



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

CORAM:

THE HON'BLE MR.JUSTICE **N.ANAND VENKATESH**

Cr1.O.P. (MD).No.22888 of 2016

and

Cr1.MP (MD).No.12013 of 2016

C.Ilavarasu

... Petitioner/Accused No.1

-vs-

State rep.by

The Revenue Divisional Officer,

Periyakulam,

Theni District.

...Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to recall for the records relating to the unnumbered P.R.C.No. of 2014, on the file of learned Judicial Magistrate Court, Periyakulam and quash the same.

For Petitioner : Mr.A.Ramesh, Sr. counsel

for T.Antony Arul Raj

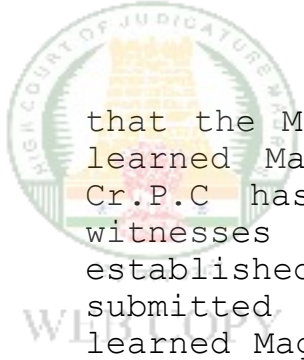
For Respondent : Mr.K.Chandrasekaran, APP

ORDER

The Private Complaint filed by the RDO, Periyakulam has been put to challenge before this Court u/s 482 of Cr.P.C.

2. The short facts of the case is that one Chandrasekar was called to the Police Station on 20.11.2010 to enquire on the suspicion that he is involved in a case of theft of gold jewellery. The deceased Chandrasekar was found dead near a Temple at Madurai Road, and the same was entered in the accident register as brought dead. Immediately thereafter an FIR was registered on 21.11.2010 u/s 174 of Cr.P.C and the RDO conducted an inquiry. In the meantime, the Post mortem was also conducted and certain injuries were found in the body of the deceased. The investigation was taken up by the DSP, Periyakulam and after a detailed investigation, a Closure Report was filed before the learned Judicial Magistrate, Periyakulam and RCS Notice was also served upon the wife of the deceased. In the meantime, the RDO who conducted the inquiry has chosen to file a Private Complaint before the learned Judicial Magistrate, Periyakulam. This complaint has now been put to challenge before this Court.

3. Mr.A.Ramesh, learned Senior Counsel appearing on behalf of the petitioner apart from canvassing the case on merits, raised a preliminary objection regarding the very maintainability of the Private Complaint. The learned Senior counsel further submitted



that the Magistrate Court adopted a wrong procedure, wherein, the learned Magistrate even without taking cognizance u/s 190(1) of Cr.P.C has proceeded to enquire u/s 202 of Cr.P.C, various witnesses and the same is totally opposed to the procedure established under Cr.P.C. The learned Senior counsel further submitted that even though cognizance has not been taken by the learned Magistrate, this Court in exercise of its powers u/s 482 of Cr.P.C can strike down the complaint on the ground that the same is not maintainable and in order to secure the ends of justice.

4. The learned Senior Counsel in order to substantiate his submissions relied upon the following judgments:

1. **Tej Kishan Sadhy .Vs. State and Ors** reported in **MANU/DE/1332/2013**.

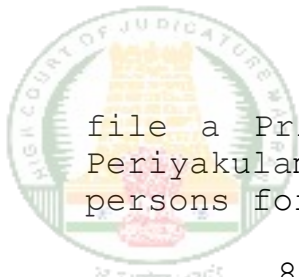
2. **R.Kasthuri .Vs. State by the District Collector, Cuddalore & District & Others** reported in **[2015] 1 MLJ (Cr1) 455**.

3. **Chinnasamy and Others .Vs. The Revenue Divisional Officer, Tiruchirapalli, K.K.Nagar, P.S.** reported in **MANU/TN/3083/2015**.

5. Per contra, Mr.M.Chandrasekar, learned Additional Public Prosecutor appearing on behalf of the respondent submitted that this Court should not interfere with the proceedings even before summons are issued by the learned Magistrate. The learned counsel further submitted that this petition filed by the petitioner is pre mature and there are *prima facie* materials to show that the deceased died while he was in the custody of the accused persons.

6. This Court has carefully considered the submissions made on either side. This Court does not want to dwell much upon the facts of the case and in the considered view of this Court, the Private Complaint filed by the respondent has to be quashed on the very ground of maintainability. From the materials placed on record, it is seen that apart from the inquiry conducted by the RDO, the regular investigation was conducted by the DSP of Police, Periyakulam. He has filed a detailed Closure Report before the concerned Court after the investigation. In the said report, he has come to the categorical conclusion that the deceased died in an accident while travelling in his two wheeler and the said fact has also been accepted by the wife of the deceased. This has also been spoken to by other witnesses. In an earlier writ petition filed before this Court in W.P.(MD).No.3939 of 2011, seeking for investigation for custodial death and compensation, the writ petition itself came to be dismissed as withdrawn by an order dated 04.09.2013. This fact has also been noted in the Closure Report. The Closure Report also takes note of the report of the RDO who conducted the inquiry u/s 174 of Cr.P.C. Before fling this Closure Report, RCS Notice was served upon the wife of the deceased and she has not chosen to file a Protest Petition before the concerned Court. She has in fact given in writing that her husband died only due to the road accident, and therefore, she is not inclined to proceed further with any action.

7. It is under such circumstances, the RDO has chosen to



file a Private Complaint before the learned Judicial Magistrate, Periyakulam in the year 2014, seeking to convict the accused persons for an offence u/s 342, 304(ii) IPC r/w Section 34 IPC.

8. The procedure to be followed in cases of custodial death has been dealt with in detail by this Court in R.Kasthuri referred supra. The relevant portion of the judgment is extracted hereunder:

"39. To sum up, the conclusions are as follows:

(1) Any information relating to the death or disappearance of any person or rape of a woman while such person or woman was in the custody of the police or in any other custody authorized by a Magistrate or Court, shall be registered as a case under Section 154 of the Code.

(2) Soon after the registration of the case, the Station House Officer shall forward the FIR to the jurisdictional Judicial Magistrate/Metropolitan Magistrate.

(3) The Jurisdictional Magistrate shall thereafter hold an inquiry under Section 176(1A) of the Code.

(4) During such inquiry under Section 176 (1A) of the Code the Judicial Magistrate/Metropolitan Magistrate shall have power to record evidence on oath.

(5) On completing the inquiry the Judicial Magistrate/Metropolitan Magistrate shall draw a report and keep the statements of the witnesses, documents collected and the report drawn by him as part of case records.

(6) The Judicial Magistrate/Metropolitan Magistrate shall furnish copies of the statements of the witnesses recorded during inquiry under Section 176(1A) of the Code, the documents collected and the report drawn by him to the investigating police officer without delay.

(7) The investigating police officer shall, without being hindered by the inquiry by the Judicial Magistrate/Metropolitan Magistrate conduct investigation under Chapter XII of the Code thoroughly and submit a final report to the jurisdictional Magistrate/Court under Section 173 of the Code.

(8) If the case relates to police encounter, as directed by the Hon'ble Supreme Court in People's Union for Civil Liberties and Another v. State of Maharashtra and others (supra), the investigation



shall be entrusted to either CB CID or a police team of another police station under the supervision of a senior police officer (at least a level above the head of the police party engaged in the encounter).

(9) The Judicial Magistrate/Metropolitan Magistrate shall not forward the original records of the inquiry under Section 176(1A) of the Code either to the District Collector or to the Government".

9. Subsequently, an issue which is similar to the present case again came for consideration before this Court in Chinnasamy and Others referred supra. The relevant portions of the judgment is extracted hereunder:

"

1.....
.....

(f) The Revenue Divisional Officer/Executive Magistrate finally filed a private complaint before the jurisdictional Magistrate against these accused and on committal, the accused were tried by the trial Court. Based on the above, the trial Court framed charges under Sections 304 IPC. But, the accused denied the same. In order to prove the case, on the side of the prosecution, as many as five witnesses were examined and ten documents were exhibited.

17. Nextly, as rightly pointed out by the learned counsel for the appellants, the procedure adopted by the Revenue Divisional Officer/Executive magistrate in filing the private complaint is wholly illegal. In this regard, I may say that prior to the introduction of Sub-Section (1-A) of Section 176 of Code of Criminal Procedure, by amendment Act 25 of 2005, with effect from 23.06.2006, the enquiry into the case in respect of custodial death were to be made by the Executive Magistrate, but after introduction of Sub-section (1-A) of Section 176 of the Code, the power of the Executive Magistrate to hold such enquiry in respect of custodial death has been taken away and instead such power has been given only to the jurisdictional Judicial Magistrate. Such an enquiry to be held by the jurisdictional Magistrate is not a substitute for the investigation to be done by the Police and it is only in addition to the investigation to be done by the Police. As to how such enquiry is to be held by a Judicial Magistrate and as to how the report of the Magistrate is to be used have

been extensively dealt with by me in R.Kasthuri v. State, rep. by the District Collector, Cuddalore, MANU/TN/3114/2014: (2015) 1 MLJ (Cr1) 455 and in



P.Pugalenth v. State, rep. by the Director General of Police, Chennai, MANU/TN/3388/2014 : (2015) 1 MLJ (Crl) 424. Therefore, I do not want to repeat the same. I am only hopeful that the authorities concerned will scrupulously follow the mandate of law contained in Sub-section (1-A) of Section 176 of the Code, in the light of the judgments, cited supra. Above all, I do not understand as to why the executive Magistrate, who conducted enquiry purportedly under Section 176 of the Code and laid the private complaint, was not examined in this case."

10. From the above said judgments, it is very clear that after coming into force of Section 176(1-A) of Cr.P.C, power of inquiry into the custodial death has been taken away from the Executive Magistrate. The manner in which such cases will have to be dealt with has been clearly spoken to in Kasthuri case, and this Court hereby merely reiterates the same. This Court has categorically held that the Revenue Additional Officer/Executive Magistrate is not entitled to file a Private Complaint in cases of this nature and such complaint is wholly illegal. In this case, the investigation conducted by the DSP, Periyakulam has reached its logical conclusion when a Closure Report was filed before the concerned Court, and RCS Notice was served upon the wife of the deceased who chose not to file a Protest Petition or a Private Complaint, as the case may be. Under such circumstances, the Private Complaint filed by the respondent against the accused person is wholly illegal and opposed to the dictum of this Court referred supra.

11. The learned Magistrate has followed a very curious procedure in this case. The learned Magistrate even without taking cognizance of the complaint has proceeded to conduct an inquiry u/s 202 of Cr.P.C and the said procedure is totally illegal. Section 202 of Cr.P.C comes into play only at the post-cognizance stage and it can never be resorted to even before the Complaint is taken cognizance u/s 190(1) of Cr.P.C.

12. The last question to be considered is whether this Court can interfere with the Complaint even before summons are issued to the accused persons ? Useful reliance can be made to the judgment of the Delhi High Court in Tej Kishan Sadhu referred supra. The relevant portions of the judgment is extracted hereunder:

"3(a). *Whether the petitioner who has yet not been summoned as an accused can challenge any order passed by the learned Metropolitan Magistrate at the pre-summoning stage, by invoking the powers under Section 482, Section 483 Cr.P.C. or Article 226 & 227 of the Constitution of India.*

50. *Undoubtedly, the petitioner approaching*



the High Court at the pre-summoning stage, can only do so in excruciating circumstances wherein a very strong case has

WEB COPY

been made out seeking for the indulgence of this Court. In exercise of its powers under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India it is only in very rare and exceptional cases that the High Court intervenes in the interest of securing the ends of justice to prevent the abuse of the process of the court. This has been a consistent view of the Apex Court and various High Courts that exercise of such powers either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India would depend upon the facts and circumstances of each case and it is neither possible nor desirable to lay down any inflexible rules or guidelines which would govern the exercise of these inherent, plenary and extraordinary powers of this Court".

13. This Court is in agreement with the judgment of the Delhi High Court. The powers of this Court u/s 482 has a very wide amplitude and the same can be exercised even at a pre-summons stage in appropriate cases. This is a case where this Court should exercise the jurisdiction since the Complaint itself is illegal and the pendency of the Complaint as caused grave prejudice to the petitioner, and therefore, it has to be interfered in order to prevent the abuse of process of Court and in the interest of justice. It is made clear that such exercise of power at pre-summons stage must be done only in very rare and exceptional cases.

14. In the result, the Private Complaint filed by the respondent is found to be wholly illegal and the same requires the interference of this Court u/s 482 of Cr.P.C, and accordingly the same is quashed.

In the result, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //



To

WEB COPY

1. The Revenue Divisional Officer,
Periyakulam, Theni District.
2. The Judicial Magistrate Court,
Periyakulam.
3. The Additional Public Prosecutor,
Madurai High Court.

1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-59594[F] dated
08/04/2019)

Cr1.O.P.(MD).No.22888 of 2016
and
Cr1.MP (MD).No.12013 of 2016

05.04.2019

DS(SP) /SAR- (15.04.2019) 7P 5C