



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2017

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CrI.O.P. (MD)No.2633 of 2011

and

M.P. (MD).Nos.1 and 2 of 2011

- 1.Selvaraj
- 2.Ramadoss
- 3.Govindaraj
- 4.Ravi
- 5.Muthu
- 6.Ilavarasan
- 7.Vijayakumar
- 8.Elangovan
- 9.Sundari
- 10.Kala

.. Petitioners/Accused Nos. 1 to 10

-Vs-

Elangovan

.. Respondent/De-facto complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the Private Complaint filed by the respondent, which was taken on file in C.C.No.6 of 2010, on the file of the learned Chief Judicial Magistrate, Kumbakonam, and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.A.Rahul

For Respondent : No appearance

ORDER

This petition has been filed to call for the records pertaining to the Private Complaint filed by the respondent, which was taken on file in C.C.No.6 of 2010, on the file of the learned Chief Judicial Magistrate, Kumbakonam, and quash the same in so far as the petitioners are concerned.

2. The brief facts of the case is as follows:

The respondent initially lodged a complaint before the Panthanallur Police Station on 11.07.2009, alleging that these petitioners joined in an unlawful assembly and abused him and his friends when they visited to inspect the land belonging to one Loganathan. It is further alleged that the said people also armed with deadly weapons and assaulted the respondent and his friends. Thereafter the respondent and his friends run away and escaped from the place of occurrence. Subsequently, the respondent lodged a



complaint before the Panthanallur police station. Based on the complaint, a case was registered in Crime No.197 of 2009, under Section 147, 148, 294(b) and 506(ii) of IPC.

(2.1) Since no action was taken against the complaint made by the respondent, he filed a petition under Section 482 Cr.P.C. in Crl.O.P.(MD).No.1267 of 2010, before this Court, seeking a direction to the Inspector of Police, Panthanallur Police Station, to conduct a complete investigation and file a final report in Crime No.197 of 2010, on the file of the Panthanallur Police Station, within a reasonable time that may be fixed by this Court. Thereafter, on 15.02.2010, this Court disposed of the above said Crl.O.P.(MD).No.1267 of 2010 and passed orders as follows:

"3.The learned Government Advocate (Criminal side) for the respondent, on instructions, would submit that the case, after investigation was closed as 'mistake of fact' on 11.07.2009 and Referred Charge Sheet notice was also served in R.C.No. 8 of 2009.

4.In view of the said submission, the petitioner is also at liberty, to work out his remedy before the learned II-Additional District Munsif-cum-Judicial Magistrate, Kumbakonam, with regard to the said Referred Charge Sheet in accordance with law.

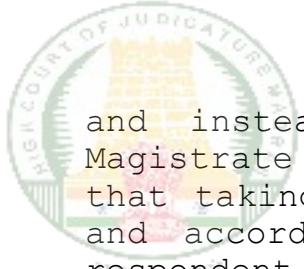
5.With the above direction, this petition is disposed of".

(2.2) Thereafter the respondent herein filed an impugned private complaint before the learned Chief Judicial Magistrate, Kumbakonam against the accused persons. Aggrieved by the same, the present petition has been filed under Section 482 Cr.P.C.

3. I have heard the learned counsel appearing for the petitioners and perused the materials available on record. There was no appearance on behalf of the respondent.

4. The learned counsel appearing for the petitioners submitted that already the Inspector of Police, Panthanallur Police Station, registered a case for the very same offence. After conducting investigation, the said complaint was closed as 'mistake of fact' and without filing the protest petition before the competent Court for challenging the Referred Charge Sheet notice, the respondent has filed a private complaint under Section 190 (2) read with Section 200 Cr.P.C. before the learned Chief Judicial Magistrate, Kumbakonam.

5. To support his argument, the learned counsel for the petitioners relied on a decision of this Court made in **A.Krishna Rao vs. L.S.Kumar**, reported in 1998 (1) CTC 329, wherein it is stated that when the learned Magistrate has accepted the Referred Charge Sheet, 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 therein has not taken any such action



and instead had filed a second complaint, which the learned Magistrate had taken cognizance. At the same time, this Court held that taking cognizance in the second complaint is not maintainable and accordingly, set aside the second complaint filed by the respondent therein. But the present case on hand makes it very clear that the respondent herein had approached this Court for a direction to the respondent police to complete the investigation and to file final report within a reasonable time and after hearing the parties, this Court disposed of the case, giving liberty to the respondent herein to work out his remedy before the learned II-Additional District Munsif-cum-Judicial Magistrate, Kumbakonam, with regard to the said Referred Charge Sheet, in accordance with law.

6. Thereafter as per the direction of this Court, the respondent filed a protest petition before the II-Additional District Munsif-cum-Judicial Magistrate, Kumbakonam. In that petition, the 11th accused in the impugned complaint, the Inspector of Police, Panthanallur police station filed a petition stating that the above crime number was closed as 'mistake of fact'. Aggrieved by the above said counter and alleged illegal action of the Inspector of Police, the respondent herein filed a private complaint against these petitioners and the said Inspector of Police. The present complaint is filed not only against the petitioners as well as the Inspector of Police, Panthanallur police station, who allegedly acted in favour of the petitioners. In my considered opinion, the second complaint filed by the respondent is maintainable and I do not find any infirmity or illegality in the said complaint and infact the decision cited *supra* itself clearly quoted the case of **Manoharbal vs. Vasudev** reported in 1983 L.W.(Crl.) 319, wherein in paragraph No.4, it reads as follows:

"4. Learned counsel for the respondent relied upon a decision of this Court in **Manoharbal vs. Vasudev** reported in 1983 L.W.(Crl.) 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*."

7. In view of the above, I am not inclined to quash the second complaint filed by the respondent, accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also dismissed.



8. However, this Court makes it clear that this Court is not expressed any opinion on the facts of the case and the learned Chief Judicial Magistrate shall decide the case in C.C.No.6 of 2010 and pass orders in accordance with law, without influencing any of the observations made by this Court herein. However, considering the pendency of the case, the learned Chief Judicial Magistrate, Kumbakonam, is directed to complete the trial in C.C.No.6 of 2010, within a period of six months from the date of receipt of the copy of this order.

Sd/-

Assistant Registrar(P & A)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Kumbakonam.

+1cc to Mr.A.RAHUL Advocate in SR. No. 85908

PJL

JS/JC/SAR.2/4.12.2017/4P-3C

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