



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P.No.11525 of 2011

and

MP(MD)Nos. 1 & 2 of 2011

Tamilarasan ...Petitioner /Sole Accused

Vs.

Saroja ... Respondent/ complainant

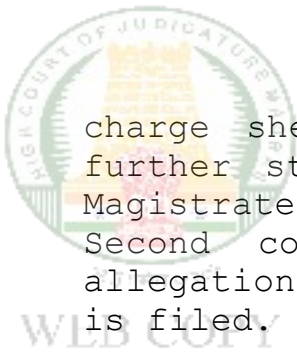
PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating the case (charge sheet), in C.C.No.55 of 2008 on the file of the Judicial Magistrate Court No.II, Kuzhithurai, and quash the same.

For Petitioner : Mr.B.Brijesh Kishore
For Respondent : Mr.S.C.Herold Singh

O R D E R

The petitioner has filed this petition under section 482 of Cr.P.C by challenging C.C.No.55 of 2008 on the file of the Judicial Magistrate No.II, Kuzhithurai.

2.The facts of the case is that the petitioner abused the respondent with filthy language and subsequently on 16.12.2005, she found one letter near to the back door of her house requesting her to wait at the night in her house. As per the said letter, she and her husband waited at night on 18.12.2005 and when they are waiting, the petitioner has placed another letter near the door. At that time, they caught hold of the petitioner and thereafter, she lodged a complaint in Pudukkottai Police station. Since there was no action, she sent a representation to the Superintendent of Police, Kanyakumari District on 13.09.2017. further, the Superintendent of Police also did not take action. She filed a petition under Section 156(3) Cr.P.C before the Judicial Magistrate Court No.II, Kuzhithurai, for registering the complaint. As per the order of the learned Judicial Magistrate No.II, Kuzhithurai, the Sub-Inspector of Police has registered a case in Crime No.267 of 2007 on 02.11.2009, for the offences punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. After investigation, the said case was closed as mistake of fact, vide R.C.No.74/07. The learned Judicial Magistrate No.II, Kuzhithurai, has also accepted the referred



charge sheet by an order dated 20.12.2007. Without taking any further steps against the order passed by the learned Judicial Magistrate - II, Kuzhithurai, the respondent herein has filed the Second complaint before the same court, on the very same allegation. Against which, the present Criminal Original Petition is filed.

3.The learned counsel for the petitioner states that the earlier complaint given by the petitioner under Section 156 (3) of Cr.P.C was closed, as mistake of fact after conducting investigation . For the very same allegation, the respondent herein has filed a private complaint, which is not sustainable in law.

4.In support of his contention the learned counsel for the petitioner relied upon the decision of this Court reported in **1998 (1) CTC 329 A.Krishna Rao Vs. L.S.Kumar** wherein it has been held as follows:

"3. It was argued on the side of the third accused/petitioner that since the referred charge sheet has been filed by the police in the earlier complaint given by the complainant and after passing the orders on the referred charge sheet, the second complaint filed in respect of the same occurrence is not maintainable to substantiate this argument, the 3rd accused/petitioner has submitted some decisions of this Court.

In Murugesan v. Kothandam, 1969 L.W. Cr1. 268 this Court in similar circumstances quashed the proceedings in the second complaint stating that when the Sub-Inspector has investigated the case under Section 156(3), Cr.P.C. and submitted his report under Section 173(2), Cr.P.C. referring the case and subsequent complaint for the very same occurrence would not be maintainable.

In Ramasubbu v. State, Through The Inspector of Police? Palani Taluk, 1987 L.W. Cr1. 79 this Court held that when the police was filed a report under Section 173, Cr.P.C., the Magistrate got the option under Section 173(3), 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.

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 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 mere complaint regarding the same occurrence.

In Ansari v. Mohammed Ali, 1990 L.W. CrI. 201 in similar circumstances when the Magistrate has referred the complaint under Section 156(3) Cr.P.C. for investigation, and without obtaining the report of the police, has taken cognizance in the second complaint on the same materials, by referring the decision stated in Murugesan v. Kothandam, 1969 L.W. (CrI.) 268 this Court held that the said complaint could be taken as a second complaint for the same occurrence and therefore not maintainable.

In the instant case, the police have already filed a R.C.S. on the complaint referred to them under Section 156(3), Cr.P.C. and the learned Magistrate has taken cognizance of the 2nd complaint for the very same occurrence and therefore the 2nd complaint is not maintainable.

In Mariagloria v. John Britto, 1995 (1) L.W. CrI. 305 this Court held that when once the Magistrate has accepted the report of the police, taking cognizance in the second complaint for every same occurrence is illegal.

In the present case from the averments found in the petition it is clear that the learned Judicial Magistrate No.2, Wallajapet has passed the order on the R.C.S. served by the police in the previous complaint which was referred by him to the police under Section 156(3), Cr.P.C. for investigation. There is no contrary evidence on the side of the complaint respondent herein. When once the Magistrate has passed the order on the R.C.S. the second complaint for the very same occurrence is not maintainable.

4. Learned counsel for the respondent relied upon a decision of this Court is Manoharbal v. Vashdev 1983 L.W. (CrI.) 319 wherein it was held that when a Magistrate sends a complaint for enquiry under Section 156(3), Cr.P.C., he does not take cognizance of the case, that consequently when he, receives the report stating that the complaint should be referred either as false or as mistake of fact or mistake of law, he does not pass any judicial order, but merely lodges the complaint and does not take



any further action and in such circumstances, there is no bar in law for the Magistrate to entertain a second complaint and take cognizance of it and issue process to the accused. The view expressed by this Court herein is somewhat contrary to the views expressed in the decisions stated supra.

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 chargesheet. 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 have no hesitation to follow the said view, 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. "

5.The learned counsel appearing for the respondent would submit that there is no bar in Criminal Procedure Code for filing the private complaint in the very same set of facts. However he fairly conceded that the respondent participated in enquiry. In her presence, the complaint was closed as mistake of fact. Admittedly, there is no bar for filing the private complaint, if the petitioner was not given any opportunity under Section 156(3) of Cr.P.C.

6. Heard Both sides.

7.In view of the above discussions as well as the decision cited supra, I am inclined to quash the complaint in C.C.No.55 of 2008 on the file of the Judicial Magistrate No.II, Kuzhithurai.

8.In the result, this Criminal Original Petition is allowed and C.C.No.55 of 2008 on the file of the Judicial Magistrate No.II, Kuzhithurai is quashed. However liberty is granted to the respondent to work out her remedy in the manner known to law. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/



1.The Judicial Magistrate No.II,
Kuzhithurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.C.HEROLD SINGH Advocate in SR. No. 87574
+1cc to Mr.B.BRIJESH KISHORE Advocate in SR. No. 87744

TM
JS/KK/SAR.3/6.12.2017/5P-5C

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