

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2019

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.8062 of 2019

and

Crl.M.P Nos.4148, 4149 of 2018 & 10338 of 2019

R.Sekar

... Petitioner

Vs.

Revenue Divisional Officer
and Executive Magistrate,
Cuddalore District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in P.R.C No.3 of 2015, on the file of the Judicial Magistrate Court-II, Cuddalore District and quash the same as illegal.

For Petitioner : Mr.M.Mohamed Saifulla

For Respondent : Mr.C.Iyapparaj
Additional Public Prosecutor

O R D E R

This petition has been filed seeking to quash the proceedings in P.R.C No.3 of 2015 on the file of the Judicial Magistrate Court-II, Cuddalore District.

2. The petitioner herein, while working as Deputy Jailor of Cuddalore Prison, some of the prisoners died in the prison on 03.08.2009. The death was registered in a FIR in Crime No. 442 of 2009 under Section 176 of Cr.P.C and the Revenue Divisional Officer had conducted an enquiry and submitted a report before the District Collector, Cuddalore with some allegations against the jail authorities. The State Government had sanctioned criminal action against the concerned officers, pursuant to which, a private complaint under Section 200 of Cr.P.C was filed against the petitioner and 10 others before the learned Judicial Magistrate No.II, Cuddalore in PRC No.29 of 2013. The

petitioner herein, was arrayed as the 8th accused.

3. When the aforesaid private complaint was listed on 14.11.2014, the complaint came to be dismissed for non-prosecution. Thereafter, the present complaint has been filed for the second time, and the cognizance of the same has been taken in PRC No.3 of 2015 by the same Judicial Magistrate No.II, Cuddalore. The challenge is made to the second complaint by the petitioner/8th accused. The learned counsel for the petitioner submitted that the foundation of the case itself is bad in law since the enquiry conducted by the Revenue Divisional Officer under Section 176 of Cr.P.C is not permissible and that the concerned Judicial Magistrate alone is the appropriate authority to conduct an enquiry. He also submitted that when the earlier complaint in PRC No.29 of 2013 was dismissed for non-prosecution, the second complaint is not maintainable.

4. The learned Additional Public Prosecutor appearing for the respondent opposed the said submissions and stated that the report of the Revenue Divisional Officer is self-explanatory, wherein a detailed enquiry was conducted and the petitioner was found to be liable for the reasons set out therein. Even otherwise, he would submit that the present complaint was dismissed for non-prosecution and the benefit of Section 300 Cr.P.C would not be available to the petitioner.

5. Section 176 of Cr.P.C reads as herein:

(1) When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry

Explanation—In this section, the expression "relative" means parents, children brothers, sisters and spouse".

6. The provision makes it mandatory for the Judicial Magistrate or the Metropolitan Magistrate to conduct an enquiry, in cases, where any person dies or disappears among other circumstances. While that being so, the FIR came to be registered under Section 176 of Cr.P.C, and the Revenue Divisional Officer has chosen to conduct the enquiry, which is apparently not permissible in view of Section 176 of Cr.P.C. When the foundation for the entire private complaint itself has been commenced on an illegal procedure, the consequent private complaint cannot be maintained. On this ground, the complaint is liable to be quashed.

7. The other ground raised by the learned counsel for the petitioner is that the earlier complaint has been dismissed for non-prosecution. In the said dismissal order dated 14.11.2014, the learned Magistrate had observed that the complaint was pending for about a year and the complainant has not appeared before that Court except on the date of presentation of the complaint and the learned Magistrate was of the view that the complainant has no intention to conduct the case. He had further observed that inspite of several opportunities granted, the complainant has not come forward to examine her side witness as enunciated under proviso to Section 202 of Cr.P.C. On this ground also, the learned Magistrate has dismissed the complaint. The second complaint apparently has been presented without challenging the earlier order. No leave has obtained nor was the dismissal of the first complaint disclosed in the second complaint. The learned Magistrate, before taking cognizance of the said complaint has also not been appraised of the earlier dismissal order. While that being so, the second complaint itself would not be maintainable, since it has not been preferred on any changed circumstances, but on the same cause of action.

8. For all the reasons stated above, I am of the view that the petitioner is entitled to the relief as sought for in this petition. Consequently, the proceedings in PRC No. 3 of 2015 on the file of the Judicial Magistrate No.II, Cuddalore, insofar as it relates to the petitioner/A8 is concerned, stands quashed.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.II, Cuddalore

2.Do Thro The Chief Judicial Magistrate
Cuddalore

3. Revenue Divisional Officer
and Executive Magistrate,
Cuddalore District.

4. The Public Prosecutor,
High Court of Madras, Chennai.

+2 Ccs to Mr.M.Mohamed Saifulla, Advocate sr 81264.

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& 10338 of 2019

EV(CO)
SP(24/10/2019)