



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2021

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrIOP(MD)No.7701 of 2017

and

CrI.M.P(MD)No.5245 of 2017

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Bhuavneswari

... Petitioner /Accused No.2

Vs.

Vijayakumar

... Respondent / Complainant

**Prayer:** Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to C.C.No.20 of 2016 on the file of the Judicial Magistrate No.1, Kulithalai and quash the private complaint insofar as the petitioner alone.

For Petitioner : Mr.AN.Ramanathan  
For Respondent : Mr.J.Anandhakumar,  
Legal Aid Counsel

**ORDER**

This petition is filed as against the private complaint taken on file by the learned Judicial Magistrate, Kulithalai as against this petitioner and another for the offence under Sections 447, 148, 506(ii) and 384 r/w 34 IPC.

2.The learned counsel for the petitioner Mr.AN.Ramanathan submits that this petitioner Bhuavneswari [A2] wife of A1 has been unnecessarily roped in by the complainant, since the complaint of the petitioner dated 26.05.2014 has been referred to as mistake of facts.

3.The learned Counsel further by referring the complaint dated 26.05.2014 and the direction petition filed by the complainant before this Court in CrI.O.P(MD)No.2477 of 2015 would submit that no where in the complaint and in the direction petition, the petitioner's name is mentioned. The complaint of the respondent is for the alleged occurrence said to have taken place on 26.05.2014. The complaint was originally sent to the respondent Police through registered post on 29.05.2014. Thereafter, the direction petition was filed by the respondent on 19.02.2015 in Crime No.2477 of 2015. The case of the respondent in the said petition is that he was running a saw mill in the name and style of Sri Ramajeyam Saw Mill at Lalapet at Karur District in Survey No.179/10, 11 and 12 at Krishnarayapuram Village, Karur - Trichy main road. The petitioner has erected machineries and other fittings to the tune of Rs.5,00,000/- after obtaining due licence and due to loss in his



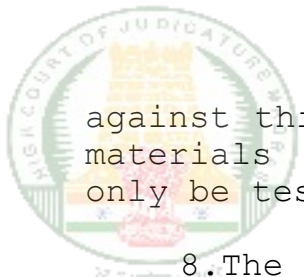
business, he could not pay the rent to the petitioner. While so, on 26.05.2014 at about 10.30am, when the second respondent was in the saw mill, the petitioner's husband one Boss Naicker and his men trespassed into his saw mill, abused and necked him out of the same mill that he has not paid the rent for four months and the complainant was also criminally intimidated by the said Boss Naicker and they also took away some of the machineries from there.

4. For the aforesaid incident, the respondent lodged a complaint before the Inspector of Police, Lalapet, but the police refused to register a case and therefore, he sent the complaint through registered post on 29.05.2014 and thereafter, filed a direction petition before this Court. On the direction of this Court in the said petition in CrI.O.P(MD)No.2477 of 2015, the Inspector of Police, Lalapet Police station registered a case as against the petitioner's husband one Boss Naicker and five unknown persons in Crime No.55 of 2013 on 06.03.2015 for the offence under Sections 447, 148, 506(ii) and 384 IPC. The Police after conducting investigation filed the final report referring the complaint as mistake of fact in RCS No.4 of 2015 before the Judicial Magistrate No.1, Kulithalai. As against the said RCS notice filed by the Inspector of Police, Lalapet, this respondent filed a protest petition and the same was taken on file in C.C.No.20 of 2016 as against this petitioner and her husband Boss Naicker. Aggrieved over the same, the present quash petition is filed by accused No.2.

5. Mr. AN. Ramanathan, learned Counsel for the petitioner further submitted that the petitioner / wife of the Boss Naicker has been added in the private complaint filed in the year 2016 only to harass the petitioner. According to him in the earlier complaint dated 26.05.2014 of the respondent as well as in the direction petition filed before this Court, this petitioner's name is not mentioned.

6. Though the respondent has been served with notice and he has also entered appearance through Advocate, there was no representation for the respondent for several hearings in the past and therefore, this Court by order dated 28.06.2021 appointed Advocate Mr. J. Anandkumar, who is having more than 20 years experience, as Legal Aid Counsel to defend the respondent.

7. Mr. J. Anandkumar, learned Legal Aid Counsel for the respondent submitted that there is specific averment made against this petitioner in the complaint that she also accompanied other accused at the time of occurrence and she instigated the other accused to commit the offence. He also referred to the relevant portion from the complaint and submitted that the police had intentionally suppressed the material facts and closed the case as mistake of fact in favour of the accused. Therefore, the respondent / complainant has filed a protest petition before the learned Judicial Magistrate No. I, Kulithalai and based on the materials placed on record, the



against this accused and issued summons and therefore, based on the materials available, the truth or otherwise of the complaint can only be tested during the trial.

8. The learned Legal Aid Counsel in support of his contention relied on the following judgments:

(I) **Vishnu Kumar Tiwari Vs State of Uttar Pradesh, through Secretary Home, Civil Secretariat, Lucknow**, reported in **2019(5) CTC 603** and the relevant portion are extracted hereunder:

"18. In Mahesh Chand v. B. Janardhan Reddy, the appellant/complainant had lodged report alleging commission of offences by the respondent. Subsequently, being dissatisfied with the investigation, he filed a criminal complaint in the court of the Magistrate. In the meantime, the Investigating Officer filed a final report finding that the controversy was of a civil nature. The appellant filed a protest petition. The final report was accepted by the Magistrate. The complaint case filed by the appellant was also closed. It became final. The appellant filed a third complaint, as it were, under Section 200 of the Code. On summons being issued, it was successfully questioned before the High Court. We may notice the following discussion by this Court profitably. 3 (2003) 1 SCC 734

"12. There cannot be any doubt or dispute that only because the Magistrate has accepted a final report, the same by itself would not stand in his way to take cognizance of the offence on a protest/complaint petition; but the question which is required to be posed and answered would be as to under what circumstances the said power can be exercised.

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16. In Munilal Thakur case [1985 Cri LJ 437:1984 Pat LJR 774] the Division Bench of the Patna High Court was concerned with the question as to whether a Magistrate even after accepting final report filed by the police, can take cognizance of offence upon a complaint or the protest petition on same or similar allegations of fact; to which the answer was rendered in the affirmative.

17. The question which has arisen for consideration herein neither arose therein nor was canvassed.

18. In Jayashankar Mund case [1989 Cri LJ 1578 : (1989) 67 Cut LT 426] the Orissa High Court again did not have any occasion to consider the question



raised herein. The Court held: (Cri LJ pp. 1582-83, para 6)

"Even though a protest petition is in the nature of a complaint, it is referable to the investigation already held by the vigilance police culminating in the final report and because the informant was not examined on solemn affirmation under Section 202 of the Code, thereby no illegality or prejudice was caused to the accused. If such a view is accepted and there is no reason why such a view should not be accepted, the necessary consequence in this particular case shall be that the protest petition which is of the nature of a complaint petition filed by the petitioner shall be in continuation and in respect of the case instituted and investigated by the vigilance police."

19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in *Pramatha Nath Talukdar case* [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not."

(Emphasis supplied)

19. In *Gangadhar Janardan Mhatre v. State of Maharashtra*<sup>4</sup>, this Court reiterated that Magistrate can, faced with a final report, independently apply



his mind to the facts emerging from investigation and take cognizance under Section 190 (1)(b), and in this regard, is not bound to follow the procedure under Sections 200 and 202 of the Code for taking cognizance under Section 190(1)(b). It was, however, open to the Magistrate to do so.

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20. In regard to the filing of protest petition by the informant who filed the First Information Report, it is important to notice the following discussion by this Court:

"6. There is no provision in the Code to file a protest petition by the informant who lodged the first information report. But this has been the practice. Absence of a provision in the Code relating to filing of a protest petition has been considered. This Court in *Bhagwant Singh v. Commr. of Police* [(1985) 2 SCC 537:1985 SCC (Cri) 267 : AIR 1985 SC 1285] stressed on the desirability of intimation being given to the informant when a report made under Section 173(2) is under consideration. The Court held as follows: (SCC p. 542, para 4) "There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

9. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and



issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See *India Carat (P) Ltd. v. State of Karnataka* [(1989) 2 SCC 132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885] .] The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the



informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. Therefore, this Court indicated in Bhagwant Singh case [(1985) 2 SCC 537 : 1985 SCC (Cri) 267 : AIR 1985 SC 1285] that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard."

(ii) **Pratibha Vs Rameshwari Devi and Others**, reported in (2008) 1 SCC (Cri) 399, the Hon'ble Supreme Court has held as follows:

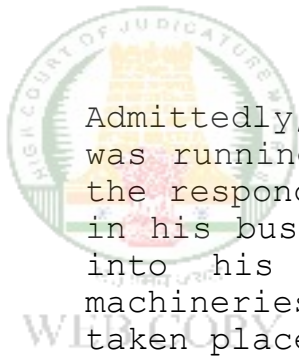
"For the reasons aforesaid, we are inclined to interfere with the order of the High Court and hold that the High Court in quashing the FIR in the exercise of its inherent powers under Section 482 of the Code by relying on the investigation report and the findings made therein has acted beyond its jurisdiction. For the purpose of finding out the commission of a cognizable offence, the High Court was only required to look into the allegations made in the complaint or the FIR and to conclude whether a prima facie offence had been made out by the complainant in the FIR or the complaint or not.

Before parting with this judgment, we may also remind ourselves that the power under Section 482 of the Code has to be exercised sparingly and in the rarest of rare cases. In our view, the present case did not warrant such exercise by the High Court. For the reasons aforesaid, we are unable to sustain the order of the High Court and the impugned order is accordingly set aside.

The appeal is allowed to the extent indicated above. The learned Magistrate is directed to proceed with the case in accordance with law. It is expected that the Magistrate shall dispose of the criminal proceedings as expeditiously as possible preferably within six months from the date of communication of this judgment."

9. This Court paid its anxious consideration to the rival submissions and also perused the materials placed on record.

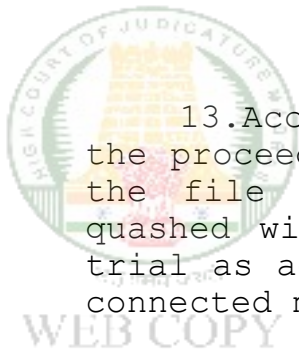
10. This private complaint is filed by the respondent in the year 2016 for the alleged occurrence taken place on 26.05.2014.



Admittedly, the respondent was the tenant of the petitioner and he was running a saw mill in the petitioner's land. It is the case of the respondent that he was not in a position to pay rent due to loss in his business. However, the petitioner and his husband trespassed into his saw mill, intimidated him and also took away the machineries from his saw mill. For this occurrence said to have taken place on 26.05.2014, a complaint was lodged by registered post on 29.05.2014, but the case was not registered initially. Therefore, the respondent has filed a direction petition before this Court in CrI.O.P(MD)No.2477 of 2015 and pursuant to the direction of this court, the said complaint was registered in Crime No.55 of 2015 and the police after investigation filed the final report referring the matter as mistake of facts. As against the same, the protest petition is filed, which has been taken on file as a private complaint as against this petitioner and her husband.

11.The learned Counsel for the respondent placed reliance on the above cited judgments of the Hon'ble Supreme Court, wherein the right of a complainant in filing the protest petition has been reiterated and the Courts are expected to take cognizance of the issue, despite the final report filed by the Police concerned. But in this issue on hand, the respondent / complainant overstated his complaint by adding this petitioner also as an accused, as if, this petitioner has accompanied the other accused and also instigated other accused to commit the offence. Therefore, the judgments relied on by the learned Counsel are not applicable to the case on hand.

12.The occurrence in this case has taken place on 26.05.2014 at about 10.30 hours. The complaint was sent through registered post after three days on 29.05.2014. Thereafter, a direction petition was filed before this Court in CrI.O.P(MD)No.2477 of 2015 on 09.02.2015. As rightly pointed by the learned Counsel for the petitioner, either in the complaint sent on 29.05.2014 or in the direction petition filed before this Court on 09.02.2015, there is no reference about this petitioner that this petitioner also accompanied other accused and has also indulged in the commission of offence. Pursuant to the directions of this Court, the respondent Police registered a case in Crime No.55 of 2015 on 06.03.2015. The petitioner is not shown as accused in the said crime number. The complainant/ respondent did not raise any objection to the same at that very point of time. The case in Crime No.55 of 2013, after investigation was closed as mistake of facts. Thereafter, this private complaint is filed on 03.12.2015 with averments as if, this petitioner has also accompanied other accused at the time of commission of offence and instigated other accused to commit the offence. The events referred to above clearly expose the manner in which, the petitioner has been roped in and therefore, this Court is inclined to allow this petition.



13. Accordingly, the criminal original petition is allowed and the proceedings as against this petitioner in C.C.No.20 of 2016 on the file of the Judicial Magistrate No.1, Kulithalai is hereby quashed with a direction to the trial court to proceed with the trial as against other accused on a day to day basis. Consequently, connected miscellaneous petition is closed.

14. This Court places its appreciation on record to Mr.J.Anand Kumar, learned Legal Aid Counsel and the Legal Services Authority is directed to pay a sum of Rs.10,000/- [Rupees Ten Thousand] to the learned Counsel.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

**NOTE:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate No.1,  
Kulithalai
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.A.N.RAMANATHAN, Advocate (SR-21304[F] dated 06/07/2021)

**CrOP(MD)No.7701 of 2017**

**05.07.2021**

**NSN** (CO)

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