

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No.360 of 2015

P. Ayyappan

.. Petitioner

Versus

1. The Inspector of Police
T-14, Mangadu Police Station

2. The Sub-Inspector of Police
T-14, Mangadu Police Station

.. Respondents

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure praying to call for the records pertaining to Crl.M.P. No. 572 of 2015 on the file of District Munsif cum Judicial Magistrate Court, Sriperumbudur and to pass orders in the interest of justice allowing the above petition/complaint as prayed for by setting aside the order dated 30.03.2015 passed by the District Munsif cum Judicial Magistrate Court, Sriperumbudur in Crl.M.P. No. 572 of 2015.

For Petitioner : Mr. S. Diwakar

For respondents : Mr. V. Arul

Government Advocate (Crl.side)

ORDER

The petitioner has come forward with this Criminal Revision Case aggrieved by the order dated 30.03.2015 passed by the learned District Munsif cum Judicial Magistrate Court, Sriperumbudur in Crl.M.P. No. 572 of 2015. By the said order dated 30.03.2015, the private complaint filed by the petitioner was dismissed on the ground that the petitioner has not made out a prima facie case to take cognisance of the offence complained of.

2. According to the revision petitioner/defacto complainant, he is the owner of the property - a vacant land measuring 898 square feet comprised in Survey No.161 in Kundrathur Main Road, Gerugambakkam, Chennai- 600 122, which was purchased by his father late. Parthasarathy by means of a registered sale deed during the year 1996. From the date of such purchase, the father of the petitioner was in possession and enjoyment of the aforesaid vacant land and after the demise of his father, the petitioner continued to peacefully possess and enjoy the said land. While so, on 09.08.2013 one Kalaimani @ Venugopal along with his henchmen have dismantled the hut put up by the petitioner in the aforesaid land and when it was questioned, they threatened the petitioner with dire consequences by stating that if the petitioner continued to reside there, he will be done to death. In this connection, the petitioner has given a complaint dated 09.08.2013 to

the second respondent for which a receipt in CSR No. 1079 of 2013 was issued to him. However, the respondents did not take any action on the basis of such complaint dated 09.08.2013. Thereafter, on 16.03.2015, one Naresh, Son of Kanagasabai along with his henchmen alleged to have trespassed in to the land owned by the petitioner and attempted to put up or erect a temporary shed. For such purpose, the said Naresh and his henchmen have allegedly unloaded construction materials in the land, erected a temporary shed where watermelon have been stored. When it was questioned by the petitioner, they have stated that they will run a shop only in that place and threatened the petitioner with dire consequences. In this context, the petitioner has given a complaint dated 16.03.2015 to the second respondent for which a receipt in CSR No.1397/2015 was given. However, according to the petitioner, the respondents have not taken any action on the basis of his complaint, therefore, he has given a complaint dated 17.03.2015 to the Assistant Commissioner of Police, who in turn forwarded the complaint to the respondents and directed them to cause necessary investigation thereof. According to the petitioner, despite such direction given by the Assistant Commissioner of Police, the respondents have failed and neglected to take any action on the complaint given by him or registered a first information report on the basis of his complaint. Therefore, the petitioner has filed the private complaint before the trial Court on 19.03.2015 against the respondents herein. Such private complaint was filed purportedly under Section 200 of Cr.P.C. read with Section 156 (3) of Cr.P.C. with a specific prayer to direct the respondents to register a first information report on the basis of the complaint dated 16.03.2015. According to the petitioner, the respondents did not take any action on the basis of his complaint dated 16.03.2015 despite issuing a CSR receipt on 16.03.2015 which necessiated him to file the private complaint.

3. The learned counsel for the petitioner would contend that the trial court erred in dismissing the private complaint filed by the petitioner without proper appreciation of the facts of the case. According to the counsel for the petitioner, when the petitioner was examined on oath, it amounts to taking cognisance of the complaint and thereafter, the trial court is bound to follow the procedure contemplated under Section 202 of Cr.P.C. The scope of enquiry under Section 202 of Cr.P.C. is only limited for the purpose of finding out whether a prima facie case is made out or not and the lower Court ought not to have conducted a detailed enquiry thereby it caused injustice to the petitioner. The trial Court failed to place reliance on the material evidence produced by the petitioner while dismissing the private complaint. Therefore, the learned counsel appearing for the petitioner prayed for allowing this Criminal Revision Cse.

4. The learned Government Advocate (Criminal side) would contend that the revision itself is not maintainable for the simple reason that the petitioner did not implead the person against whom he has given the complaint dated 16.03.2015. When the petitioner has categorically named the person who committed the alleged trespass as Naresh, son of Kanagasabai, he ought to have instituted the private complaint only against the said person and not against the police officers. The trial court also pointed out that the petitioner, even though claims a right over the property in dispute, did not produce any document to show the nature of ownership or right over such property. In any event, the

trial court, in exercise of the powers conferred under Section 200 of Cr.P.C. has rightly refused to take cognisance of the complaint given by the petitioner and it does not call for any interference by this Court.

5. I heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) appearing for the respondents and perused the materials placed on record. It is seen from the records that the petitioner claims to be the owner of the property in question, however, he has not chosen to produce any document in support thereof. This was also rightly pointed out by the trial court at the time of dismissing the private complaint. When the petitioner claims a right over a particular property in which somebody had allegedly trespassed, he is under an obligation to produce some document to show the nature of possession, right or ownership over such property. In the present case, for the reasons best known, the petitioner did not produce any documentary evidence along with the complaint before the trial Court. In the absence of production of any material evidence nor any documentary evidence by the petitioner to show that he is in possession over the property in dispute, the trial court cannot be expected to take cognisance of the complaint.

6. It is also seen from the records that the petitioner has filed the private complaint against the respondents seeking for a direction only to register a first information report on the basis of complaint given by him and not impleaded the person named in the complaint i.e., Mr. Naresh, Son of Kanagasabai against whom the complaint dated 16.03.2015 was given by him. A perusal of the complaint dated 16.03.2015 discloses that the petitioner has specifically named the alleged trespasser in to his land namely Mr. Naresh, son of Kanagasabai. However, he has not chosen to implead him. Therefore, I am of the view that the private complaint filed by the petitioner against the respondents is not maintainable especially when the petitioner did not implead the person against whom he has given the complaint dated 16.03.2015.

7. It has to be pointed out that in connection with the alleged trespass in to the land of the petitioner by one Mr. Naresh, son of Kanagasabai on 16.03.2015, the petitioner has given a written complaint to the respondents police on the same day i.e., 16.03.2015. On receipt of the complaint, the respondents police have given a receipt for having received the complaint dated 16.03.2015. The petitioner, without waiting for some reasonable time to enable the respondents to pursue action on the basis of his complaint, has approached the Assistant Commissioner of Police the next day i.e., 17.03.2015 complaining that the respondents did not act upon his complaint dated 16.03.2015. The Assistant Commissioner of Police, in turn, directed the respondents to take up the complaint dated 16.03.2015 on file and to cause appropriate investigation thereof. Thereafter, within two days, the petitioner has rushed to the trial court and filed the private complaint on 19.03.2015 not against the person against whom the petitioner has given the complaint but as against the respondents police for not registering a first information report against the person named in the complaint dated 16.03.2015. The haste with which the petitioner has approached the trial court by filing the private complaint is not proper and he ought to have waited for some reasonable time to enable the respondents

to pursue action. The mere non-registering of first information by the respondents, therefore, will not be a ground for the petitioner to file the private complaint before the trial court under Section 200 of Cr.P.C. It is also seen from the private complaint filed by the petitioner that it was not signed by the petitioner in an affidavit form. When the petitioner has chosen to raise certain allegations against third parties, the private complaint ought to have been filed by means of a sworn affidavit and the private complaint filed as such is not acceptable as has been held by the Honourable Supreme Court in the decision rendered in (Priyanka Srivastava Versus State of Uttar Pradesh) (2015 (6) SCC 287).

8. It is seen from the order passed by the trial court that the private complaint filed by the petitioner was not taken cognisance of for three major reasons. First of all, the petitioner has not produced any documentary evidence in support of his ownership over the land in dispute. Secondly, the petitioner has not arrayed Mr. Naresh, son of Kanagasabai, against whom the complaint dated 16.03.2015 was given. Lastly, the petitioner did not produce any photograph or video evidence to show that watermelon have been stored in his property, as has been alleged in the complaint. The aforesaid reasons pointed out by the trial court for dismissing the private complaint, in my view, is legally sustainable and it does not warrant any interference by this Court.

9. The learned counsel for the petitioner relied on the decisions in the cases of (1) (Gurudas Balkrishna vs. Chief Judicial Magistrate) 1993 (II) Crimes (Bombay) (2) (Dr. S.S. Khannu vs. Chief Secretary, Patna and another) AIR 1983 Supreme Court 595 (3) (Ramesh Kumar vs. State (N.C.T. of Delhi) and others) AIR 2006 Supreme Court 1322 and (4) (Rajinder Singh Kanch vs. Chandigarh Administration and others) 2000 Criminal Law Journal 356 (P&H) to contend that as and when a complaint under Section 200 of Cr.P.C. is filed, the Magistrate is bound to issue process to the accused. The aforesaid decisions relied on by the petitioner is not applicable to the facts of this case. Even in the above said decisions, the position of law was reiterated to the effect that a private complaint, is by its character, is different from a case instituted on police report inasmuch as there is no inquiry by the police and statements recorded under Section 162 of Cr.P.C. Therefore, the Magistrate, in its judicial discretion, shall take or refuse to take cognisance of a complaint on the basis of the material evidence produced by the complainant.

10. The learned counsel for the petitioner also relied on the decision rendered by this Court in the case of (H.H. Avittam Thirumal Adithya Verma vs. Commissioner of Police, Commander-in-Chief Road, Egmore, Chennai) (2007) 1 MLJ (Crl.) 673 to contend that the police cannot refuse to register a complaint on the ground that the information furnished in the complaint are not reliable. This decision will not lend support to the case of the petitioner. In the present case, even before the respondents act upon the complaint given by the petitioner on 16.03.2015, he has rushed to the trial Court with the private complaint and therefore, there was no occasion for the respondents to treat the information furnished by the petitioner as reliable or unreliable.

11. The learned counsel for the petitioner reiterated that when the petitioner examined himself as a witness before the trial court, it amounts to taking cognizance of the complaint and thereafter, the trial court is bound to follow the procedures contemplate under Section 202 of Cr.P.C. Such a contention of the petitioner cannot be accepted. Mere examination of the petitioner will not amount to taking cognizance of the complaint. A complaint can be taken cognizance of only if a prima facie case is made out and upon satisfaction of existence of such prima facie case, summons could be issued by the Magistrate to the accused for his or her attendance. When prima facie case has not been established by the complainant, it is well open to the Magistrate to refuse to take cognizance of the case. At this stage, the Magistrate is not bound to scrupulously examine whether such prima facie case has been made out or not against the accused. What is to be seen is whether there is existence of prima facie evidence to proceed against the accused or not, the evidence that is sufficient to establish a fact or to raise a presumption of existence of fact unless controverted. In the present case, as rightly pointed out by the court below, the complainant has not produced any documentary evidence to show the existence of a prima facie case and merely because a complaint was given, in the absenc of a existence of prima facie case, the police officials cannot be directed to register a first information report against the person named in the complaint.

12. In this context, useful reference can be made to the decision of the Honourable Supreme Court reported in the case of (S.K. Sinha, Chief Enforcement Officer Vs. Videocon 14 International Ltd. and others (2008) 2 SCC 492) wherein the Honourable Supreme Court has dealt with the expression "cognizance" which reads as follows:-

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes" to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone."

20. "Taking Cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance." (para nos. 19 and 20 at page 499 of the report).

13. It is evident from the above decision that even after examining the complainant on oath, the Court can come to a conclusion, the Court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. Therefore, the argument of the counsel for the petitioner that the learned Magistrate has taken oath of the complainant and it amounts to taking cognisance of the complaint cannot be accepted.

14. Similarly, while considering the power of a Magistrate to take cognisance of a complaint, the Honourable Supreme Court in the decision reported in (M/s. India Carat Private Ltd. Vs. State of Karnataka &Anr. (1989) 2 SCC 132) laid down the following parameters, which can be usefully extracted hereunder:-

"16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer; and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused..."

15. That apart, in another decision reported in In CREF Finance Ltd. vs. Shree Shanthi Homes (P) Ltd. and Another, (2005) 7 SCC 467, the Honourable Supreme Court, in para No.10, had an occasion to deal with the power of a Magistrate while taking cognisance of the offence and it reads as follows:-

"10. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the Court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the

court may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure...."

16. In yet another decision reported in the case of Devarapally Lakshminarayana Reddy & Ors. vs. V. Narayana Reddy & others (AIR 1976 SC 1672) the Honourable Supreme Court elaborately dealt with the expression "taking cognizance" of an offence by a Magistrate within the contemplation of Section 190 Cr.P.C., and the relevant portion of the said decision can usefully be extracted hereunder:-

"...But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV to the Code of 1973, he is said to have taken cognizance of the offence within the meaning to Section 190(1)(a). It, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156 (3), he cannot be said to have taken cognizance of any offence."

17. In Narsingh Das Tapadia vs. Goverdhan Das Partani & another (AIR 2000 SC 2946), it was held by the Honourable Supreme Court that mere presentation of complaint cannot be held to mean that the Magistrate has taken the cognizance of the complaint.

18. In Subramanian Swamy vs. Manmohan Singh & Another, (2012) 3 SCC 64, the Honourable supreme Court explained the meaning of the scope and meaning of the word 'cognizance' that "...In legal parlance cognizance is taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially".

19. In S.R. SUKUMAR Versus S.SUNAAD RAGHURAM, Criminal Appeal No. 844 of 2015 (Arising out of S.L.P. (Crl.) No. 4813 of 2012) dated 2nd July 2015 the Honourable Supreme court has held as follows:-

"Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section

200 Cr.P.C., when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon facts and circumstances of the particular case.

20. From the above decisions, it is clear that a Magistrate before whom a complaint has been presented is empowered to refuse to entertain it or to take cognizance thereof for want of existence of prima facie case. Further, the complaint was not presented by the complainant with an affidavit, as has been held by the Honourable Supreme Court in (Priyanka Srivastava Versus State of Uttar Pradesh) (2015 (6)SCC 287) mentioned supra. Therefore, I am of the considered view that the learned Magistrate is right in dismissing the complaint filed by the petitioner for want of existence of prima facie case and I do not find any reason to interfere with the same. However, it is open to the petitioner to approach the trial court afresh by filing an affidavit narrating the sequence of events and by filing documentary proof relating to his possession or ownership over the land in question in accordance with the provisions contained in Section 200 of Criminal Procedure Code, if he is so advised.

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

Rsh

Sd/-

Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To

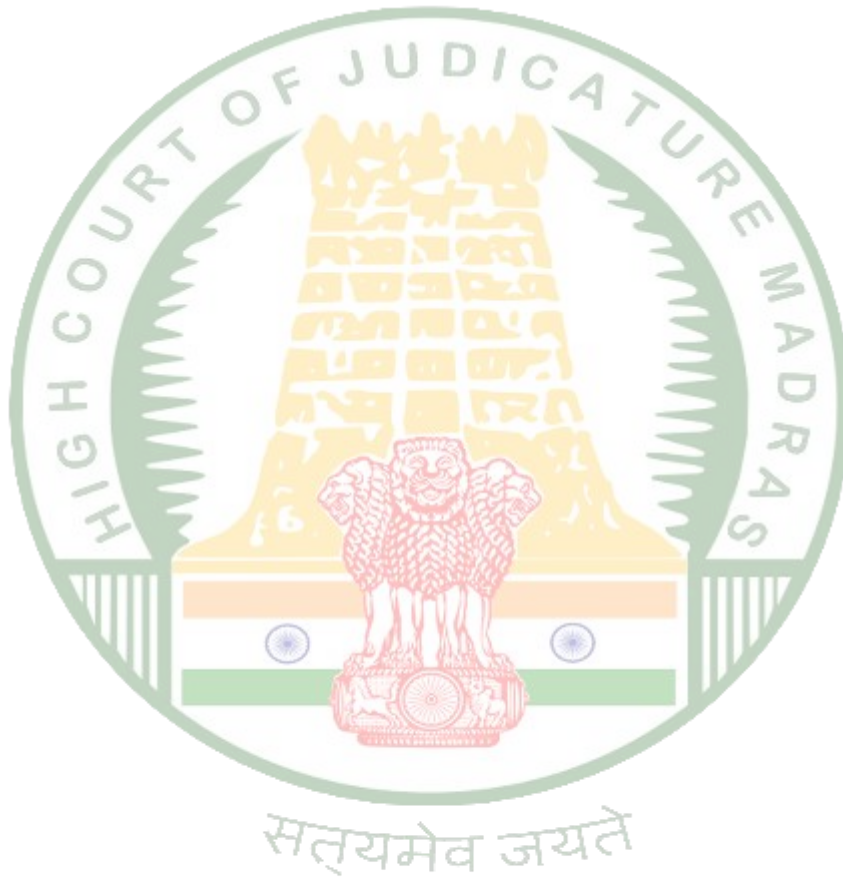
1. The District Munsif cum Judicial Magistrate,
Sriperumbadur
2. The Inspector of Police,
Mangadu Police Station,
Chennai
3. The Sub-Inspector of Police,
Mangadu Police Station,

4. The Public Prosecutor,
High Court, Madras

5. The Section Officer,
Criminal Section,
High Court, Madras

Crl.R.C.No.360 of 2015

MSM(CO)
sd: 26/10/2015



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