

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.03.2016

CORAM

THE HON'BLE MR.JUSTICE P.DEVADASS

Criminal Revision Case No.224 of 2016

P.Mani .. Petitioner
vs.
V.Ganeshkumar .. Respondent

Criminal Revision against the order dated 21.07.2014 made in C.C.No.5224 of 2013 on the filed of the learned Judicial Magistrate No.III, Coimbatore.

For petitioner : Mr.A.Ansar

ORDER

This revision arises out of dismissal of a complaint filed by the revision petitioner.

2. As between the revision petitioner and the respondent there is a money dispute. In the circumstances, the complainant/revision petitioner lodged a complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate No.III, Coimbatore, alleging that on 26.02.2013, at about 11 a.m, while he and his son Senthil Kumar were worshipping in the Pillaiyar Temple situate within the District Court Campus, Coimbatore, the accused/respondent came, abused him in filthy language and threatened him with dire consequences, if he demands money back.

3. The learned Magistrate examined the complainant and his two witnesses and recorded their sworn statement. Perusing the complaint and the said statement, the learned Magistrate dismissed the complaint on the ground that the place of occurrence is District Court Campus where many people will frequent not examining any one of the public creates doubt.

4. This revision is to revise the said order.

5. The learned counsel for the revision petitioner contended that at this stage the Magistrate has to take the allegations in the complaint and in the sworn statement of witnesses as such at their face value and see that whether prima facie it discloses any offence. Inadequacy or adequacy, weightage of the said materials will not be a relevant matter at this stage.

6. In this connection, the learned counsel cited Adalat Prasad .v. Rooplal Jindal and others '(2004 (4) CTC 608)'.

7. I have anxiously considered the submissions of the learned counsel for the petitioner, perused the allegations in the complaint and other connected materials on record and also the decision cited.

8. Now the question is whether the order of dismissal passed by the learned Magistrate suffers from any legality or impropriety.

9. Filing of a private complaint is contemplated under Section 200 Cr.P.C. It is a private prosecution. Taking of cognizance upon private complaint is provided in Section 190(1) (a) Cr.P.C. The enquiry on a private complaint whether for a warrant offence or for summons case is contemplated under Sections 200 - 202 Cr.P.C. If there is a ground to proceed further, in other words, if there is a prima facie case as to an alleged offence, then the Magistrate has to take the case on file under Section 190(1)(a) Cr.P.C., and issue summons to the accused under Section 204 Cr.P.C. If there is no prima facie case, he can dismiss the complaint under Section 203 Cr.P.C, by giving his brief reasons for so doing.

10. Now, for enquiry under Sections 200 - 202 Cr.P.C what are the materials that a Magistrate has to consider.

11. In this connection, it is opposite here to notice the following observations of the Hon'ble Supreme Court made in Adalat Prasad .v. Rooplal Jindal and others '(2004 (4) CTC 608)'.

"14. Section 202 contemplates :
postponement of issue of process: It provides that if the Magistrate on receipt of a complaint, if he thinks fit, to postpone the issuance of process against the accused and desires further inquiry into the case either by himself or directs an investigation to be made by a Police Officer or by other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, he may do so. In that process, if he thinks it fit, he may even take evidence of witnesses on oath, and after such investigation, inquiry and the report of the Police, if sought for by the Magistrate and if he finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly

the reasons for doing so as contemplated under Section 203 of the Code.

15. But after taking cognizance of the complaint and examining the complainant and the witnesses, if he is satisfied that there is sufficient ground to proceed with the complaint, he can issue process by way of summons under Section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint, hence issue the process under Section 204 of the Code. In none of these stages, the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew's case before issuance of summons, the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under Sections 200 and 202, and the only stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the Court and making an application for dismissal of the complaint under Section 203 of the Code for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 Stage."

12. Now as rightly submitted by the learned counsel, shifting of the evidence consisting of statement of the complainant and the witnesses and analysing it are a matter to be considered at the tail end of the trial. An enquiry under Sections 200- 202 Cr.P.C is contemplated to satisfy the Magistrate that there is a ground to proceed further. In other words, there is a prima facie case. At this juncture, if a

prima facie case is made out, there ends the matter. At this stage, sufficiency of the evidence to sustain the allegations nor entertaining a doubt on the case of the prosecution will not arise.

13. Now keeping the said principles in our mind, let approach the case at our hand.

14. Now in this case, as stated already Mani / revision petitioner and Ganesh Kumar / respondent are not strangers. As between them there is a money dispute. There is allegations in the private complaint that on 26.02.2013, at about 11 a.m, in the District Court Campus of Coimbatore District, the respondent is alleged to have abused the complainant / revision petitioner in filthy language and also threatened him. This has also been reiterated in the sworn statement of other two witnesses.

15. The Chennai City Police Act, 1888, has been extended to City of Coimbatore. Its section 75 reads as under:-

"75. Penalty for drunkenness or riotous or indecent behaviour in public place. -

(1) Whoever, in any public place, office, station house or Court, or in any place of public amusement or on board of any passenger boat or vessel, is

(a) found drunk and incapable of taking care of himself; or

(b) found drunk and under the influence of liquor or drug; or

(c) found behaving in a violent or boisterous or disorderly or riotous or indecent manner or using any threatening, abusive or insulting words which causes or is likely to cause a breach of public peace shall be liable, on conviction, to imprisonment not exceeding six months or fine not exceeding one thousand rupees.

2. ..."

16. Now for the purpose of an offence contemplated under Section 75 of the Chennai City Police Act, then offence should have taken place in a public place and they should have behaved in a violent or boisterous or disorderly or riotous or indecent manner, using of threatening, abusive and insulting words, which

had causes or likely to cause breach of public peace. These are the ingredients required for the offence.

17. The occurrence place is the District Court Campus. It is a public place. The occurrence time is 11 a.m. It is Court and office hours. Many lawyers, litigants, vendors, trouble makers, sureties and accused will frequent. By the act of the complaint, possibility of breach of public peace cannot be ruled out. In such circumstances, there is ground to proceed as against the respondent for an offence under Section 75(1)(c) of the Chennai City Police Act.

18. In the circumstances, the impugned order of dismissal of the trial Court suffers from legality, it is required to be revised.

19. In the result, the impugned order of dismissal dated 21.07.2014 passed by the learned Judicial Magistrate No.III Coimbatore in C.C.No.5244 of 2013 is set aside. The learned Judicial Magistrate No.III, Coimbatore, is directed to take cognizance for an offence under Section 75(1)(c) of the Chennai City Police Act and issue summons to the respondent / accused.

20. Accordingly, this Criminal Revision is allowed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge
Coimbatore.
2. The Chief Judicial Magistrate
Coimbatore.
3. The Judicial Magistrate No.III,
Coimbatore.

+1cc to Mr.A.Ansar, Advocate Sr.21154

Cr1.Revision Case No.224 of 2016

vsn(CO)
srg(25/04/2016)