



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
RESERVED ON : 10.12.2021  
PRONOUNCED ON: 31.01.2022  
CORAM  
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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**Crl.O.P. (MD)No.6441 of 2019**  
**and**  
**Crl.M.P. (MD)Nos.4287 and 4288 of 2019**

Selvanayagam : Petitioner/ Accused No.1

Vs.

Sulachona Bai : Respondent / Complainant

**PRAYER** : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records relating to the proceedings in C.C.No.53 of 2019, on the file of the learned Judicial Magistrate No.II, Kuzhithurai and quash the same.

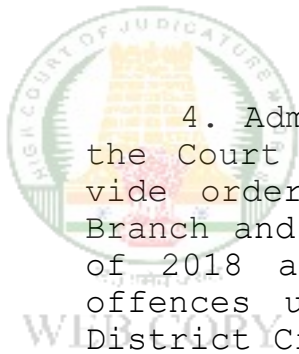
For Petitioner : Mr.Ananth C.Rajesh  
For Respondent : Mr.C.K.M.Appaji

**ORDER**

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to the proceedings in C.C.No.53 of 2019, on the file of the Judicial Magistrate Court No.II, Kuzhithurai and quash the same.

2. The petitioner is the first accused in C.C.No.53 of 2019, on the file of the Judicial Magistrate Court No.II, Kuzhithurai. Admittedly, the petitioner is the husband of the respondent/complainant.

3. The case of the respondent/complainant is that her father Late.Siva Sankaran Nadar had executed a sale deed in her favour as shreedhana vide document No.4558/1978, dated 07.09.1978, that the petitioner has been mentioned as guardian of the respondent, that the respondent came to know in the year 2018 that the petitioner has forged a lease deed, dated 29.11.1980 vide document No.6500 of 1980 as if it was executed by the father of the respondent, that on the basis of the respondent's complaint, the District Crime Branch, Kanyakumari District at Nagercoil registered a case in Cr.No.15 of 2018, that the police, after investigation, has filed a final report dated 01.10.2018 referring the case as mistake of fact and that therefore the respondent was constrained to file the above private complaint.



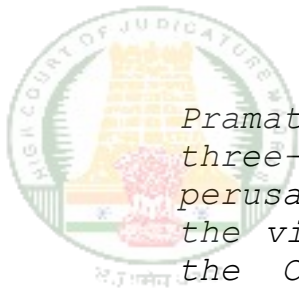
4. Admittedly, the complaint preferred by the respondent before the Court of Judicial Magistrate No.II, Kuzhithurai was forwarded vide order passed in C.M.P.No.235 of 2018 to the District Crime Branch and on that basis, F.I.R., came to be registered in Cr.No.15 of 2018 against the petitioner and one another for the alleged offences under Sections 465, 419, 420, 406 and 471 I.P.C. The District Crime Branch, after completing the investigation, has filed a final report under Section 173 Cr.P.C., dated 01.10.2018 referring the case as mistake of fact. It is not in dispute that though the RCS notice was served on the respondent/complainant, she had not preferred any protest petition nor any other action challenging the closure report, but subsequently, the respondent has filed a private complaint before the Court of Judicial Magistrate No.II, Kuzhithurai. The first accused has come forward with the present petition for quashment of the proceedings in C.C.No.53 of 2019.

5. The first contention of the petitioner is that since the jurisdictional police, after completing the investigation, has filed the final report as mistake of fact and the same was accepted by the Court, the complainant is not entitled to file a private complaint on the same cause of action. The learned Counsel for the petitioner would submit that since the respondent has not contested or agitated the closure report and thereby allowed the proceedings to attain finality, the private complaint filed by her is not legally maintainable and that the learned Judicial Magistrate ought not to have reopened the earlier prosecution by taking cognizance in the second complaint.

6. At this juncture it is necessary to refer a decision of the Hon'ble Supreme Court in ***State of Rajasthan Vs. Aruna Devi and others*** reported in **1995 SCC (1) 1**.

"3. A perusal of the impugned judgment of the High Court shows that it took the view that the Magistrate had no jurisdiction to take cognizance after the final report submitted by police had been once accepted. Shri Gupta, appearing for the appellant, contends that this view is erroneous in law inasmuch as Section 173(8) of the Code permits further investigation in respect of an offence after a report under sub-section (2) has been submitted. Sub-section (8) also visualises forwarding of another report to the Magistrate. Further investigation had thus legal sanction and if after such further investigation a report is submitted that an offence was committed, it would be open to the Magistrate to take cognizance of the same on his being satisfied in this regard.

4. Shri Francis for the respondents, however, contends that the order of the Magistrate taking cognizance pursuant to filing of further report amounted to entertaining second complaint which is not permissible in law. To substantiate the legal submission, we have been first referred to



*Pramatha Nath Taluqdar v. Saro Ranjan Sarkar*, in which a three-Judge Bench of this Court dealt with this aspect. A perusal of the judgment of the majority shows that it took the view that dismissal of a complaint under Section 203 of the Code is no bar to the entertainment of a second complaint on the same facts; but the same could be done only in exceptional circumstances some of which have been illustrated in the judgment. Further observation in this regard is that a fresh complaint can be entertained, inter alia, when fresh evidence comes forward. In the present case, this is precisely what had happened, as on further investigation being made, fresh materials came to light which led to the filing of further report stating that a case had been made out."

7. A three judge Bench of the Hon'ble Supreme Court in **Kishore Kumar Gyanchandani vs. G.D. Mehrotra And Another** reported in **AIR 2002 SC 483**, has specifically held that even if the Magistrate accepts the final report submitted by the police, the right of the complainant to file a regular complaint is not taken away and the relevant portion is extracted hereunder:

"4. When the matter was listed before a two-Judge Bench of this Court, thinking that there is some divergence of views, it referred the matter to a three-Judge Bench. On examining the different provisions of the Code of Criminal Procedure as well as the decisions of this Court relevant on the question, we see no divergence in the matter. It is too well settled that when police after investigation files a final form under Section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of the Code. The Magistrate may not take cognizance and direct further investigation in the matter under Section 156 of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 201 of the Code and takes cognizance if the materials produced by the complainant make out an offence. This question has been raised and answered by this Court in the case of *Gopal Vijay Verma V. Bhuneswar Prasad Sinha and Ors.*, whereunder the view of the Patna High Court to the contrary has been reversed. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding."



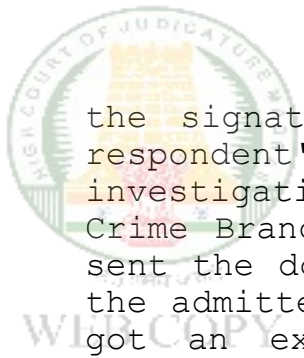
8. Considering the legal dictum laid down by the Honourable Supreme Court, it is very much clear that the defacto complainant is entitled to file a private complaint, even if the case lodged with the police is referred as closed, and that the right of the defacto complainant to proceed with his complaint, even after recording or accepting of negative report of the police by the learned Judicial Magistrate, is very much available and as such, the first contention canvassed by the petitioner's side is liable for rejection.

9. It is the specific case of the respondent that her father Siva Sankaran Nadar was owning 11 items of properties obtained in a family partition effected vide document dated 22.09.1961, that he sold 2 items of properties, that at the time of marriage of the respondent, her father had executed a sale deed in respect of item Nos.1 and 6 of the properties as Shreedhana and the petitioner, who is her husband has been shown as her guardian in the sale deed and that after the death of said Siva Sankaran Nadar on 13.04.1986 and after the death of her mother, the respondent has inherited all the remaining 7 items of properties and was in possession and enjoyment of the same. It is her further case that she had executed a sale deed in favour of one Jebaraj on 11.05.2011 in respect of 8<sup>th</sup> item of property and the petitioner had subscribed his signature as witness, that the respondent subsequently came to know that the house tax in respect of 9<sup>th</sup> item of property, stands in the name of the petitioner and on enquiry, she came to know that he had taken a lease deed, as if the same was executed by her father on 29.11.1980 and that the petitioner has impersonated and forged the signatures of the respondent's father.

10. Admittedly, the document in question is a registered lease deed dated 29.11.1980 and as rightly pointed out by the learned Counsel for the petitioner, it is more than 30 years old document. It is settled law that a document is presumed to be genuine, if it is a registered document. Moreover, the respondent has lodged a complaint before the Judicial Magistrate Court on 20.07.2017 and the F.I.R., came to be registered on 04.07.2018. Since the document in question was registered on 29.11.1980, the complaint came to be lodged after the lapse of more than 38 years.

11. It is pertinent to mention that the petitioner has specifically alleged that the petitioner and the respondent who are husband and wife, are living in a single roof with their children and grand children and that the said factum was not specifically disputed by the respondent. Moreover, as rightly pointed out by the learned Counsel for the petitioner, in the private complaint, the respondent, referred her address, as address of the petitioner.

12. As rightly contended by the learned Counsel for the petitioner, in the private complaint, the respondent has alleged



the signatures found in the alleged lease deed are that of the respondent's father and that they have not conducted proper investigation. It is evident from the records that the District Crime Branch, while investigating the case in Cr.No.15 of 2018 has sent the document in question along with other documents containing the admitted signature of the respondent's father to the expert and got an expert opinion and whereunder it was opined that the signatures found in the disputed lease deed are that of the signatures of the respondent's father.

13. At this juncture, it is necessary to refer the judgment of the Honourable Supreme Court in **Harishchandra Prasad Mani & others Vs State of Jharkhand & another** reported in **CDJ 2007 SC 094**, wherein the Hon'ble Apex Court has specifically reiterated the legal position that the cognizance cannot be taken unless there is at least some material indicating the guilt of the accused. In the above decision, the complaint forwarded to the police was registered for the offences under Sections 302, 201, 328 and 120-B I.P.C. and after getting the medical records that the deceased was shown to have dead due to Cardio Respiratory Arrest filed a final report and the same was accepted by the learned Judicial Magistrate. Thereafter the defacto complainant has filed a petition and the learned Chief Judicial Magistrate, after recording the statement of the applicant and his witnesses, has taken cognizance of the offence and when the order taking cognizance was challenged, the Hon'ble Apex Court has held that the learned Magistrate has taken cognizance of the case, on pure conjectures and surmises and in the absence of any material indicating the guilt of the accused persons, the order taking cognizance has to be quashed. The relevant passages are extracted hereunder:

*"9. We have carefully perused the entire record placed before us and find that there is not even an iota of evidence or any material on record against the appellants. It is true that at this stage it is not necessary that the complainant or prosecution must prove its case beyond reasonable doubt, but at least there must be some material on the basis of which cognizance is taken and summon is issued. Cognizance cannot be taken merely on suspicion as has evidently been done in this case.*

*10. The death certificate dated 12.10.2001 in respect of the deceased Rajnish Kumar was issued by the Medical Officer of Brindavan Hospital & Research Centre, Hazaribagh, which states that the cause of death is Cardio Respiratory Arrest.*

*11. Learned counsel for the complainant submitted that the deceased had no history of cardiac problems. It is well known even persons with no history of heart problem can suffer a heart attack and can die. Moreover in the present case the learned counsel for the appellant has shown us*



the medical reports of the cardiologist of Patna which show that the deceased Rajnish Kumar was a patient of severe hypertension (blood pressure) for a very long period. Hence, it cannot be said that Rajnish Kumar had no medical problems which could lead to his heart attack. It is well known that blood pressure, diabetes, is a silent killer.

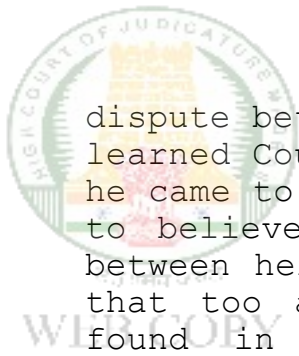
12. The complainant has alleged that Rajnish Kumar was killed by poisoning, but there is no iota of material that any poison was administered to Rajnish Kumar. There is nothing in the medical evidence showing that the dead body of Rajnish Kumar had any poisoning in it. It appears that Rajnish Kumar had vomited in the hospital when he was admitted, but the Police did not take any sample of the vomit for sending it to some laboratory for chemical analysis where it could have been established whether he had been given any poison. It appears to us that cognizance has been taken on pure conjectures and surmises.

13. It is well-settled by a series of decisions of this Court that cognizance cannot be taken unless there is at least some material indicating the guilt of the accused vide R.P. Kapur vs. State of Punjab (1960) 3 SCR 388, State of Haryana vs. Bhajan Lal (1992) Suppl (1) SCC 335, Janta Dal vs. H.S. Chowdhary (1992) 4 SCC 305, Raghubir Saran (Dr) vs. State of Bihar (1964) 2 SCR 336, State of Karnataka vs. M. Devendrappa (2002) 3 SCC 89 and Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haque (2005) 1 SCC 122.

14. In the present case, there is not even an iota of material indicating the guilt of the accused persons. It is true that at the stage of taking cognizance adequacy of evidence will not be seen by the Court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion as it appears to have been done in the present case. To take a contrary view would only lead to harassment of people.

15. No doubt, it has been alleged in the complaint that the wife of the deceased was having an affair with accused No. 2, but this itself is only a suspicion and cannot be the basis of a conviction. Similarly, the fact that the in-laws of the deceased did not take part in his cremation is not evidence to show their guilt."

14. In case on hand, considering the relationship between the parties and also the nature of the disputes, as rightly pointed out by the learned Counsel for the petitioner, there existed a civil



dispute between the parties. Moreover, as rightly pointed out by the learned Counsel for the petitioner, the stand of the respondent that he came to know about the alleged lease deed after 38 years, is hard to believe. The respondent, considering the dispute now existed between herself and her husband, has lodged the above complaint and that too after a specific finding was given that the signatures found in the alleged lease deed were that of her father's signatures.

15. Though the learned Magistrate has taken cognizance for the offences under Sections 465, 419, 420, 406 and 471 I.P.C., there are absolutely no material indicating the guilt of the petitioner. But the learned Magistrate, in the absence of any material, has taken cognizance only on the basis of the averments raised in the complaint. No doubt, adequacy of evidence cannot be gone into at the time of taking cognizance of the case, but there must be some materials implicating the accused. Considering the above, this Court is of the view that initiation of proceeding is clearly an abuse of process of Court and the same is liable to be quashed.

16. In the result, the Criminal Original Petition is allowed and the proceedings in C.C.No.53 of 2019, pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai as against the petitioner are quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

SSL

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 Judicial Magistrate No.II, Kuzhithurai.

+1 CC to M/s.ANANTH C RAJESH, Advocate (SR-3498[F] dated 01/02/2022 )

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31.01.2022