



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2017

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P. (MD) No.4129 of 2011

and

M.P. (MD) No.2 of 2011

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P.Balasubramanian

... Petitioner/Accused

Vs.

S.Nainar

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the private complaint in PRC.No.2 of 2011, on the file of the learned Judicial Magistrate Court No.I, Tirunelveli and quash the same as illegal.

For Petitioner : Mr.Sulthan Basha
for M/s.M.Ajmal Khan
For Respondent : Mr.P.Senthur Pandian

O R D E R

This Criminal Original Petition has been filed to quash PRC.No.2 of 2011, pending on the file of the learned Judicial Magistrate No.I, Tirunelveli.

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

The respondent filed a complaint against the petitioner under Section 200 Cr.P.C. and the complaint was registered in P.R.C.No.2 of 2011, on the file of the learned Judicial Magistrate No.I, Tirunelveli for the offences punishable under Sections 30(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In his complaint, the respondent alleged that he is the President of the Maruthoor Melakkal Thenkaraikulam Water Users Association.

(2.2) The learned counsel for the petitioner submitted that when the petitioner was working as Chief Engineer-cum-Director, Irrigation and Training Centre, Public Works Department, Trichirappalli, the respondent met the petitioner on 17.06.2010 and made a request to release of water for the cultivation of 2500 Acres of land. However, the petitioner expressed his inability that without getting orders from the Government, he can not do so. Thereafter, on 18.06.2010, the respondent again went to meet the petitioner and there was a wordy quarrel arose between the petitioner and the respondent, which lead to file a private complaint against the petitioner.



(2.3) In the earlier occasion, for the very same offences, the respondent filed a petition under Section 156(3) Cr.P.C. before the learned Judicial Magistrate No.I, Tirunelveli and accordingly, the learned Magistrate issued a direction to the Law Enforcing Agency to register the complaint. In furtherance of the same, the case was registered against the petitioner in Crime No. 1015 of 2010 for the offences under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes(Prevention of Atrocities) Act, 1989, on 24.07.2010. While pending investigation, the respondent herein filed CrI.O.P.(MD).No.11362 of 2010 before this Court. On 30.09.2010, the case was closed after recording the statement of the learned Government Advocate (CrI.Side) that the case has already referred as 'mistake of fact'.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

4. The learned counsel for the petitioner would submit that without disclosing the earlier complaint filed by the complainant, which was referred as 'mistake of fact', the respondent herein approached the learned Judicial Magistrate No.I, Tirunelveli to file the second complaint against the petitioner for the very same occurrence.

5. The learned counsel for the respondent would submit that the earlier proceedings which was referred as 'mistake of fact' was not served on the petitioner. Hence, he would not be able to work out his remedy before the competent Court, in the manner known to law. However, he seeks permission of this Court to grant liberty to the respondent to work out his remedy in the manner known to law.

6. The learned counsel for the petitioner also acceded the request made by the learned counsel for the respondent. To substantiate the argument, the learned counsel for the petitioner relied upon the judgment of this Court in **A.Krishna Rao vs. L.S.Kumar** reported in **1998 (1) CTC 329**. **The relevant paragraphs are 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 the argument, the accused/petitioner has submitted some decisions of this Court.



In Murugesan v. Kothandam, 1969 L.W. CrI. 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, The 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 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 direction 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.

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 complaint in 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 **Mariaglory v. John Britto, 1995 (1) L.W. Cr1. 305** this Court held that when once the Magistrate has accepted the report of the police, taking cognizance in the second complaint for the very 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 complainant/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. (Cr1.) 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 lodged 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 cited 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 R.C.S., filed by the police. In such circumstances, when the Magistrate has accepted the R.C.S., the second complaint should be fled 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 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 C.C.No.274 of 1994 is not maintainable and the proceedings have to be quashed."

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7. Admittedly, the petitioner was working as Chief Engineer-cum-Director, Irrigation and Training Centre, Public Works Department, Trichirappalli, and when the respondent met the petitioner on 17.06.2010 and made a request for release of water for cultivation of 2500 Acres of land, the petitioner expressed his inability that without getting orders from the Government, he can not do so. Subsequently, on 18.06.2010, the respondent again met the petitioner and entered into a wordy quarrel. Thereafter, in order to settle the score against the petitioner, the respondent filed a private complaint against the petitioner under Section 156(3) Cr.P.C. After contest, the case was closed as 'mistake of fact' and thereafter, the petitioner approached this Court for the very same allegation, which is unsustainable in law.

8. Considering the fact that the case was already closed as 'mistake of fact' and also in the light of the decision cited supra, I am inclined to quash the private complaint in P.R.C.No.2 of 2011, on the file of the learned Judicial Magistrate No.I, Tirunelveli. Accordingly, P.R.C.No.2 of 2011 on the file of the learned Judicial Magistrate No.I, Tirunelveli is hereby quashed and the Criminal Original Petition stands allowed. However, liberty is given to the respondent to work out his remedy in the manner known to law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Tirunelveli.

+1cc to M/s. Ajmal Associates, Sr.No.84920

+1cc to Mr.P.Senthur Pandian, Advocate Sr.No.85302

PJL

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