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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 11.01.2021

Order Pronounced on : 24.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.1297 of 2014

and

M.P.No.1 and 2 of 2014

1.Renuka Devi

2.Ananthalakshmi

... Petitioners/Accused

Versus

1. The State Represented by the
Inspector of Police,
East Police Station,
Pollachi.
(Ref Crime No.102 of 2013,
dated 24.04.2014)

2.Madhanagopal

... Respondents/Complainant

Prayer : Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the summons, dated 20.11.2014 issued in C.C.No.10 of 2014 for offences under Sections 147, 294(b), 323 and 506(ii) of I.P.C on the file of the learned Judicial Magistrate, Valparai.

For Petitioners : Mr.C.Arun Kumar

For R1 : Mr.L.Baskaran
Government Advocate
(Criminal Side)

For R2 : No Appearance

ORDER

The Criminal Revision in Crl.R.C.No.1297 of 2014 is filed by the petitioners/accused Nos.1 and 2 in C.C.No.10 of 2014, thereby, calling for the records and quash the summons, dated 20/11/2014 in C.C.No.10 of 2014 for the offenses under Section 147, 294(b), 323 and 506 (ii) of Indian Penal Code.



2. Heard Mr.C.Arunkumar, the Learned Counsel for the Petitioners and Mr.L.Baskaran, the Government Advocate (Crl.Side) for the first respondent.

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3. The learned Counsel for the petitioner would submit that in this case, there are civil suits pending between the defacto complainant side and the petitioners' side. Therefore, to add criminal colour to the civil dispute, by way of complete abuse of process of law the present complaint was lodged on 24/04/2013. Even as per the complaint, they were in Muthe Gounder Thottam and not in any public place. The learned Magistrate had without even considering that the petitioners are ladies and without advertting in detail as to the facts of the case, has passed an order taking cognizance of the offenses and has issued summons.

4. According to the learned Counsel for the petitioners, as per the judgment of Hon'ble Supreme Court of India in Om Kumar Dhankar Vs. State of Harayana & Another¹, revisional jurisdiction under Section 397 Cr.P.C is available for the petitioners, challenging the order of the Magistrate, directing issue of summons. Therefore, the learned Counsel would submit that the present revision is maintainable.

5. Further, relying upon the Judgment of the Hon'ble Supreme Court of India in Crl.A.No.138 of 2020 dated 30/01/2020, he would exhort this Court to go into the details of the suit, nature of the dispute between the parties to hold that the complainant is a malafide one and the offenses are not made out. He would submit that first petitioner is presently aged 67 years and the second petitioner aged 42 years and they would be put to great prejudice by the very act of being made to face the trial.

6. Opposing the above submissions, Mr.L.Baskaran, the learned Government Advocate (Crl.Side) would submit that the revision which is filed only as against the order of the learned Magistrate issuing summons is not maintainable. Upon final report by the police, upon finding that the material on record make out the offenses the learned Magistrate has taken cognizance and issued summons. The facts that civil suits are pending and that the complaint lodged is malafide, all can be brought to the notice of the Trial Court, during the trial and per se the order of issue of summons cannot be faulted.

7. Upon hearing the learned Counsel on either side, the following questions emerge for consideration :

(i) Whether a revision under Section 397 Cr.P.C. is maintainable against the Order of the Learned Magistrate summoning the

¹ 2012 (11) SCC 252



accused ?

(ii) Whether this court in revision should interfere the with cognizance order on the grounds raised by the petitioner ?

Question No. 1 :

8. As relied upon by the learned Counsel for petitioner, the Hon'ble Supreme Court of India in Om Kumar Dhankar Vs. State of Haryana & Another² paragraph 8 has held as follows :

"8.... In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 Cr.P.C was available to the respondent No. 2 in challenging the order of the Magistrate directing issuance of summons"

9. More recently, the Hon'ble Supreme Court of India, in State of Gujarat Vs. Afroz Mohammed Hasanfatta³ had held in para 27 as follows :

"27. After referring to various judgments, in Urmila Devi [Urmila Devi v. Yudhvir Singh, (2013) 15 SCC 624 : (2014) 5 SCC (Cri) 470] , this Court summarised the conclusion as under: (SCC pp. 639-40, para 21 & 23)

"21. Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in Rajendra Kumar Sitaram Pande v. Uttam [Rajendra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134 : 1999 SCC (Cri) 393] as well as the decision in K.K. Patel v. State of Gujarat [K.K. Patel v. State of Gujarat, (2000) 6 SCC 195 : 2001 SCC (Cri) 200] , it will be in order to state and declare the legal position as under:

21.1. The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 CrPC would be an order of intermediatory or quasi-final in nature and not interlocutory in nature.

21.2. Since the said position viz. such an

² Refer Foot Note No.2

³ (2019) 20 SCC 539



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order is intermediary order or quasi-final order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party.

21.3. Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Sections 200 to 204 CrPC, can always be subject-matter of challenge under the inherent jurisdiction of the High Court under Section 482 CrPC.

.....

23. Therefore, the position has now come to rest to the effect that the revisional jurisdiction under Section 397 CrPC is available to the aggrieved party in challenging the order of the Magistrate, directing issuance of summons."

In a catena of judgments, it has been held that the aggrieved party has the right to challenge the order of Magistrate directing issuance of summons."

Thus, the law is well settled that the revision against the order of the learned Magistrate directing issuance of summons is maintainable.

Question No. 2 :

10. In order to examine the contentions raised by the Learned Counsel for the petitioner, it is useful to refer to the Judgment in State of Gujarat Vs. Afroz Mohammed Hasanfatta⁴, first to appraise oneself as to the nature of power exercised by the Learned Magistrate while taking cognizance and issuing summons on police report :

"22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 CrPC is not the same at the time of framing the charge. For issuance of summons under Section 204 CrPC, the expression used is "there is sufficient ground for proceeding..."; whereas for framing the

4 Refer Foot No.3



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charges, the expression used in Sections 240 and 246 IPC is "there is ground for presuming that the accused has committed an offence...". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 CrPC, detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge-sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 CrPC.

23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and



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satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."

11. Further in the same case, their Lordships have elucidated the nature of exercise of power by this Court in revision :

"51. While hearing revision under Section 397 CrPC, the High Court does not sit as an appellate court and will not reappreciate the evidence unless the judgment of the lower court suffers from perversity. Based on the charge-sheet and the materials produced thereon when the Magistrate was satisfied that there are sufficient grounds for proceeding, the learned Single Judge was not justified in examining the merits and demerits of the case and substitute its own view. When the satisfaction of the Magistrate was based on the charge-sheet and the materials placed before him, the satisfaction cannot be said to be erroneous or perverse and the satisfaction ought not to have been interfered with."

12. With the above background, if one has to advert to the facts of this case, a perusal of the final report filed by the police and the Sec.161 Cr.P.C., statements in support thereon, it would be clear that there is grounds to proceed with the case and the argument of the learned Counsel in requiring this Court to proceed charge by charge also does not arise. When the learned Magistrate has found prima facie ingredients of the offense and exercised his discretion, the same cannot be substituted by this Court by its own reasoning.

13. Hence, this question is answered against the petitioner and the Revision Case is dismissed, leaving open all the contentions of the petitioners to be raised at the appropriate time during the trial. Considering the facts and circumstances of the case, the personal appearances of the petitioners alone



are dispensed with before the Trial Court except for the necessary hearings. Consequently, M.P.Nos.1 and 2 of 2014 are closed.

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Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Judicial Magistrate,
Valparai.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
East Police Station,
Pollachi.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras-104.

Crl.R.C.No.1297 of 2014

GPL(CO)
SU(07/02/2022)