



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

Crl.O.P. [MD] .No.9812 of 2017

and

Crl.M.P. (MD) .Nos.6688 & 6689 of 2017

WEB COPY

1.Ganesan
2.Thamodharan
3.Rajan
4.Muthaiyan
5.Siva @ Sivakumar
6.Jayaraj

: Petitioners / Accused Nos.1 to 6
Vs.

Ganapathy : Respondent / Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to P.R.C.No.25 of 2014, pending on the file of the learned Principal District Munsif cum Judicial Magistrate, Eraniel and quash the same.

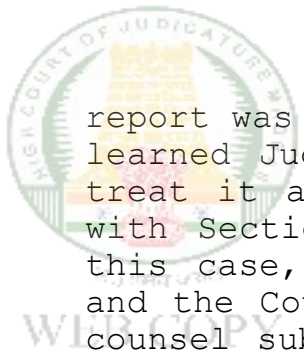
For Petitioners : Mr.S.Deenadhayalan
For Respondent : Mr.C.Sankar Prakash

ORDER

This Criminal Original Petition has been filed challenging the proceedings initiated by the respondent against the petitioners by way of filing a private complaint for the offences under Sections 147, 294(b) and 506 (ii) of the Indian Penal Code and Section 3 (1) (x) of the SC/ST Act, 1989. It is seen from the records that a similar complaint was given to the Manavalakurichi Police Station and an F.I.R. came to be registered in Crime No.241 of 2005 for the very same offences. After investigation, a closure report was filed before the learned Judicial Magistrate, Eraniel. A notice was also issued to the respondent and since the respondent did not file any protest petition, the concerned Magistrate Court on being satisfied with the closure report, took it on file and closed the case.

2. The respondent in the mean time had filed a private complaint before the learned Judicial Magistrate, Eraniel. This private complaint has been filed with the very same allegations and the Court below has taken cognizance of the complaint.

3. The learned counsel appearing for the petitioners submitted that the respondent ought to have filed a protest petition before the learned Judicial Magistrate, Eraniel, after the closure



report was filed by the Police. Thereafter, it was left open to the learned Judicial Magistrate to take up the protest petition or to treat it as a private complaint and proceed further in accordance with Section 200 of the Code of Criminal Procedure. However, in this case, the respondent has parellely filed a private complaint and the Court below has taken cognizance of the same. The learned counsel submitted that the second complaint is not maintainable on the same set of facts. In order to substantiate his submissions, the learned counsel has relied the judgment of this Court in the case of **A.Krishna Rao Vs. L.S.Kumar** reported in **1998 (I) CTC 329**.

4. Per contra, the learned counsel appearing on behalf of the respondent submitted that the Police did not properly investigate this case and therefore, the respondent had no other way except to file a private complaint before the learned Judicial Magistrate, Eraniel. The learned counsel submitted that the Court below had applied its mind and found that the offence has been made out and the summons was issued on the petitioners and therefore, there is no ground to interfere with the proceedings at this stage.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. In this case, it is admitted that the facts of the case, which became a subject matter of investigation by the Police in Crime No.241 of 2005 and the facts of the case which form part of the private complaint, are one and the same. The respondent had initially given a Police complaint and the concerned Police after a detailed investigation have filed a closure report before the learned Judicial Magistrate, Eraniel. A notice was issued to the respondent and since the respondent did not file a protest petition, the learned Judicial Magistrate took the closure report on file and closed the case. This order remains unchallenged.

7. The respondent has parallely filed a private complaint before the very same Court and the Court has taken cognizance of the same. Even without going into the facts of the present case, it must be seen as to whether such a private complaint is maintainable.

8. At this juncture, it will be relevant to rely upon a judgment of this Court in the case of **A.Krishna Rao Vs, L.S.Kumar** cited by the learned counsel appearing for the petitioners reported in **1998 (I) CTC 329**. The relevant portions of the judgment are extracted hereunder:

"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. "

9. One more judgment of this Court to which reliance can be placed is the case of **Dr.Parthasarathy Vs. Rukmani and another** reported in **CDJ 2016 MHC 009**:

"16. This Court also in the case of Bhanwarlal Sharma vs. K.V.Sathyanarayanan and others, reported in 2012 MLJ (Crl) 57, by referring to various judgments, has rendered a finding as under:

"25. We are unable to appreciate the submissions made on behalf of the petitioner, since the law with regard to the filing of a second complaint is now crystallised. It is well settled that such a complaint is maintainable in different circumstances as enumerated in, Pramatha Nath Taluqdar vs. Saroj Ranjan Sarkar, AIR 1962 SC 876 and Jainder Singh vs. Ranjit, (2001) 2 SCC 570 : 2001 SCC (Cri) 354."

26. The facts of the present case on hand are almost identical to the facts in A.Krishna Rao vs. L.S.Kumar, 1998 (I) CTC 329. In this case the respondent L.S.Kumar had preferred a complaint against the petitioner and others before the SIPCOT Police Station at Ranipet and a receipt in F.D.R.No.110 of 1993 had been issued to him by the Police. As the police had not taken any further action on the said complaint, the complainant filed a private complaint before the learned Judicial Magistrate No.II, Wallajapet and the learned Judicial Magistrate had forwarded the said complaint to the police under Section 156(3) Cr.P.C., for investigation and report. The police registered a case in Crime No.389 of 1994 under Sections 323, 341 and 506(2) I.P.C., and after investigation the investigating officer had filed the final report on 09.12.1994 referring the case as 'Mistake of fact'. The learned Judicial Magistrate had sent a memo along with the



R.C.S. Notice and the complainant did not file any objection and on the contrary he had filed another private complaint on 15.12.1994 and the same was taken by the said Court in C.C.No.274 of 1994. As the Police had already investigated the case and the matter had been referred to as 'Mistake of fact', the learned Magistrate ought not to have taken cognizance of the second complaint. In such circumstances, the learned Single Judge of this Court had concluded that the proceedings in the second complaint, which was pending in C.C.No.274 of 1994 on the file of the learned Judicial Magistrate, Wallajapet had to be quashed.

28.....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.Cs., 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 charge sheet. 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.II, Wallajapet in C.C.No.274 of 1994 is not maintainable and the proceedings have to be quashed. Accordingly, the criminal proceedings were quashed.

101. This Court has endorsed the view expressed by various High Courts as well as the Apex Court 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 Section 203 of the Code of Criminal Procedure. This Court also accepts the view that as a rule of necessary caution and of proper exercise of the discretion given to a Magistrate under Section 204 (1) of the Code of Criminal Procedure, exceptional circumstances must exist for the entertainment of a second complaint on the same allegations. This Court could say in other words, that there must be good reasons as to 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.

102. After examining various circumstances and the related facts, the larger Bench of the Apex Court has carved out the exceptional circumstances under the following three



categories to answer the question of entertainment of a second complaint on the same allegations, when a previous complaint had been dismissed under Section 203 of the code of Criminal Procedure:

i. Manifest error, ii. Manifest miscarriage of justice, and iii. New facts, which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings.

After carving out the above said exceptional circumstances, the Apex Court has held that:

Any exceptional circumstances coming within any one or more of the aforesaid three categories would fulfil the test. It is also held that:

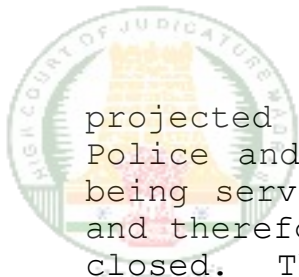
One new category mentioned was where the previous order of dismissal was passed on an incomplete record or a misunderstanding of the nature of the complaint. This new category would perhaps fall within the category of manifest error or miscarriage of justice.

103. In the instant case on hand, this Court finds that the second complaint in Crl.M.P.No.2145 of 2007 does not come under the above said three categories and this Court also finds that the Order of the learned Chief Metropolitan Magistrate dated 30.10.2009 has not resulted in a miscarriage of justice and therefore it does not create any necessity to entertain a second complaint on the same allegations made in the first complaint in Crl.M.P.No.507 of 2007.

104. Insofar as the second complaint in Crl.M.P.No.2145 of 2007 is concerned, on its reference by the learned Chief Metropolitan Magistrate, Egmore, Chennai under Section 156(3) of the Code of Criminal Procedure, the case in C.C.B.X Crime No.703 of 2007 under Sections 468, 471, 420r/w 120B I.P.C., was registered. After thorough investigation, an elaborate final report dated 28.06.2009 was submitted by the third respondent Police before the learned Chief Metropolitan Magistrate, Egmore, Chennai, in which he had narrated all the previous incidents as well as several civil litigations initiated by the first respondent/complainant as against the accused persons.

119. In the above circumstances, this Court is also of opinion that the bringing of the fresh complaint is a gross abuse of process of law and is not with the object of furthering the interests of justice."

10. In the present case, the respondent has parallelly initiated a second complaint on the same set of facts. The facts as



projected in the complaint has already been investigated by the Police and a closure report has been filed. In spite of notice being served on the respondent, he did not file a protest petition and therefore, the closure report was taken on file and the case was closed. The respondent is now agitating the very same issue in the second complaint. Atleast, the notice of the Court below could have been drawn by the respondent regarding the closure report filed by the Police. At that point of time, the Court below could have taken note of the said fact and treated this complaint as a protest petition. Even this was not done in the present case. The Court below has completely discarded the closure report filed by the Police and has independently taken cognizance of the private complaint based on the same set of facts. In the considered view of this Court, the cognizance taken by the Court below is unsustainable in law.

11. The continuation of the proceedings as against the petitioners will amount to abuse of process of Court and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure. In the result, the proceedings in P.R.C.No.25 of 2014, on the file of the learned District Munsif cum Judicial Magistrate, Eraniel, is hereby quashed and this Criminal Original Petition stands allowed accordingly. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

The Principal District Munsif
cum Judicial Magistrate, Eraniel.

+1 CC to M/s.S. DEENADHAYALAN, Advocate (SR-101992[F] dated
28/11/2019)

+1 CC to M/s.C.SANKAR PRAKASH, Advocate (SR-102559[F] dated
29/11/2019)

**Crl.O.P. [MD] .No.9812 of 2017
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KK/SAR/27.12.2019/6P-4C/