



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.10.2019
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.1517 of 2015

1.Annadasan
2.Ramani
3.Moorthy
4.Packiyalakshmi
5.Manikandan
6.Jeyanthi
7.Mageswri
8.Nanthakumari
9.Malligai
10.Paramasivam

... Petitioners / Accused

Vs.

Muthulakshmi

... Respondent / Complainant

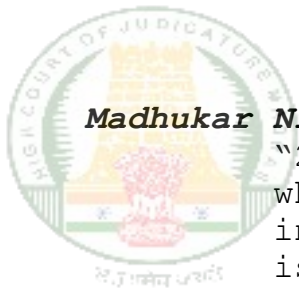
Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C No.217 of 2014 on the file of the Judicial Magistrate No.III, Nagercoil and quash the same.

For Petitioners : Mr.K.Govindarajan
for Mr.S.Ravi
For Respondent : Mr.Arumugam for Mr.C.Christopher

ORDER

This original petition has been filed for quashing the impugned proceedings in C.C No.217 of 2014 on the file of the Judicial Magistrate No.III, Nagercoil.

2.The learned counsel on either side argued at length in respect of their respective positions. But, without going into the merits of the matter, I am of the view that the matter will have to be remitted on the file of the trial magistrate to consider the issue afresh. This is because, in a criminal proceeding, it has been specifically contended that the petitioners 1 and 2 are residing at Alvarkurichi, Tirunelveli District while the petitioners are at Chennai. The petitioners 6 and 7 are at Coimbatore. The learned Trial Magistrate has taken cognizance without following the procedure as per the amended Section 202 of Cr.PC. This legal position does not admit of any doubt. The Hon'ble Supreme Court in the decision reported in **2017 (3) SCC 528 (Abhijit Pawar Vs. Hemant**



Madhukar Nimbalkar and Ors.) held as follows :

"22. Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 of the Code of Criminal Procedure was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction'. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment. The essence and purpose of this amendment has been captured by this Court in Vijay Dhanuka v. Najima Mamtaaj (2014) 14 SCC 638 in the following words:

11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this Clause seeks to amend Sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or



direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.

23.For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment *Mehmood Ul Rehman v. Khazir Mohammad Tunda* MANU/SC/1026/2015 : (2016) 1 SCC (Cri.) 124 in the following words:

20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in *Pepsi Foods Ltd.. [Pepsi Foods Ltd. v. Judicial Magistrate]*, MANU/SC/1090/1998 : (1998) 5 SCC 749: 1998 SCC (Cri.) 1400] to set in motion the process of criminal law against a person is a serious matter.

22. The steps taken by the Magistrate Under Section 190(1)(a) Code of Criminal Procedure followed by Section 204 Code of Criminal Procedure should reflect that the Magistrate has applied his mind to the facts and the



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proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed Under Section 203 Code of Criminal Procedure when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation Under Section 202 Code of Criminal Procedure, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused Under Section 204 Code of Criminal Procedure, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds Under Sections 190/204 Code of Criminal Procedure, the High Court Under Section 482 Code of Criminal Procedure is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

3. In this view of the matter, the order taking cognizance is set aside. The matter is remitted to the file of the learned Trial Magistrate to consider the issue afresh on merits and in accordance with law.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)



The Judicial Magistrate No.III,
Nagercoil

+1 CC to Mr.S.RAVI, Advocate (SR-93157[F] dated 21/10/2019)
+1 CC to Mr.C.CHRISTOPHER, Advocate (SR-93402[F] dated 21/10/2019)

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MK (30.01.2020) 5P 4C