

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.27351 of 2010
and
M.P.No.1 of 2010**

Senthil Kumar

... Petitioner

vs.

S.Palani Kumar

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to P.R.C.No.14 of 2010 on the file of the learned Judicial Magistrate, Dharapuram.

For Petitioner : Mrs.L.Srilekha

For Respondent : Mr.N.Manoharan

JUDGMENT

The petitioner has filed this Criminal Original Petition to call for the records relating to P.R.C.No.14 of 2010, on the file of the learned Judicial Magistrate, Dharapuram.

2.The case of the petitioner is that the above Private Complaint in P.R.C.No.14 of 2010, on the file of the learned Judicial Magistrate, Dharapuram filed by the respondent is an abuse of process of law and the same is not maintainable under Criminal Law. Therefore invoking the inherent power of this Court under Section 482 of Cr.P.C. the petitioner has come up with the present Criminal Original Petition seeking to quash the above private complaint in P.R.C. No.14 of 2010 pending against him.

3.The brief facts necessary for the disposal of this Criminal Original Petition runs as follows that the petitioner herein is accused by the respondent namely S.Palanikumar in the above private complaint for having committed the alleged offences under Sections 120 (B), 148, 149, 450, 325, 307 r/w 34 of IPC. According to the respondent / complainant, he was acid attacked by the petitioner and some others on 11.12.2007 at about 5.00 A.M and thereby have involved in the offences stated above. Thereupon a complaint dated 11.12.2007 lodged by the respondent before the Inspector of Police, Dharapuram and a F.I.R. in Crime No.910 of 2007 dated 11.12.2007 came to be registered against the petitioner and one another under Sections 452, 326 & 506 (ii) of IPC.

police found that there is no incriminating material or any evidence traceable against the petitioner, and hence the corresponding final report was filed before the Learned Judicial Magistrate, Dharapuram to the effect that action dropped as closed, since the actual offenders were non-traceable. Accepting the same, the said F.I.R. in Crime No.910 of 2007 dated 11.12.2007 was closed by the Learned Judicial Magistrate. Therefore the respondent has filed the above private complaint in P.R.C.No.14 of 2010 on the file of the Judicial Magistrate, Dharapuram under Section 200 of Cr.P.C against the petitioner/A2 and some others.

5.I heard Mrs.L.Srilekha, learned counsel appearing for the petitioner and Mr.N.Manoharan, learned counsel appearing for the respondent and perused the entire records.

6.The learned counsel for the petitioner would submit that the petitioner is an innocent and he never involved in the alleged offence stated above. Originally the petitioner is a family friend of the respondent's father-in-law namely Mayilsamy. Due to the matrimonial dispute existed between the respondent and his wife namely Yamilamala, the petitioner was falsely implicated in the above offence as if in collusion and at the investigation of Mayilsamy, the petitioner has committed the above offence. The said complaint is an utter false and the same came to

lime light through the final report filed by the Inspector of Police, Dharapuram finding that there is absolutely no any incriminating material or evidence or witness found corroborating the complaint of the respondent. In fact the petitioner's name is neither found in F.I.R nor any overtact set out in complaint.

7. Furthermore it is contended by the learned counsel for the petitioner that the complaint on hand being a second complaint filed in respect of the same occurrence is not at all maintainable either on law or fact. Since the reference charge sheet has been filed by the concern police in the earlier complaint given by the respondent, he cannot again maintain a complaint under Section 200 of Cr.P.C. The same is an abuse of process of Law which is warranted interference by this Court.

8. Per contra, the learned counsel for the respondent would submit that the above acid attack was made by the petitioner, so as to favor his friend the 1st accused namely Mayilsamy. It is the petitioner, who attacked the respondent. Though due to the said attack the petitioner was in shock and collapsed, such that he was not in a position to picture the above attack, later on enquiry and from the statements of the direct witness present at the time of alleged offences, it revealed that the petitioner along with the other accused has involved in the above brutal

acid attack over the respondent. In fact the respondent is seriously injured and he is defaced, resulting in serious mental agony and criticism by the society. The investigation officer due to the influence put on by the accused has filed report closing the complaint, as if the accused were not the original offenders. The said finding is erroneous and liable to be rejected.

9. In so far as the petitioner's contention that the cognizance of the complaint by the learned Magistrate under Section 200 of Cr.P.C. is barred due to the closure of the earlier F.I.R. in Crime No.910 of 2007 dated 11.12.2007, in pursuance of filing of the final report on 30.06.2008 in F.I.R. in Crime No.910 of 2007 dated 11.12.2007 is unsustainable, since the filing of a final report does not debar the Magistrate from taking cognizance on the basis of the materials produced in a private complaint under Section 200 of Cr.P.C.

10. In this regard the Learned Counsel for the respondent relied upon the decision of the Hon'ble Apex Court made in **Kishore Kumar Gyanchandani v. G.D.Mehrotra And Another** wherein it was held that when the police after investigation files a final report under Section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of

the Code. The Magistrate may not take cognizance and direct further investigation in the matter under Section 156 of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 201 of the Code and takes cognizance if the materials produced by the complainant make out an offence. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding.

11. Further it would be relevant to look into the decision made by the Hon'ble Apex Court in the matter of **Bhagwant Singh v. Commissioner of Police & another** reported in **(1985) 2 SCC 537** holding that:

"The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses : (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and

issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognized by the provisions contained in sub-sec. (2) of S. 154, sub-sec. (2) of S. 157 and sub-sec. (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes

cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of S. 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under Sub-Sec. (2) (i) of Sec. 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.”

12. Now the question before this Court is as to whether a Second Complaint is maintainable or a Protest petition is the remedy, in case that

the Police has referred the F.I.R?

13. In this context, this Court likes to emphasize the Decision of this Court made in the matter of **A.Krishna Rao v. L.S.Kumar** reported in **1998 (I) CTC 329** wherein it is held as follows:

"In Ramasubbu v. State, through the Inspector of Police, Palani Taluk, 1987 L.W. CrI. 79 this Court held that when the police was filed a report under Section 173 of Cr.P.C., the Magistrate got the option under Section 173(3) of Cr.P.C. either to agree or to disagree and to give further direction to the police. When once the Magistrate has recorded his findings as mistake of fact in the R.C.S. which is a judicial order, thereafter he cannot entertain the second complaint and if entertained the same is not maintainable."

14. It was further held that "In the instant case the police have already referred the case as mistake of fact and notice has been served on the complainant through Court and he did not raise any objection. When this matter was argued, it was not pointed out on the side of the respondent/complainant that he raised any objection or the learned Magistrate has not accepted the report of the police. If the learned Magistrate has not accepted the report, he would have given further

directing in the matter and the very reasons that the magistrate has received the second complaint, would go to show that he has not given any further direction in the R.C.S. which means that he has accepted the same and passed an order accordingly. When once such an order was passed by the learned Magistrate, it was not open to him to entertain one more complaint regarding the same occurrence”.

15. In the present case, the police have filed the referred charge sheet as 'mistake of fact' it, seems the Magistrate has accepted the R.C.S. It is not the case of the respondent herein that the Magistrate has not accepted the R.C.S. filed by the police. In such circumstances, when the Magistrate has accepted the R.C.S. the second complaint should be filed only after setting aside the order passed by the learned Magistrate in the referred charge sheet. However, the respondent herein has not taken any such action and instead, had filed a second complaint which the learned Magistrate has taken cognizance. It has been held in the above decisions that taking cognizance in the second complaint makes the same not maintainable. I am concurring with views of the decisions referred above, and as such it has to be held that the second complaint which is pending before the learned Judicial Magistrate No.2, Wallajapet, in CC No.274 of 1994 is not maintainable and the proceedings have to be quashed.”

16.It is needless to say that the facts involved in the case on hand and in above referred decisions of **A.Krishna Rao v. L.S.Kumar** reported in **1998 (1)CTC 329** and **Ramasubbu v. State, through the Inspector of Police, Palani Taluk, 1987 L.W. CrI. 79** are identical. Therefore, in view of the Ratio laid down above by this Court, I am of the opinion that the second complaint on hand in P.R.C. No.14 of 2010, on the file of the learned Judicial Magistrate, Dharapuram is not maintainable. Hence, I have no hesitation to quash the above proceedings.

17.For the foregoing reasons, this Criminal Original Petition succeeds and the P.R.C.No.14 of 2010, on the file of the learned Judicial Magistrate, Dharapuram stand quashed. Consequently, connected miscellaneous petition is closed.

04.10.2017

vs

Speaking order
Index : Yes

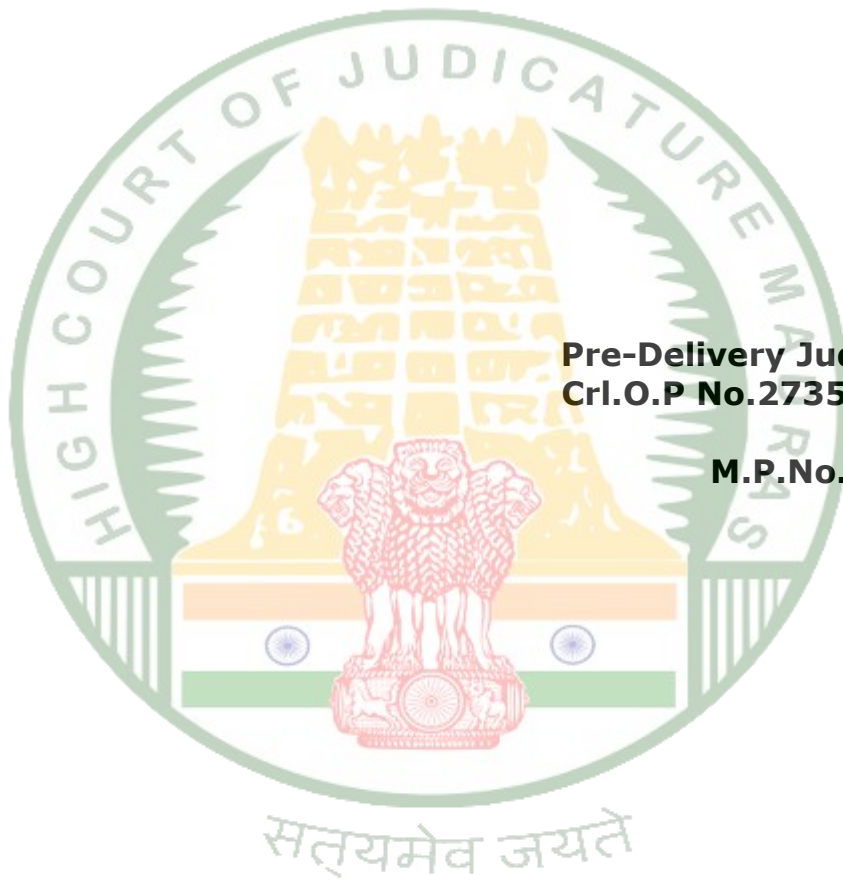
To

The Judicial Magistrate,
Dharapuram.

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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.27351 of 2010
and
M.P.No.1 of 2010**

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