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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No.26251 of 2013

and

M.P.No.1 of 2013

1. Senthil Kumar
2. Subramaniyan

...Petitioners /Accused

Vs.

1. The State of House Officer,
Kodumudi Police Station,
Erode.

...Respondent/Complainant

2. Thamilselvi

...Respondent / De facto Complainant

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.19 of 2013 on the file of the Judicial Magistrate Court, Kodumudi and quash the same as illegal, incompetent and without jurisdiction.

For Petitioners : For Mr.Sharathchandran
Mr.V.Raghavachari

For R1 : Mr.E.Rajthilak
Government Advocate (Crl Side)
R2 - Served - No Appearance

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.19 of 2013 on the file of the Learned Judicial Magistrate, Kodumudi and quash the same.

2. The petitioners submit that the 2nd respondent / defacto complainant has lodged a complaint against them on 26.10.2012 around 5.15 p.m., alleging that on 23.10.2012 around 10.30 p.m., the petitioners in an inebriated condition committed acts of mischief and broke the window of the defacto complainant's



house. Based on the complaint, a case has been registered by the 1st respondent police under Sections 427, 294(b) and 506(1) of IPC. Further, the petitioners submit that the complaint lodged against them lacks bonafide and it is highly mischievous. The petitioners were summoned by Court on 10.07.2013 and they have denied the incident. Only thereafter, they came to know that the magistrate in addition to the provisions under which the police had launched a Criminal Complaint had included Section 4 of Tamilnadu Prohibition of Harassment of Women Act 1998. None of the allegations made against the petitioners either on the complaint or on the prima facie evidence adduced before it warrant framing of charge under Act 44 of 1998. Hence they prayed for quashing the complaint on the following grounds :

a. That the complaint made against the petitioners is fictitious and false.

b. That the petitioners have not indulged in harassment of a woman that had caused intimidation, fear, shame or embarrassment, particularly to LW1, warranting a criminal charge under Section 4 of the Act.

c. That the allegations against the petitioners is created falsely and made with an oblique motive and that too, after 3 days of the alleged incident. Belated launching of the FIR remains unexplained particularly when the Police Station is hardly 4 kms away from the residence.

d. That an earlier complaint had been lodged on 23.10.12 and withholding of the complaint from the purview of the court is fatal. A second complaint on the same subject is not maintainable.

e. That the prosecution is attempting to shield the truth and built a false case without any justification and on the facts of the case, the occurrences attributed would not attract Section 294 (b) of Indian Penal Code.

f. That the valuation of the property, alleged to have been damaged is not fortified by prosecution by placing any records. Consequently, framing of charge sheet under Section 427 is impermissible.

g. That the filing of a charge sheet under Section 506(I) is absolutely misconceived as the statement of LW 1 to LW 7 would not even prima facie prove the complaint under the aforesaid provision.



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h. That when the prosecution had placed the charge sheet under Section 294(b), 427, 506(I) of Indian Penal Code, the magistrate is not justified in directing the enquiry under Section 4 of the Tamilnadu Prohibition of Harassment of Women Act 1998.

3. The learned counsel for the petitioners would submit that a Learned Magistrate while taking cognizance of an offence must record his reason for issuing process against the accused. But the Court below after taking cognizance of the offence has only made an endorsement in the bottom of the charge sheet "the case in C.C.No.19 of 2013 is taken on file under Section 294(b) 427 and 506(i) IPC, Issue summon to A1 and A2" and has not assigned any reason for the same.

4. In support of his submission, the learned counsel for the petitioners has relied on various judgments of this Court as well as the Hon'ble Supreme Court, which reads as follows :-

i. [Shanmugam and Others v. Inspector of Police and Another] reported in 2019 SCC OnLine Mad 2667 : (2019) 2 LW (Cri) 263. The relevant portions of the judgment is extracted hereunder :

"18. The Court below has taken cognizance of the complaint by merely affixing a "Rubber Stamp" as follows :-

"CC.No.104/2018
Taken on file on 27-08-18
U/s.465, 467, 468, 471 IPC
and posted to 17.09.2018
P.C.A used is on

Judicial Magistrate No.I
Ariyalur

19. It has been repeatedly held that taking cognizance is a judicial act which requires application of mind and the Court must give some reasons for taking cognizance. Failing which, the cognizance itself becomes bad in the eye of law. Unfortunately in this case, the Court below has resorted to "Rubber Stamp" cognizance without assigning any reason.

20. The Hon'ble Supreme Court in [Pawan Kumar Sharma v. State of Uttaranchal] in Crl.Appeal No.1692 of 2007(ASLP (Crl.) No. 4701 of 2007, has dealt with this issue and the relevant portions of the judgment is



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extracted hereunder :

"In the State of Uttaranchal (now known as State of Uttarakhand) there exists a strange practice. The Magistrate take cognizance of offence and issue summons in terms of Section 202 of the Code of Criminal Procedure on "rubber stamped" orders.

A distinction exists between an order taking cognizance and an order issuing process. Before process is issued, the Court concerned must apply its judicial mind. It may, not only apply its mind as to whether on the basis of the allegations made in the complaint petition and the statements made by the complainant and his witnesses, a prima facie case has been made out for issuing processes but also must consider as to whether a case has been made out in terms of proper provisions of the Penal Statute for issuance of process for alleged commission of the offences vis-a-vis, the allegations made.

Appellant herein seriously contend that even if the submissions made in the complaint petition are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance under Section 304(B) of the IPC.

In State of Karnataka v. Pastor P.Raju (2006) 6 SCC 728, this Court has clearly made out a distinction between an order taking cognizance of an offence and an order of issuance of process stating :

"13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made out."

21. The Hon'ble Supreme Court in [Sunil Bharti Mittal v. Central Bureau of Investigation] reported in (2015) 4 SCC 609 has held as follows :-



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51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

22. It is clear from the above judgments that the Hon'ble Supreme Court has deprecated the practice of taking cognizance through "Rubber Stamp" orders. The Hon'ble Supreme Court has made it very clear that taking cognizance is a judicial act which requires application of mind. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is a prima facie case against accused persons. Of course, the order need not contain detailed reasons."



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ii. [Anamallai's Motors Private Ltd., v. R.Subbaiah] reported in 2019 (2) MWN (Cr.) 598. The relevant portions of the judgment is extracted hereunder :

"11. Before considering the above submissions, it is useful to refer to the order passed by the Learned Judicial Magistrate, which reads as follows :

"Records perused. Prima facie case is made out against the respondents for the offences mentioned in the Complaint. Hence, the case is taken into file under Sections 34, 417, 418 & 420, I.P.C. Issue Summons to A-1 to A-6 on process call on 11.7.2014."

12. Section 204 of the Code of Criminal Procedure deals with issuing of process, which reads as follows :

"Issue of process - (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be :

(a) a Summons-case, he shall issue his Summons for the attendance of the Accused, or

(b) a Warrant-case, he may issue a Warrant, or, if he thinks fit, a Summons, for causing the Accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No Summons or Warrant shall be issued against the Accused under sub section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a Complaint made in writing, every Summons or Warrant issued under sub-section (1) shall be accompanied by a copy of such Complaint.

(4) When by any law for the time being in force any Process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the Complaint.

(5) Nothing in this Section shall be deemed to affect the provisions of Section 87."



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13. A cursory reading of the above provision makes it clear that, before taking cognizance of an offence, the learned Magistrate should satisfy himself that there is a sufficient ground available in the Complaint or other materials filed along with the Complaint for proceeding against the Accused. The Order passed by the learned Judicial Magistrate taking cognizance and issuing Process should reflect, whether the learned Judicial Magistrate has applied his mind, and satisfied from the materials available on record, a cognizable offence is made out, which is sufficient to initiate a proceedings against the Accused. Even though the learned Judicial Magistrate need not write an elaborate Order, but, the Order should reflect that the learned Magistrate has carefully considered the materials brought on record and he has examined the nature of allegations made in the Complaint placed before him."

iii. [Mahesh and Others v. State represented by the Inspector of Police and Another] reported in 2019 SCC OnLine Mad 7851. The relevant portions of the judgment is extracted hereunder :

"3. The learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Apex Court in the case of Rasheed Khan v. The State of Uttar Pradesh in Spl.A.No.3159 of 2018. The relevant portion of the said judgment reads as follows :-

"The question that emerges for consideration is whether the learned Magistrate, while entertaining a complaint under Section 200 and taking cognizance under Section 204 of the Code of Criminal Procedure, is obliged to record his satisfaction.

In paragraph 53 of the decision of this Court rendered by a three-judge Bench in Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 SCC 609, it has been held thus :

"53. However, the words 'sufficient ground for proceeding' appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if



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no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

4. A perusal of the above decision makes it clear that the learned Magistrate while entertaining the complaint under Section 200 Cr.P.C., and taking cognizance under Section 204 Cr.P.C., must record his satisfaction for issuance of process and further the learned Magistrate has to satisfy sufficient ground for proceeding further in respect of the complaint and after formation of opinion the learned Magistrate has to issue summon to the parties."

iv. [Adalat Prasad v. Rooplal Jindal and Others] reported in (2004) 7 Supreme Court Cases 338.

"..... A condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate, either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint. In none of these stages the Code of Criminal Procedure, 1973 has provided for hearing the summoned accused, because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provisions in the Code. The only stage of dismissal of the complaint arises under Section 203 Cr.P.C at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under Section 203 Cr.P.C for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 Cr.P.C because the Code does not contemplate a review of an order. Hence in the absence



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of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 Cr.P.C. The view of the Supreme Court in Mathew case, (1992) 1 SCC 217 that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law.

15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code."

5. On perusal of the above judgments relied on by the learned counsel for the petitioners, it is clear that the Learned Magistrate while entertaining the complaint under Section 200 Cr.P.C., and taking cognizance under Section 204 Cr.P.C., must record his satisfaction for issuance of process and further the Learned Magistrate has to satisfy sufficient ground for proceeding further in respect of the complaint. In the present case, after taking cognizance of the offence, the Court below has failed to record his satisfaction as required under Section 204 Cr.P.C and it has only made an handwritten order in the charge sheet as "the case in C.C.No.19 of 2013 is taken on file under Section 294(b) 427 and 506(i) IPC, Issue summon to A1 and A2.

6. The provisions of Section 204 CPC clearly states that before taking cognizance of an offence, the learned Magistrate should satisfy himself that there is sufficient ground available in the complaint to proceed against the accused and the order passed by the learned Magistrate should reflect as to whether the learned Magistrate has applied his mind to initiate a proceedings against the accused. The Court below without considering the above provisions has passed an unreasoned order while taking cognizance and issuing summon to the accused. Hence the order of the Court below needs interference of this Court under Section 482 of the Code in order to prevent abuse of process of the Court.



7. Accordingly, the proceedings in C.C.No.19 of 2013 on the file of the Judicial Magistrate Court, Kodumudi is quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Judicial Magistrate,
Kodumudi.
2. The Station House Officer,
Kodumudi Police Station, Erode.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.31557

CRL.O.P.No.26251 of 2013
and
M.P.No.1 of 2013

PL(CO)
RGA(30/07/2021)