

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
Criminal Revision Case Nos.347 & 348 of 2011

K.Mahalingam, .. Petition in both the revisions

Versus

1. S.R.Vijayan .. 1st respondent in Crl.R.C.No.347 of 2011
2. C.Kousalya .. 1st respondent in Crl.R.C.No.348 of 2011
3. The Deputy Superintendent of Police,
Dharapuram
Tiruppur. .. 2nd respondent in both revisions

(third respondent impleaded as per the order of this Court
M.P.Nos.2, 2 of 2011 dated 09.03.2011)

These revisions have been filed under section 401 Cr.P.C against the order dated 05.01.2010 and 03.01.2011 passed in Crl.M.P.No.8334 in C.C.No.58 of 2010 and 6976 of 2010, CC 27 of 2010 respectively by the learned Judicial Magistrate, Dharapuram.

For Appellant in both revisions : Mr.S.Selvathirumurugan
For Respondents in both revisions : No appearance - R1

Mr.E.Raja,

Additional Public
Prosecutor- R2

ORDER

These revisions have been filed as against the order of the learned Judicial Magistrate passed in Crl.M.P.No.8334 of in C.C.No.58 of 2010 and Crl.M.P.No.6976 of 2010 in C.C.No.27 of 2010.

2. The above petitions have been filed under section 210 of Code of Criminal Procedure to stay the summary trial cases filed under section 138 of the Negotiable Instruments Act.

3. Heard both sides and perused the materials available on record.

4. It appears that the revision petitioner was originally facing trial for the offence under section 138 of the Negotiable Instruments Act in C.C.No.58 of 2010 and 27 of 2010. In the meanwhile, the revision petitioner has filed a complaint alleging theft of cheques from the shop of the defacto complainant and based on the directions obtained from this Court, the First Information Report has also been registered in Crime No.1650 of 2010 under sections 120(B), 109, 499, 379(NP), 465, 477(A) and 506(ii) and investigation has been conducted by the Deputy Superintendent of Police and in the final report, it has been stated by the investigating officer that the complaint is mistake of fact and the final report has also been filed before the trial court.

5. Now the crux of the issue in this revision is whether the trial of the case filed under section 138 of the Negotiable Instruments Act is to be stayed in view of the police complaint lodged by the defacto complainant. On a careful perusal of Section 210 of the Criminal Procedure Code which reads as follows :

"Section 210 : Procedure to be followed when there is complaint case and police investigation in respect of the same offence - (1) when in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

reveals that when there is an investigation by the police in
<https://hcservices.ecourts.gov.in/hcservices/>

respect of the offence which is the subject matter of the trial before the Magistrate, the Magistrate shall stay the proceedings of the trial and call for a report from the conducting investigation. Whereas in this given case, the complaint under section 138 of the Negotiable Instruments Act has been instituted by the defacto complainant and the First Information Report has been filed by the accused for various offences and both are no way connected and it is with regard to some other offence. So the complaint under section 210 of the Code of Criminal Procedure, before the Magistrate should have been investigated by the police at the relevant time. Therefore, stay of the trial proceedings in these cases is not sustainable. Hence, there is no infirmity or illegality in the Order passed by the learned trial Judge.

6. It is also represented by the petitioner that the protest petitions filed by him as against the closure report has not been decided by the Magistrate. No material whatsoever, has been placed before this Court in this regard. However, if such being the case, it is the duty of the Magistrate to dispose of the protest petitions on merits and pass orders.

7. Accordingly, these Criminal Revision Cases are dismissed and the trial court is directed to dispose the cases in C.C.No.58 of 2010 and C.C.No.27 of 2010 within a period of six months from the date of receipt of a copy of this Order.

s/d-

Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

vrc

To

1. The Judicial Magistrate, Dharapuram.
 2. The Deputy Superintendent of Police,
Dharapuram
Tiruppur.
 3. The Public Prosecutor
High Court, Madras
 4. The Superintendent of Police
Thirupur District
District Police Office
Thiruppur.
 5. The Chief Judicial Magistrate
Erode (For information)
- +1 CC to Mr. S. Selvathirumurugan , Advocate sr 44811
+1 CC to Mr. S. Selvathirumurugan , Advocate sr 44810 (21/07/2017)

Criminal Revision Nos. 347 & 348 of 2011