



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.5324 of 2021

and

Crl.M.P (MD)No.3078 of 2021

WEB COPY

1.R.Thulasiram

2.Ramesh

... Petitioners/Accused Nos.1 & 2

Vs.

Chinnapandi

... Respondent/Defacto complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the charge sheet in C.C.No.57 of 2020 pending on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur and to quash the same sofar as the petitioners are concerned.

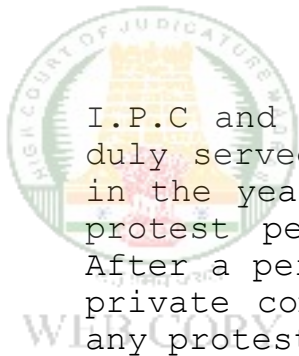
For Petitioners : Mr.K.Navaneetharaja

For Respondent : Mr.M.Jegadesh Pandian

ORDER

This Criminal Original Petition has been to quash the charge sheet in C.C.No.57 of 2020 pending on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur, insofar as the petitioners are concerned.

2.The petitioners are arraigned as A.1 and A.2 in the private complaint lodged by the respondent herein. Originally, there was a property dispute between the petitioners and the respondent herein while surveying the land. Pursuant to the same, both the petitioners as well as the respondent lodged complaints. On the complaint lodged by the petitioner, F.I.R has been registered in Crime No.154 of 2015 for the offences under Sections 147, 341, 294(b), 323, 427, 355 and 506(i) of I.P.C as against the respondent and his family members. After completion of investigation, the Inspector of Police, T.Kallupatti Police Station, Madurai filed a charge-sheet on the complaint lodged by the petitioners and the same has been taken cognizance in C.C.No.72 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur and it is pending for trial. However, on the complaint lodged by the respondent as against the petitioners, the Inspector of Police, T.Kallupatti Police Station, Madurai District registered the F.I.R in Crime No.155 of 2015 for the offences under Sections 294(b), 323, 354 and 506(i) of



I.P.C and closed the same as 'mistake of fact'. The respondent was duly served the referred charge-sheet notice in R.C.S.No.20 of 2016 in the year 2016 itself. However, the respondent failed to file any protest petition on the closure report in Crime No.155 of 2015. After a period of four years, in the year 2020, the present impugned private complaint filed under Section 200 of Cr.P.C without filing any protest petition on the closure report.

3.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

4.In this regard, it is relevant to rely upon a judgment of this Court in the case of **A.Krishna Rao Vs, L.S.Kumar** 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."

5. 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**, wherein this Court has held as follows:

"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



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."

4.The above judgments are squarely applicable to the case on hand, since inspite of receipt of referred charge-sheet notice in Crime No.155 of 2015, the respondent failed to file any protest petition on the closure report. However, after a period of four years, the present private complaint has been lodged for the very same set of allegations for the occurrence took place on 16.07.2015. The learned Magistrate has completely discarded the closure report filed by the Inspector of Police, T.Kallupatti Police Station, Madurai in Crime No.155 of 2015 and now has taken cognizance in the private complaint based on the very same set of allegations. Therefore, it cannot be sustained as against the petitioners and the continuation of the proceedings as against the petitioners will amount to abuse of process of Court and it requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

5.In fine, this Criminal Original Petition is allowed and the proceedings in C.C.No.57 of 2020 pending on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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

The District Munsif cum Judicial Magistrate,
Peraiyur.

WEB COPY

CrI.O.P(MD)No.5324 of 2021
08.04.2022

RK(21/04/2022) 6P 2C