

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.04.2018
Pronounced on : 07.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.R.C.No.82 of 2011

R.Sundaram ...Petitioner/Complainant

Vs.

1. M.Nataraj
2. M.Ashok
3. R.Mani ...Respondents/Accused

This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order of the learned Judicial Magistrate, Mettupalayam in C.M.P.No.3061 of 2010 in C.C.No. of 2010 dated 29.10.2010.

For Petitioner : Mr.J.Prithvi for Mr.A.K.Kumarasamy

For Respondents : Notice served - No Appearance

O R D E R

This revision is filed as against the order of the learned Judicial Magistrate, Mettupalayam in C.M.P.No.3061 of 2010 in C.C.No. of 2010 dated 29.10.2010.

2 On 20.06.2008, the revision petitioner R.Sundaram filed a private complaint before the learned Judicial Magistrate, Mettupalayam, in which, it is alleged that the respondents herein committed offences under Sections 420, 468 & 471. After receiving the said complaint, on 29.09.2010, the learned District Munsif-cum-Judicial Magistrate dismissed the complaint by mentioning the reasons as follows:

"Heard. Records perused. The very complaint had already been filed before this court and same has been referred to the D.C.B. Police, Coimbatore under section 156(3) Cr.P.C. Further an F.I.R. has been registered on the very same set of allegations by the D.C.B. Police, Coimbatore on 19.07.2008 in Cr.No.11/2008. Thereafter the D.C.B. Police, Coimbatore has filed a final report U/s.173 Cr.P.C. to refer the case as mistake of fact in R.C.S.No.23/2009 dated 03.09.2009.

Thereafter this court issued notice to the complainant who appeared before this Court on 20.01.2010 and filed a protest petition. The protest petition was dismissed on 06.01.2010. Thereafter the complainant had taken the matter on appeal in CrI.R.P.No.10/2010 and the same has also been dismissed on 20.04.2010. Now the complaint has been lodged on the very same set of facts. Taking this complaint on file would tantamount to double jeopardy under section 300 Cr.P.C. Hence the complaint is dismissed."

3 Now, this revision has been filed against the said order dated 29.09.2010, praying to set aside the same. On perusing the prayer sought for by the petitioner in the complaint filed before the learned Judicial Magistrate, Mettupalayam, it appears that the petitioner narrated the earlier happenings, filing of the earlier complaint, etc. Now the order passed by the District Magistrate-cum-Judicial Magistrate shows those aspects are considered and then only the petition was dismissed. In the complaint, it is alleged that the previous complaint filed by him was forwarded to the District Crime Branch, Coimbatore and thereafter, on 19.07.2008, a case has been registered in Crime.No.11 of 2008 for the offences mentioned supra.

4 Further he added that the Investigating Officer after completing the investigation, filed a final report before the said Court mentioning that the factual aspects mentioned in the complainant are all not true and he prayed to close the F.I.R as "mistake of fact". So the learned District Munsif sent a notice to the petitioner, after receiving the said notice, the petitioner had filed a protest petition, which was taken on file in C.M.P.No.2419 of 2009, after enquiry, the same was dismissed on 06.01.2010.

5 After mentioning all the above said facts, the revision petitioner filed a private complaint before the learned Judicial Magistrate, Mettupalayam, which was taken on file as C.M.P.No.3061 of 2010 and the same was dismissed through the impugned order dated 29.10.2010.

6 Aggrieved against the said order dated 29.10.2010, the revision petitioner is before this Court with the present criminal revision petition.

7 Heard the learned counsel appearing for the petitioner and perused the materials available on record. In spite of notice being served, the respondents did not appear before this Court either in person or through counsel.

8 However, the learned Magistrate in his order had mentioned that Section 300 Cr.P.C is a bar for taking cognizance in the complaint filed by the present petitioner. In order to invoke the provision under Section 300 of Cr.P.C., either the order of conviction or order of acquittal is necessary. But, in this case, no such order is passed against the accused, moreover, the said private complaint has not been filed by the accused.

9 In the said circumstances, it is necessary to decide whether the present complaint is maintainable after closing the earlier complaint for the reason "mistake of fact". It is a settled proposition that a second complaint can lie only on new facts or it can lie even on same facts, if, special circumstance is made out. There is no such bar for entertaining the second complaint, if, some special circumstances are there or it is filed on a new facts. The dismissal of the complaint is no bar to entertain a second complaint on the same set of facts. But, the same could however be entertained only in exceptional circumstances. Hence, applying the principles of Hon'ble Apex Court reported in 2005 Crl.Law Journal 100 (104 & 105) SC, with the present case on hand, before the dismissal, the learned Magistrate has not taken any steps to record the sworn statement of the complainant. Only after invoking Section 202 of Cr.P.C., the learned Judicial Magistrate has to invoke Section 203 of Cr.P.C. in this case. The said procedure has not been adopted by the learned Judicial Magistrate, which is erroneous.

10 Hence, in the light of the above discussion, the order passed by the learned Judicial Magistrate, Mettupalayam, in C.M.P.No.3061 of 2010 in C.C.No. of 2010 dated 29.10.2010 is set aside. The learned Judicial Magistrate is directed to record the sworn statements and after receiving the documents, if any produced, find that whether any new circumstances arouse or not and dispose of the complaint according to the manner known to law.

11 In the result, this Criminal Revision Petition is allowed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Mettupalayam.

2.The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to M/S.A.K.Kumarasamy, Advocate Sr.35271

Cr1.R.C.No.82 of 2011

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srg 18/06/2018