



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2018

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THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Cr1.O.P. (MD) No.12430 of 2013
and
M.P. (MD) .Nos.1 & 2 of 2013

1. Jayanthi
2. Pushpam
3. Mahendran

... Petitioners/Accused Nos.1 to 3

Vs.

T. Ganesan

... 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 C.C.No.312 of 2012 pending on the file of the learned Judicial Magistrate, Theni and quash the same as illegal.

For Petitioners : Mr.J.Sulthan Basha
for M/s.Ajmal Associates
For Respondent : No Appearance

O R D E R

The petitioners herein are arrayed as accused Nos.1 to 3 in C.C.No.312 of 2012 on the file of the learned Judicial Magistrate, Theni. Based on the private complaint filed by the respondent, the learned Magistrate take the case on file for the offences punishable under Sections 120-B, 380 and 506(i) IPC. Now, in order to quash the said private complaint, the petitioners herein filed this application.

2. On going through the case of the respondent, on 10.08.2011, at about 06.00 p.m., the petitioners herein stolen away 44 sovereigns of gold jewels and Rs.3,05,000/-, when the same was questioned by the respondent through telephone, the petitioners herein criminally intimidated and made life threat. Thereafter, he lodged a complainant before the learned Judicial Magistrate, Theni and the same was forwarded to the Inspector of Police, Theni for the registration of the case. After receiving the same, as per the direction of the learned Magistrate, the case was registered in Crime No.660 of 2011 for the offences punishable under Sections 120-B, 379 and 506(i) IPC. Subsequently, after completing investigation,



the said FIR was closed as 'mistake of fact'. Thereafter, without filing any protest application before the Court concerned, against the Referred Charge Sheet, the petitioner herein filed a private complaint under Section 200 Cr.P.C., and the same was taken cognizance by the learned Magistrate and taken on file as C.C.No.312 of 2012 for the offences punishable under Sections 120-B, 380 and 506(i) IPC. Now, the petitioners have approached this Court to quash the entire proceedings related to C.C.No.312 of 2012.

3. The only contention raised by the learned counsel appearing for the petitioners is that as per the provisions of the Criminal Procedure Code, the respondent/complainant is entitled to file a protest petition alone. Since the order passed by the learned Judicial Magistrate, Theni is the judicial order, without setting aside the same, filing of the second complaint for the same set of facts is nothing but illegal, for which he relied upon the judgment of this Court, in the case of **A.Krishna Rao vs. L.S.Kumar**, reported in **(1998)1 CTC 329** wherein in paragraph Nos.3 and 4, 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. 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.

<https://hcservices.ecourts.gov.in/hcservices/>
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 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 *Mariaglory 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. (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.

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."

4. The principles relied in the above judgment is squarely applicable to the case on hand and this Court is also having the duty to follow the said verdict. Hence, this Court is inclined to allow this petition. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar



The Judicial Magistrate,
Theni.

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+ 1 CC TO M/s.AJMAL ASSOCIATES, IN SR No. 54027

PJL

TE/KK/SAR-3 : 11/04/2018 : 5P/3C

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