



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.12.2021

Pronounced on : 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P. (MD) .No.7972 of 2019

and

CRL.M.P (MD) Nos.4919 & 4920 of 2019

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1.Vithya

2.Senthilkumar

3.Surlirajan

: Petitioners/Respondents

Vs.

Ramesh

: Respondent/Petitioner

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in proceedings in C.C.No.190 of 2019 before the Judicial Magistrate, Aundipatti and quash the same as against the petitioners herein.

For Petitioners

: Mr.M.Ramesh

For Respondent

: Mr.P.Sivachandiran

ORDER

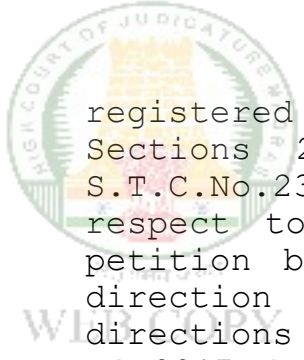
The Criminal Original Petition has been filed, invoking Section 482 of Code of Criminal Procedure, seeking orders to call for the records in C.C.No.190 of 2019 pending on the file of the Court of the Judicial Magistrate, Aundipatti and quash the same.

2.The petitioners are accused in C.C.No.190 of 219, pending on the file of the Judicial Magistrate, Aundipatti. It is not in dispute that the second petitioner and the respondent are brothers; that the first petitioner is the wife of the second petitioner and that the third petitioner is the father of the first petitioner.

3.The case of the respondent put forth in C.C.No.190 of 2019 in short is as follows :

(a) On 25.06.2017, when the respondent/complainant was doing agricultural work in his land, the petitioners had trespassed into the respondent's land, abused him in filthy language and attacked him with stones and caused bleeding injuries. The complainant has preferred a complaint before the fourth respondent, but he refused to receive the same.

(b) The complainant has then proceeded to Government Hospital, K.Vilakku and was taking treatment as inpatient for four days. Meanwhile, the complaint given by the first petitioner was



registered in Crime No.253 of 2017 for the alleged offence under Sections 294(b) and 323 IPC and final report was filed in S.T.C.No.23 of 2018. Since the Police has not taken action with respect to the complaint lodged by the complainant, he filed a petition before this Court in Crl.OP(MD)No.8170 of 2017, seeking direction for registration of case and in pursuance of the directions of this Court, FIR came to be registered in Crime No.654 of 2017 for the alleged offence under Sections 323, 324 and 506(i) IPC.

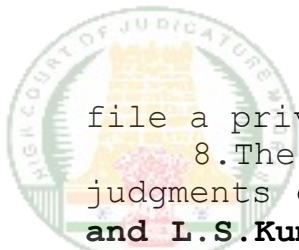
(c) Subsequently, the fourth accused has filed a final report closing the FIR as 'mistake of fact'. The fourth accused, who was the then Sub-Inspector of Police has acted in a biased manner and filed the closure report. The notice of the closure report was sent to the complainant only on 13.12.2018 through courier. Thereafter, the complainant, with no other option, has filed a private complaint under Section 199 r/w 200 Cr.P.C.

4. It is not in dispute that the learned Judicial Magistrate, after conducting enquiry under Section 202 Cr.P.C., has taken the private complaint on file in C.C.No.190 of 2019 for the alleged offence under Sections 294(b), 427, 324 and 506(ii) IPC against the petitioners herein. The petitioners, after receipt of the summons, have now come forward with the present original petition, for quashing the case in C.C.No.190 of 2019 pending on the file of the Court of the Judicial Magistrate, Aundipatti.

5.The learned counsel for the petitioner would mainly contend that the complainant's case was already registered and after investigation, the same was closed as 'mistake of fact', that the complainant after receiving the closure notice, without exhausting the remedy under Section 173(8) Cr.P.C by filing the protest petition, he filed the private complaint under Section 199 r/w 200 Cr.P.C., that the learned Magistrate ought not to have taken the complaint on file and ought not to have issued summons to the petitioners, as the very taking the complaint on file by the learned Magistrate is nothing but an abuse of process of law and that the above complaint has been filed to escape from the clutches of law, as the case in S.T.C.No.20 of 2019 is pending.

6.The learned counsel for the petitioners would further submit that the learned trial Judge has failed to consider the civil dispute existed between the second respondent and the complainant and the pendency of the suit in O.S.No.75 of 2017 on the file of the District Munsif Court, Aundipatti and that the closure report filed by the Police as 'mistake of fact' would clearly shows that the petitioners have been falsely implicated.

7.On considering the grounds raised in the original petition and the arguments advanced by the learned counsel for the petitioners, it is very much clear that the petitioners have taken a main stand that since the jurisdictional police after completing the investigation has filed the closure report and the same was accepted by the learned Judicial Magistrate, the complainant is not entitled to



file a private complaint on the same cause of action.

8.The learned counsel for the petitioners has relied on two judgments of this Court reported in **1998 (1) CTC 329 [A.Krishna Rao and L.S.Kumar]** and in Crl.OP(MD)No.2830 of 2017, [**Thiyagarajan Vs. Karuppannan and another**] dated 03.01.2019.

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9.In the first decision, the learned Single Judge of this Court in **A.Krishna Rao and L.S.Kumar**, after referring to some earlier decisions, has held that the second complaint on the same cause of action is not maintainable and the relevant passages are extracted hereunder :

"3.

In Murugesan v. Kothandam, 1969 L.W. Crl. 268 this Court in similar circumstances quashed the proceedings in the second complaint stating that when the Sub-Inspector has investigated the case under Section 156(3), Cr.P.C. and submitted his report under Section 173(2), Cr.P.C. referring the case and subsequent complaint for the very same occurrence would not be maintainable.

In Ramasubbu v. State, The Through The Inspector of Police, Palani Taluk, 1987 L.W. Crl. 79 this Court held that when the police was filed a report under Section 173, Cr.P.C, the Magistrate got the option under Section 173(3), Cr.P.C. either to agree or to disagree and to give further direction to the police. When once the Magistrate has recorded his findings as mistake of fact in the R.C.S. which is a judicial order, thereafter he cannot entertain the second complaint and if entertained the same is not maintainable.

In the instant case the police have already referred the case as mistake of fact and notice has been served on the complainant through Court and he did not raise any objection. When this matter was argued, it was not pointed out on the side of the respondent/complainant that he raised any objection or the learned Magistrate has not accepted the report of the police. If the learned Magistrate has not accepted the report, he would have given further directing in the matter and the very reasons that the magistrate has received the second complaint, would go to show that he has not given any further direction in in the R.C.S. which means that he has accepted the same and passed an order accordingly. When once such an order was passed by the learned Magistrate, it was not open to him to entertain one mere complaint regarding the same occurrence.

In Ansari v. Mohammed Ali, 1990 L.W. Crl. 201 in similar circumstances when the Magistrate has referred the complaint under Section 156(3) Cr.P.C. for investigation, and without obtaining the report of the police, has taken



cognizance in the second complaint on the same materials, by referring the decision stated in *Murugesan v. Kothandam*, 1969 L.W. (Crl.) 268 this Court held that the said complaint could be taken as a second complaint for the same occurrence and therefore not maintainable.

WEB COPY In the instant case, the police have already filed a R.C.S. on the complaint referred to them under Section 156 (3), Cr.P.C. and the learned Magistrate has taken cognizance of the 2nd complaint for the very same occurrence and therefore the 2nd complaint is not maintainable.

In *Mariagloria v. John Britto*, 1995 (1) L.W. Crl. 305 this Court held that when once the Magistrate has accepted the report of the police, taking cognizance in the second complaint for every same occurrence is illegal.

In the present case from the averments found in the petition it is clear that the learned Judicial Magistrate No.2, Wallajapet has passed the order on the R.C.S. served by the police in the previous complaint which was referred by him to the police under Section 156(3), Cr.P.C. for investigation. There is no contrary evidence on the side of the complaint respondent herein. When once the Magistrate has passed the order on the R.C.S. the second complaint for the very same occurrence is not maintainable.

4. Learned counsel for the respondent relied upon a decision of this Court is *Manoharbal v. Vashdev* 1983 L.W. (Crl.) 319 wherein it was held that when a Magistrate sends a complaint for enquiry under Section 156(3), Cr.P.C., he does not take cognizance of the case, that consequently when he, receives the report stating that the complaint should be referred either as false or as mistake of fact or mistake of law, he does not pass any judicial order, but merely lodges the complaint and does not take any further action and in such circumstances, there is no bar in law for the Magistrate to entertain a second complaint and take cognizance of it and issue process to the accused. The view expressed by this Court herein is somewhat contrary to the views expressed in the decisions stated supra.

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."

10. In the second decision, the learned Single Judge of this Court in **Thiyagarajan Vs. Karuppannan and another** passed in Crl.OP (MD) No.2830 of 2017, dated 03.01.2019, has held as follows :

"10. Once the police closed the investigation by filing a referred charge sheet, it is open to the concerned Court to entertain a protest petition or to treat a protest petition as a complaint and proceed under Section 202 of Cr.P.C. If the Magistrate chooses to treat the protest petition as a complaint, the Magistrate has to necessarily take into consideration the closure report filed by the police and also the materials collected by the police in the course of investigation. These materials will have a bearing on the concerned Court while it takes cognizance of the complaint. An independent private complaint dehors the closure report and the materials collected by the police can never be entertained. If such a procedure is permitted, there will be no end to criminal prosecution.

11. In this case, at the time of filing of the closure report, RCS notice has been served on the first respondent on 01.11.2013. If the first respondent was aggrieved by the closure report, he should have filed a protest petition before the concerned Court and it would have been open to the concerned Court to proceed further with the protest petition or to treat the protest petition as a complaint and proceed under Section 202 of Cr.P.C. Without adopting this procedure, the first respondent has chosen to file an independent private complaint without bringing to the notice of the Court the closure report and also the materials collected by the police in the course of the investigation.

...

14. However, in the present case, the closure report has been taken cognizance by the concerned magistrate Court and the private complaint itself came to be filed only in the year 2016. Therefore, in the considered view of this Court, the Court below went wrong in taking cognizance of the private complaint filed by the first respondent. More particularly, due to the fact that the



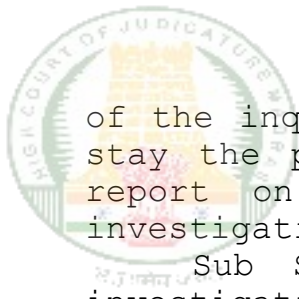
Court below did not apply its mind on the closure report filed by the police in Crime No.291 of 2013 and the materials collected during the course of investigation. Therefore, the entire procedure adopted by the Court below is illegal and not in accordance with the Code of Criminal Procedure."

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11. But, it is pertinent to note that a three judge Bench of the Hon'ble Supreme Court has taken a different view in **Kishore Kumar Gyanchandani vs. G.D. Mehrotra And Another** reported in **AIR 2002 SC 483** and 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."

12. Section 210 of the Code of Criminal Procedure contemplates the procedure to be followed when there is a complaint case and police case in respect of the same offence. Sub Section 1 of Section 210 provides that when in a case instituted otherwise than on a police case, namely, a complaint case, the Magistrate is informed during the inquiry or trial, that an investigation by the Police is in progress in relation to the offence which is the subject matter



of the inquiry or trial held by him, the Magistrate is required to stay the proceedings of such enquiry or trial and to call for a report on the matter from the Police Officer conducting the investigation.

Sub Section 2 provides that if a report is made by the investigating officer under Section 173 and on such report, cognizance of an offence is taken by the Magistrate against any person, who is an accused in the complaint case, the Magistrate shall inquire into or try the two cases together as if both the cases had been instituted on a police report.

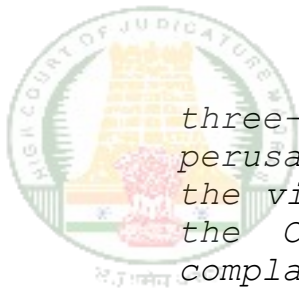
Sub Section 3 contemplates that, the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

13. Considering the above, as per Section 210 (3) of Cr.P.C, if the police report does not relate to the accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he has to proceed with the original complaint pending before him. Hence, it is very much clear that even though the police has filed a final report contrary to the averments in the private complaint already pending before the concerned Court, that contrary report or even the acceptance of the contrary report filed by the police does not debar or prevent the Magistrate from proceeding with the private complaint.

14. At this juncture, it is necessary to refer the 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*¹, 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."

15. In the said case, the complaint was forwarded under Section 156(3) of Cr.P.C and after investigation, final report was filed stating that the complaint was false, that the police report came to be accepted by the learned Magistrate, that subsequently the Superintendent of Police had independently ordered further investigation and filed the final report and that the Magistrate has taken cognizance of the said report and when the same was challenged, the learned Sessions Judge has dismissed the revision. But the High Court, set aside the order of cognizance and when the same was questioned, the Hon'ble Supreme Court has held that the High Court erred in quashing the cognizance taken by the learned Magistrate.

16. Considering the above, the position of law is well settled that as per the Code of Criminal Procedure, the defacto complainant is entitled to file a private complaint, even if the case lodged with the police is referred or closed. The right of the defacto complainant to proceed with his complaint, even after the acceptance of the negative report of the police by the learned Judicial Magistrate, is very much available.

17. No doubt, the decision reported in **1998 1 CTC 329** was decided earlier to the decision of the Hon'ble Supreme Court in **Kishore Kumar Gyanchandani's** case. But the judgment in **Kishore Kumar Gyanchandani's** case was not brought to the notice of the learned Single Judge of this Court while deciding the case in **Thiyagarajan Vs. Karuppannan and another** and as such, the same can only be considered as *per incuriam*.

18. Considering the above, this Court has no hesitation to hold that the private complaint now pending in C.C.No.190 of 2019 is perfectly maintainable in law. Since the petitioners have not taken any other acceptable reason or grounds sufficient enough to quash the complaint, they have to necessarily face the trial and establish their innocence. It is clarified that this Court has not gone into the merits of the case and as such, all the pleas and defence of the petitioners are left open.



19.In the result, the Criminal Original Petition is dismissed.
Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

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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,
Aundipatti.

CRL.O.P. (MD) .No.7972 of 2019
and

CRL.M.P (MD) Nos.4919 & 4920 of 2019
12.01.2022

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