



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 10.12.2019
Judgment Pronounced on : 13.12.2019

CORAM:

THE HONOURABLE Mr. JUSTICE M.NIRMAL KUMAR

Crl.O.P. (MD)No.14904 of 2015

and

M.P. (MD)No.2 of 2015

Sarguru ... Petitioner / Sole Accused
Vs.
A.Vanitha ... Respondent / Complainant

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records in connection with S.T.C.No.1007 of 2015, before the learned Judicial Magistrate, Theni, Theni District and quash the same.

For Petitioner : Mr.B.Jeyakumar

For Respondent : Mr.M.Ajmalkhan

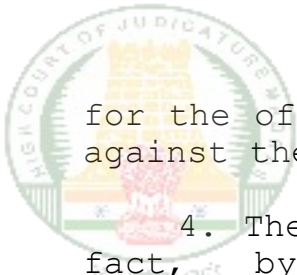
Senior Counsel For M/s.Ajmal Associates

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.1007 of 2015, pending on the file of the learned Judicial Magistrate, Theni, Theni District.

2. The respondent / complainant has filed a private complaint against the petitioner / accused, for offence under Sections 448, 452, 427 and 506(ii) of IPC., before the learned Judicial Magistrate, Theni, which was taken on file as C.C.No.1007 of 2015.

3. The gist of the case is that one Sarguru and Ayyalusamy are brothers. The said Ayyalusamy is said to have been murdered in the year 1994. The children of late Ayyalusamy are (1) Vanitha (2) Ananth and (3) Suresh and they are all living in USA. The property in dispute in this case is a house in NRT Nagar, Theni. According to the defacto complainant, he was the lawyer of the deceased Ayyalusamy and was handling his case. It is his case that the said house property belongs to Ayyalusamy and on his death, it belongs to his heirs, that the children of Ayyalusamy, whose names are given above, have given a power of attorney, dated 06.11.2010, to the defacto complainant. On 07.11.2010 the defacto complainant lodged a complaint with the Inspector of Police, Theni Police Station, alleging that on 06.11.2010 Sargur and two others forcibly took the house keys from one Rajagopal, watchman of the house and trespassed into the house and removed valuable things running to several lakhs of rupees belonging to the children of Ayyalusamy. In the complaint, the defacto complainant has specifically stated that Sarguru and his men attempted to take forcible possession of the house. Based on the complaint, the first respondent police registered the case in Theni Police Station Crime No.2638 of 2010,



for the offences under Sections 448, 452, 427 and 506(ii) of IPC., against the petitioner and two others.

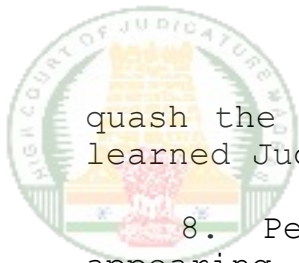
4. The case in Crime No.2638 of 2010 was closed as mistake-of-fact, by closure report dated 23.03.2011. Against which, the petitioner filed a protest petition. The learned Judicial Magistrate in Cr.MP. No.8450 of 2013 dismissed the protest petition by order dated 17.10.2013. While dismissing the protest petition, the learned Magistrate, at paragraph No.11, has observed as follows:-

“இறுதியில் இவ்வழக்கு சம்பந்தமாக புகார்தாரர் தனி நபர் வழக்கு தாக்கல் செய்துகொள்ளலாம் என்று அறிவுறுத்தலோடு புகார்தாரரின் தொடர் புலன் விசாரணை செய்ய வேண்டும் என்ற கோரிக்கையானது தள்ளுபடி செய்து உத்திரவிடப்படுகிறது.”

5. Challenging the same, Crl.R.C.No.744 of 2013 was filed and this Court, by Judgment dated 18.06.2014, had found no illegality or infirmity on the conclusion arrived at by the Police as well as in the impugned order of Judicial Magistrate and accordingly, dismissed the Revision.

6. Hence, the respondent / complainant has filed a private complaint, for the offences under Sections 448, 452, 427 and 506(ii) of IPC., before the learned Judicial Magistrate, Theni, which was taken on file, as C.C.No.1007 of 2015.

7. Mr.B.Jeyakumar, the learned counsel appearing for the petitioner would submit that the private complaint has been filed only to harass and humiliate the petitioner and there is no iota of material against the petitioner. He would further submit that the petitioner had purchased the property in his name in the year 1969, by way of a registered Document No.1925 of 1969, in Sub-Registrar's Office, Theni and therefore, the title of the said house property stands in the name of the petitioner. Since the respondent has not produced any document to sustain his claim, the learned Judicial Magistrate, by order dated 17.10.2013, has rightly rejected the same contention of the respondent in protest petition in Cr.M.P.No.8450 of 2013. The respondent has no *locus standi* to lodge the above complaint. The present complaint is nothing but violation of principles of double jeopardy. The petitioner, being a business man, having business at Chennai and USA, frequently travelled to foreign countries for his business. Taking advantage of the same, the respondent to drag on the petitioner and to harass him, the present complaint has been filed. Further, the Court below as well as this Court had elaborately dealt with the contention of the petitioner earlier and passed a detailed order, rejected the claim of the petitioner on the ground that without any fresh material on the same facts, the second complaint cannot be entertained. He would further submit that there are civil Suits pending against them. Therefore, the learned counsel, prayed to



quash the proceedings in S.T.C.No.1007 of 2015, on the file of the learned Judicial Magistrate, Theni.

8. Per contra, Mr.M.Ajmalkhan, the learned Senior Counsel appearing for the respondent, by placing heavy reliance on the observation made by the learned Judicial Magistrate in Cr.M.P.No.8450 of 2013, dated 17.10.2013, submitted the respondent has got right to file a private complaint. The learned Senior Counsel, in support of his contention, drew the attention of this Court, to the Judgment of Hon'ble Supreme Court in **Mahesh Chand Vs. B.Janardhan Reddy** reported in **(2003 (1) SCC 734)**, wherein it has been held as follows:-

"14. In Pramatha Nath Taluqdar's case (supra), Kapur, J, speaking for himself and Hidayatullah, J, as he then was, observed : (AIR P899, para 48):-

"Therefore if he has not misdirected himself as to the scope of the enquiry made under s.202, Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under s.203, Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into Allah Ditta v. Karam Baksh, Ram Narain Chaubey v. Panachand Jain, Hansabai v. Ananda, Doraisami v. Subramania. In regard to the adducing of new facts for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court or the Patna High Court in cases above quoted an adopted the opinion of Maclean, C.J. in Queen Empress v. Dolegobinda Das affirmed by a full Bench in Dwarka Nath Mandal v. Benimadhab Banerji. It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming."



S.K. Das, J delivering the minority judgment also observed : (AIR p.888, para 21)

"The question was then considered by a Full Bench of the Calcutta High Court in Dwarka Nath Mondul v. Beni Madhab Banerjee and it was held by the Full Bench (Ghose, J. dissenting) that a Presidency Magistrate was competent to rehear a warrant case triable under Ch. XXI of the Code of Criminal Procedure in which he had earlier discharged the accused person. Nilratan Sen's case and Kamal Chandra Pal's case were referred to in the arguments as summarized in the report, but the view expressed therein was not accepted. Dealing with the question Prinsep, J. said :

"There is no bar to further proceedings under the law, and, therefore, a Magistrate to whom a complaint has been made under such circumstances, is bound to proceed in the manner set out in s.200, that is, to examine the complaint, and, unless he has reason to distrust the truth of the complaint, or for some other reason expressly recognized by law, such as, if he finds that no offence had been committed, he is bound to take cognizance of the offence on a complaint, and, unless he has good reason to doubt the truth of the complaint, he is bound to do justice to the complainant, to summon his witnesses and to hear them in the presence of the accused."

The same view was expressed by the Madras High Court In re. Koyassan Kutty and it was observed that there was nothing in law against the entertainment of a second complaint on the same facts on which a person had already been discharged, inasmuch as a discharge was not equivalent to an acquittal. This view was reiterated in Kumariah v. Chinna Naicker, where it was held that the fact that a previous complaint had been dismissed under s. 203 of the Code of Criminal Procedure was no bar to the entertainment of a second complaint. In Hansabai Sayaji v. Ananda Ganuji the question was examined with reference to a large number of earlier decisions of several High Courts on the subject and it was held that there was nothing in law against the entertainment of a second complaint on the same facts. The same view was also expressed in Ram Narain v. Panachand Jain, Ramanand v. Sheri and Allah Ditta v. Karam Baksh. In all these decisions it was recognized further that though there was nothing in law to bar the entertainment of a



second complaint on the same facts, exceptional circumstances must exist for entertainment of a second complaint when on the same allegations a previous complaint had been dismissed. I accept the view expressed by the High Courts that there is nothing in law which prohibits the entertainment of a second complaint on the same allegations when a previous complaint had been dismissed under s.203 of the Code of Criminal Procedure. I also accept the view that as a rule of necessary caution and of proper exercise of the discretion given to a Magistrate under s.204(1) of the Code of Criminal Procedure, exceptional circumstances must exist for the entertainment of a second complaint on the same allegations; in other words, there must be good reasons why the Magistrate thinks that there is "sufficient ground for proceeding" with the second complaint, when a previous complaint on the same allegations was dismissed under s.203 of the Code of Criminal Procedure."

9. The learned Senior Counsel invited the attention of this Court to an yet another Judgment of Hon'ble Apex Court, in **Jattinder Singh Vs. Ranjit Kaur** reported in **(AIR 2001 SC 784)**, wherein it has been held as follows:-

9. There is no provision in the Code or in any other statute which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not result in a conviction or acquittal or even discharge. Section 300 of the Code, which debars a second trial, has taken care to explain that the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of this Section. However, when a magistrate conducts an inquiry under Section 202 of the Code and dismisses the complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance."

10. I have heard the learned counsels appearing on either side and perused the materials on record, including the complaint filed by the respondent.

11. It is not in dispute with regard to registration of the case in Crime No.2638 of 2010, for the offence under Sections 448, 452, 457 and 506(ii) of IPC., against the petitioner, at the



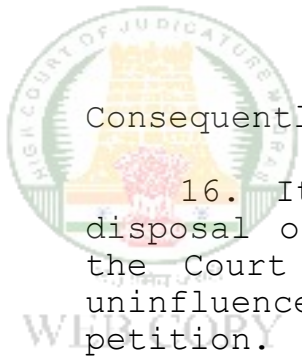
instance of respondent, and the same, after investigation, had been closed as mistake-of-fact, which was challenged by way of a protest petition in Cr.M.P.No.8450 of 2013, before the learned Judicial Magistrate, Theni, which came to be dismissed on 17.10.2013. Against which, a Revision in Crl.RC.No.744 of 2013 has been preferred by the respondent, which came to be dismissed, by order dated 18.06.2014. On perusal of these documents and the complaints it is seen that the earlier allegation and the present complaint are one and the same, without any fresh material. Further it is seen that except for examining the complainant / viz. Power of attorney Vajravel, no other witnesses have been examined and there are no fresh materials produced. Further, earlier, the Court below as well as this Court had found the happenings on 06.11.2010 is without any substance and there is no credible materials to substantiate the same and hence, closed the case as mistake-of-fact, confirmed by Judicial Orders.

12. In view of no fresh materials produced, the Court below ought not to have taken the private complaint on file. Further, the private complaint has been filed on 05.12.2014 in which, there is no mention of the order of this Court, dated 18.06.2013 in Crl.R.C. (MD)No.744 of 2013. The respondent had not approached the Court with clean hands, suppressed material facts. It is submitted that there are civil suits pending between the parties. The civil suit was Initially filed by the respondent for declaration and injunction in O.S.No.207 of 2010 before the Sub Court, Theni, now transferred to the Mahila Court and pending as O.S.No.86 of 2019. In view of the above factual matrix, the court below ought not to have taken the complaint on file and continuation of the further proceedings would amount to abuse of process of law.

13. The respondent in the complaint had not mentioned about any new occurrence or development that necessitated fresh complaint and the issue, which was already decided. It is well settled principle of law that in the absence of sufficient cause being shown, repetitive complaint in respect of the very same occurrence ought not to be entertained. The respondent failed to show sufficient cause and has also intentionally suppressed the dismissal of the Criminal Revision Case, reaching finality from the knowledge of the Court. The second complaint is nothing but abuse of process of law.

14. Having regard to the related facts and circumstances, this Court is of the view that the second complaint in S.T.C.No.1007 of 2015, is not covered by the special circumstances enumerated by the Larger Bench of the Apex Court in **Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar** reported in **(AIR 1962 SC 876)**.

15. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.1007 of 2015, on the file of the learned Judicial Magistrate, Theni, Theni District, is quashed.



Consequently, the connected miscellaneous petition is closed.

16. It is made clear that the observations made herein for disposal of the above case. The civil proceedings pending before the Court below between the parties, to be decided on merits, uninfluenced by any of the observations and findings made in this petition.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

MPK

To

1.The Judicial Magistrate,
Theni, Theni District

+1CC TO Mr.B.Jeyakumar, Advocate, Sr.No.105255

+1cc to M/S.Ajmal Associates, Sr.No.105039

ORDER MADE IN

Crl.O.P. (MD)No.14904 of 2015

13.12.2019

SMA/02/01/2020/7P/4C