copy of the F.I.R.s to the complainants, within twenty four hours of receipt/production of copy of such orders. It may further give direction to take immediate steps for apprehending the accused persons and recovery of kidnapped/abducted persons and properties which were subject matter of theft or dacoity. In case F.I.R.s are not registered within the aforementioned time, and for aforementioned steps are not taken by the police, the concerned

> Magistrate would be justified in initiating contempt proceeding against such deliquent officers and punish them for violation of its orders if no sufficient cause is shown and awarding stringent punishments like sentence of imprisonment against them in as much as the Disciplinary Authority would be quite justified in initiating departmental proceeding and suspending them in contemplation of the same.

17. A cumulative reading of all these decisions would indicate that the Magistrate is empowered to issue appropriate direction to conduct investigation into a complaint if it is satisfied that there exist an element of prima facie case for issuing such direction. In the present case, for issuing appropriate direction to the police, the trial Court has come to a categorical conclusion that the complaint given by the first respondent has to be investigated independently dehors the registration of the case in Crime No. 247 of 2014 at the instance of the revision petitioners herein. The trial court, after appreciating the nature of the complaint given by the first respondent herein has come to a specific conclusion that such complaint given by the first respondent has to be investigated separately. Therefore, the trial court concluded that the summary refusal on the part of the investigation officer to cause investigation in to the complaint given by the first respondent is not proper. As rightly pointed out by the trial court, even though the complaint given by the first respondent herein appears to be one and the same as that of the case registered in Crime No. 247 of 2014, the very dispute relating to payment of additional Rs.7 crores, as alleged by the first respondent herein, requires to be examined separately especially when he admits that he has received only Rs.3 crores and it was repaid by him. The trial court also concluded that a major portion of the amount was made in cash for which original receipts itself has not been produced or investigated into. Even though the investigation carried on in the case in Crime No. 247 of 2014 appears to be a part and parcel of one and the same transaction, yet, the complaint given by the first respondent herein is distinct and the allegations made therein stands in a different footing. In such circumstance, the trial court is justified in issuing the direction to the Deputy Commissioner of Police to depute an Inspector of Police to register a first information report on the basis of the complaint given by the first respondent herein, to carry out investigation thereof and to file a final report before it. Such an order passed by the trial court is well founded and I do not find any reason to interfere with the same.

18. In the result, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The XI Metropolitan Magistrate
Saidapet, Chennai

2.-do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai.

3.The Inspector of Police
Central Crime Branch
E.D.F.-2, Team III
Vepery, Chennai - 600 007

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M/s. McGan Law Firm, Advocate, S.R.No.64839
+1cc to Mr.M. Mohammed Rafi, Advocate, S.R.No.64806

Crl RC No. 289 of 2015

KSJ(CO)
CA(14/12/2015)