

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.06.2017

PRONOUNCED ON : 15.06.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.716 of 2016

V.B.R.Menon

... Petitioner

Vs.

1. P.Naresh Babu,
Assistant Executive Engineer,
O & M/PORUR/CEDC/SOUTH,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Porur 110KV SS Complex,
Kundrathur Road, Porur,
Chennai - 600 116.

2. P.Arputaraj
Assistant Executive Engineer
Enforcement/chennai/South,
Tamil Nadu Generation and Distribution,
Corporation Limited (TANGEDCO),
NPKRR Maaligai, No.144, Anna Salai,
Chennai - 600 002.

... Respondents

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure Code to call for the records in CMP No.5250 of 2015 on the file of the learned Judicial Magistrate 1, Poonamallee and set aside the order dated 11.03.2016 and further direct the learned Judicial Magistrate No.1, Poonamallee to take the petitioner's complaint dated 14.08.2015 on file and proceed the same in accordance with law.

For Petitioner : Mr.V.B.R.Menon,
party-in-person

For respondents: Mr. Mani Shankar, AAG
for V.Viswanathan

O R D E R

Challenging the order dated 11.03.2016 made in C.M.P.No.5250 of 2015, dismissing the petitioner's private complaint as not maintainable, the present revision has been filed.

2. The case of the petitioner, in brief, is as follows:

The petitioner was the owner of the building in Survey No.19/1 of Porur Village, Ambattur Taluk, Chennai. In the above building, he obtained two electricity service connections from the Tamil Nadu Electricity Board. Out of which, one for industrial and lighting purpose in the ground floor, and the other electricity service connection under commercial category in the first floor, that is being used by a law firm. Subsequently, by a registered settlement deed dated 30.03.2012, the petitioner settled the above property in favour of his two sons and the petitioner's son let out the ground floor to one plastic manufacturing industrial unit.

3. On 26.05.2015, around 5.00 p.m., the respondents 1 and 2 herein, the Assistant Executive Engineers of Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO) inspected the above premises and found that the tenant in the ground floor was using part of the industrial service connection for lighting purpose. Thereafter, they have demanded compounding fee and penalty under Section 135 of the Indian Electricity Act 2003, alleging the theft of energy. At that time, the petitioner was away in U.S.A, for summer vacation. Thereafter, the respondents preferred a Mahazar report in absence of the owner or occupier or their authorized representatives, and obtained a signature from one Kannan in the Mahazar prepared by them. The said Kannan is neither a resident of the locality or an employee or representative of the petitioner or the owner or occupier of the premises. But in the Mahazar report, the respondents had stated that the said

Kannan was the building incharge, hence, the respondents had committed an offence of criminal conspiracy, fabrication of false evidence to injure the complainant, which is punishable under Sections 120-B part II, 193 part I and II, 195A part I, 199, 200, 211 part -I, and 506 para-1 of IPC.

4. Apart from that the respondents have also dishonestly omitted to proceed against the lawful occupiers of the said premises, namely, M/s. Zhafir Plastic Machinery India (P) Ltd, for the alleged offence. Instead the respondents, have maliciously and willfully chosen to proceed against the petitioner for the alleged theft of electricity with the oblique motive to malign and cause injury to the name and reputation of the petitioner. Hence, they have committed an offence of criminal defamation punishable under Section 500-part-II of IPC.

5. It is further stated that the respondents also called the petitioner's son after the preparation of Mahazar and demanded him to pay the compounding fee of Rs.4000/- on behalf of the petitioner, failing which, he was threatened of immediate arrest and prosecution. Even though the petitioner's son has shown all the details and produced relevant documents regarding the present ownership and occupation of the said premises, the respondents without considering the explanation and documents produced by the petitioner's son, on compulsion and duress, collected a sum of Rs.4000/- by cash towards the compounding fee on the spot. The respondents have compounded the alleged offence on their own and without the request and consent of the petitioner, who was away in U.S.A, after recording a false statement that the compounding order has been done at the request of the petitioner. Subsequently, a provisional assessment order was also issued to the son of the petitioner, which was in turn sent to the petitioner by his son through e-mail on 27.05.2015. Thereafter, on the very same day, the petitioner had sent an objection for the above said Provisional Assessment Order and the e-mail copy was also handed over to the first respondent. But, without considering the objection, the first respondent passed a final assessment order imposing a penalty for violation of the Electricity Act and also the Electricity Supply code. In the complaint, it is further stated that the respondents have acted without good faith as defined under Section 52 of the IPC, and since the TANGEDCO is only a limited company, the respondents are not government servants and no sanction is required from the Government for their removal from service. In the above circumstances, the petitioner filed a private complaint before the Court below.

6. According to the petitioner, the complaint was filed on 14.08.2015 and the same was returned by the court below by an order dated 14.09.2015 stating that the petitioner already filed a writ petition challenging the final assessment order before this Court in W.P.No.20433 of 2015 and the same is pending and apart from that the complaint itself is not maintainable before this forum as TANGEDCO is the Unit of Tamilnadu Government undertaking. Thereafter, the petitioner has represented the complaint by giving suitable explanation regarding maintainability of the complaint. Then, he has also filed a written arguments regarding the maintainability of the complaint. On 06.02.2016, the Court below heard the arguments of the counsel for the petitioner regarding maintainability of the complaint. Subsequently, by an order dated 11.03.2016, the court below dismissed the complaint as not maintainable holding as follows :

"On hearing the arguments of the complainant counsel and on perusal of available material records, it was found that the petitioner had filed only the settlement deed in favour of his sons dated 30.03.2012, but failed to furnish the relevant documents to show that he had transferred the service connection into his sons name as stated by him. Moreover the complainant was away from India at the time of this incident. The petitioner himself had admitted that he had filed a writ of Certiorarified Mandamus in petition No. W.P.No.20433 of 2015 in the Hon'ble High court of Madras seeking to quash the entire proceedings and the final assessment order passed. 1st accused under Section 135 of the Electricity Act, 2003 and the same is still pending. Moreover this petition is not maintainable before this forum. Since TANGEDCO is a unit of Government of Tamil Nadu undertaking. Hence, the complaint is dismissed as not maintainable."

Now , challenging the above order, the present revision has been filed.

7. Mr.V.B.R.Menon, party-in-person, submits that the Court below has no power to dismiss the complaint as not maintainable. Before taking cognizance of the offence, the learned Magistrate is only required to examine the complainant on oath, and other witnesses produced by the complainant, and on

considering the complaint as well as the statement on oath, if the learned Magistrate is of the opinion that there is no sufficient ground for proceeding the complaint, he can dismiss the same under Section 203 Cr.P.C., but the Magistrate has no power to reject the complaint as not maintainable at the threshold itself. The petitioner further submits that he has made out a case for taking cognizance of the offence and he has filed documents and also ready to produce witnesses to make out a prima facie case for issuance of process. But the learned Magistrate, without considering that any ground is made out in the complaint for proceeding further, has rejected the complaint as not maintainable, which is not permissible under law. Apart from that the other reason stated by the learned Magistrate for rejecting the complaint as not maintainable and also not valid in the eye of law. Merely because the respondents are employees of the TANGEDCO, there is bar under the Criminal Procedure Code to maintain the complaint against them. But, the learned Magistrate has erroneously held that since TANGEDCO is a unit of Government of Tamil Nadu undertaking, the complaint is not maintainable before him. The producing of witness for taking cognizance of the offence and issue process will arise only at the stage of the enquiry under Section 202 Cr.P.C. The learned Magistrate without even conducting any enquiry under Section 202 Cr.P.C., and without providing any opportunity to the petitioner to produce all the materials, rejected the complaint at the threshold as not maintainable, for which, he has no power or jurisdiction. In support of his contention, he has also referred to number of judgments of this Court as well as the Hon'ble Supreme Court.

8. Per contra, the learned Additional Advocate General, appearing for the respondents, vehemently contended that the respondents were working as Assistant Executive Engineers in the TANGEDCO, and they were only discharging their public duty, and only with a malafide intention a frivolous complaint has been filed against them without obtaining necessary sanction as required under Section 197 Cr.P.C. Apart from that a perusal of complaint and sworn statement filed by the petitioner would clearly shows that no sufficient ground is made out to proceed against the respondents. Considering all these facts, since there is no sufficient ground available for proceeding with the complaint, the learned Magistrate has rightly rejected the complaint as not maintainable and there is no illegality or irregularity in the order passed by the Court below. The learned Additional Advocate General also relied upon the judgments of the Hon'ble Supreme Court of India reported in 2010 (7) SCC 578 (SHIVJEE SINGH /VS/ NAGENDRA TIWARY AND OTHERS) and 2015 9 SCC 609 (S.R.SUKUMAR /VS/ S.SUNAAD RAGHURAM).

9. Upon consideration of the rival contentions and perusing the materials available on record carefully, the question arises for consideration is whether the Judicial Magistrate has power to dismiss the complaint as not maintainable at the threshold.

10. Section 200 Cr.P.C provides the procedure for the Magistrate to take/taking cognizance of an offence on a complaint and it reads as follows :

" A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

11. The above provision makes it abundantly clear that before taking cognizance of an offence on a complaint filed before him, the Court shall examine the complainant upon the statement of Oath and the witnesses any produced by him, to find out whether there is any sufficient ground for proceeding against the complaint. Section 202 Cr.P.C provides that the Magistrate on receipt of the complaint, if he thinks fit to postpone the process against the accused and desires further enquiry into the case either by himself or direct investigation to be made by a police officer for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, which reads as follows:

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to

take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200 (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant 203"

Section 203 Cr.P.C provides for dismissal of the complaint, which reads as follows:

"If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing"

As per Section 203 Cr.P.C., after considering the statements on Oath of the complaint and the witness produced by him and the result of enquiry or investigation under Section 202 Cr.P.C, if the Magistrate find no sufficient ground for proceeding with the complaint, he can dismiss the complaint after recording reasons for the dismissal of the complaint. On the other hand, if the Magistrate satisfies on the above material that there is a sufficient ground to proceed with the complaint he can issue

process by way of summons or warrant as the case may be under Section 204 Cr.P.C.

12. The Hon'ble Supreme Court in Adalat Prasad vs. Rooplal Jindal reported in 2004 (7) SCC 338 held as follows:

"12. Section 200 contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. If on such examination of the complaint and the witnesses, if any, the Magistrate if he does not want to postpone the issuance of process has to dismiss the complaint under Section 203 if he comes to the conclusion that the complaint, the statement of the complainant and the witnesses have not made out sufficient ground for proceeding. Per contra, if he is satisfied that there is no need for further inquiry and the complaint, the evidence adduced at that stage have materials to proceed, he can proceed to issue process under Section 204 of the Code.

13. 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 such 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."

13. The another judgment in Shivjee Singh /vs/ Nagendra Tiwary and others reported in 2010 7 SCC 578 the Hon'ble Supreme Court held as follows :-

" An analysis of the above reproduced provisions shows that when a complaint is presented before a Magistrate, he can, after examining the complainant and his witnesses on oath, take cognizance of an offence. This procedure is not required to be followed when a written complaint is made by a public servant, acting or purporting to act in discharge of his official duties or when a court has made the complaint or if the Magistrate makes over the case for inquiry/trial to another Magistrate under Section 192.

11. Section 202(1) empowers the Magistrate to postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person whom he thinks fit for the purpose of deciding whether or not there exists sufficient ground for proceeding. By amending Act 25 of 2005, the postponement of the issue of process has been made mandatory where the accused is residing in an area beyond the territorial jurisdiction of the Magistrate concerned. Proviso to Section 202 (1) lays down that direction for investigation shall not be made where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session or where the complaint has not been made by a Court unless the complainant and the witnesses have been examined on oath under Section 200.

12. Under Section 202(2) the Magistrate making an inquiry under sub-section (1) can take evidence of the witnesses on oath. If the Magistrate thinks that the offence complained of is triable exclusively by the Court of Session then in terms of the proviso to Section 202, he is required to call upon the complainant to produce all his witnesses and examine them on oath.

13. Section 203 empowers the Magistrate to dismiss the complaint if, after considering the statements made by the complainant and the witnesses on oath and the result of the inquiry or investigation, if any, made under Section 202(1), he is

satisfied that there is no sufficient ground for proceeding. The exercise of this power is hedged with the condition that the Magistrate should record brief reasons for dismissing the complaint. Section 204, which talks of issue of process lays down that if the Magistrate taking cognizance of an offence is of the view that there is sufficient ground for proceeding then he may issue summons for attendance of the accused in a summons case. If it is a warrant case, then the Magistrate can issue warrant for causing attendance of the accused."

14. In a judgment reported in 2012 (10) SCC 517 (Manharibhai Muljibhai Kakadia and another /vs/ Shaileshbhai Mohanbhai Patel and others) the Hon'ble Supreme Court held as follows:

" 24. The procedural scheme in respect of the complaints made to Magistrates is provided in Chapter XV of the code. On a complaint being made to a Magistrate taking cognizance of an offence, he is required to examine the complainant on oath and the witnesses, if any, and then on considering the complaint and the statements on oath, if he is of the opinion that there is no sufficient ground for proceeding, the complaint shall be dismissed after recording brief reasons. The Magistrate may also on receipt of a complaint of which he is authorised to take cognizance proceed with further inquiry into the allegations made in the complaint either himself or direct an investigation into the allegations in the complaint to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. In that event, the Magistrate in fact postpones the issue of process. On conclusion of the inquiry by himself or on receipt of report from the police officer or from such other person who has been directed to investigate into the allegations, if, in the opinion of the Magistrate taking cognizance of an offence there is no sufficient ground for proceeding, the complaint is dismissed under Section 203 or where the Magistrate is of the opinion that there is sufficient ground for proceeding,

then a process is issued. In a summons case, summons for the attendance of the accused is issued and in a warrant case the Magistrate may either issue a warrant or a summons for causing the accused to be brought or to appear before him."

15. In a judgment reported in 2015 (2) SCC 609 (S.R.Sukumar /vs/ S. Sunaad Raghuram), the Hon'ble Supreme Court has held as follows:

"11. Section 200 Cr.PC contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to the accused or order an inquiry under Section 202 Cr.P.C or dismiss the complaint under Section 203 Cr.P.C. Upon consideration of the statement of the complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process under Section 204 Cr.P.C. Section 202 Cr.P.C contemplates "postponement of issue of process". It provides that the Magistrate on receipt of a complaint of an offence, of which he is authorised to take cognizance may, if he thinks fit, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of deciding whether or not there is sufficient ground for proceeding. If the magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 Cr.P.C."

16. From a careful reading of the above judgments, it is very clear that when a complaint is filed before a Magistrate, the Magistrate is required to examine the complainant on oath and any witness produced by him and has to

consider the complaint, and the statement of oath, and on consideration, if the Magistrate is of the opinion that there is no sufficient ground for proceeding, then the Magistrate can dismiss the complaint recording reason for the same. From the scheme of the Act, it could be seen that when a complaint is filed there are three courses available to the Magistrate, the Magistrate can straight away issue summons to the accused if he is satisfied from the complaint and the statement of oath that there are sufficient grounds available for proceeding with the complaint or he postpone the issue of process to enquire into the case by himself, or an investigation made by the Police Officer or other person for the purpose of deciding whether or not a sufficient ground was available for proceeding with the complaint and based on the above, if the Magistrate found no sufficient ground for proceeding further, he can dismiss the complaint under Section 203 Cr.P.C or if the Magistrate is satisfied there are sufficient ground available to proceed, he can issue process under Section 204 Cr.P.C, but nowhere the Criminal Procedure Code provides for dismissal of the complaint on maintainability.

17. In the instant case, from the perusal of records, it could be seen that the complaint was filed on 14.08.2015 and the same was returned by the Court on 14.09.2015 making an endorsement that "petitioner present. Sworn statement filed. On perusal of records it was found that the petitioner himself had admitted in the S.S in para(19) that he had filed writ of certiorari mandamus in W.P.No.20433/2015 in Hon'ble High Court and notice was ordered on 09.07.2015 and the same is still pending. More over this petition is not maintainable before this forum since TANDGEDCO is a unit of Government of Tamil Nadu undertaking. Hence this petition is dismissed".

18. Thereafter, the matter was taken up for arguments regarding maintainability on 15.10.2015, a detailed written arguments was also filed by the petitioner and after various adjournments, on 06.02.2016, arguments were heard on maintainability of the complaint, and subsequently, on 11.03.2016, the complaint has been dismissed as not maintainable. The docket order produced by the petitioner clearly shows that only the maintainability of the complaint alone has been considered by the learned Magistrate, and he has not considered the complaint either under section 200 Cr.P.C or 202 Cr.P.C.

19. So far as the contention of the learned Additional Advocate General that the complaint itself is not maintainable for want of sanction from the appropriate authorities to proceed against the respondents, that issue not at all arises at this stage, because what is contemplated under Section 200 Cr.P.C is

that the Magistrate only has to see from the complaint as well as the statement of oath or from the enquiry under Section 202 Cr.P.C., whether there are sufficient ground for proceeding with the complaint. Apart from that, the judgments relied upon by the learned counsel for the respondents is also not applicable to the facts of the present case, as the above judgments only supporting the case of the petitioner to some extent. In the above circumstances, the order passed by the learned Judicial Magistrate dismissing the complaint is not maintainable is totally illegal and is liable to be set aside.

20. In the result, the Criminal Revision Petition is allowed and the order passed by the Court below is set aside and the matter is remanded back to the Court below and the learned Judicial Magistrate is directed to consider the complaint filed by the petitioner as per law and pass appropriate orders.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The Judicial Magistrate No.I,
Poonamallee, Chennai.
2. The Public Prosecutor,
High Court,
Chennai.

+1cc to M/s.V.Viswanathan, Advocate Sr.42242

+1cc to M/S.V.B.R.Menon, Advocate Sr.42466

Cr1.R.C.No.716 of 2016

nri[co]
srg 23/06/2017