



Crl.O.P.(MD) No.15687 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P (MD) No.15687 of 2022

and

Crl.M.P.(MD) Nos.10343 and 10344 of 2022

1.Narayanaraj

2.Nagalakshmi

...Petitioners

VS

Sankar

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the case registered in the impugned private complaint in C.C.No.2 of 2022 on the file of the learned Judicial Magistrate, Paramakudi and quash the same as illegal, insofar as the Petitioners are concerned.

For Petitioners : Mr.B.Arun

For Respondent : Mr.C.Anand



Crl.O.P.(MD) No.15687 of 2022

ORDER

WEB COPY

This Criminal Original Petition has been filed to quash the private complaint in C.C.No.2 of 2022 pending on the file of the learned Judicial Magistrate, Paramakudi.

2.It is the contention of the learned Counsel for the Petitioners that the Petitioners are the senior citizens. For the same offence, Crime No.70 of 2018 was registered by the Paramakudi Taluk Police, which was closed as mistake of fact. The Petitioners had obtained information regarding the same under the Right to Information Act and the referred Charge Sheet was also filed before the Court concerned. After filing of the referred Charge Sheet in the year 2018, the Respondent/complainant had lodged the private complaint. It is for the very same cause of action, which attracts the limitation under Section 468 Cr.P.C.

3.The learned Counsel for the Petitioners invited the attention of this Court to the order passed by the learned single Judge of this Court in Crl.O.P.(MD) No.5324 of 2021 (***R.Thulasiram and another Vs. Chinnapandi***) dated 08.04.2022, wherein it had been stated as follows:-



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 (1) 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 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. 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 (CrI) 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 2007 under Sections 468, 471, 420r/w 120B I.P.C., was 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.



WEB COPY

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."

4.The learned Counsel for the Respondent by way of reply would submit that originally the case is based on the Writ Petition in W.P.(MD) No.9037 of 2018, which was filed by R.Vijayalakshmi, who is the wife of the Respondent herein, seeking direction to the Respondents 2 and 3 therein



Crl.O.P.(MD) No.15687 of 2022

to remove the encroachment, encroached by the Respondents 2 and 3 in the pathway in S.Nos.204/9, 205 and 205/14 in Muthuramalingampuram Village, Melakaavanur Revenue Birka Paramakudi Taluk, as per the proceedings of the Respondents 1 and 2, dated 15.02.2018, 02.03.2018 and 14.03.2018.

5.It is the contention of the learned Counsel for the Petitioner in the Writ Petition that the Respondents 5 to 15 therein have encroached the pathway. When that was questioned by the Petitioner, she and her family members were attacked and abused by the Respondents 5 to 15. The Petitioner had made representation to the Respondents 2 to 4. Based on the same, directions were issued by the Division Bench of this Court, vide order dated 13.11.2018. Subsequently, there was case and counter case. The case was registered in Crime No.70 of 2018, in which the Petitioners herein are the accused and the Respondent herein the complainant. The other case was registered in Crime No.69 of 2018, in which the Respondent herein is an accused.



Crl.O.P.(MD) No.15687 of 2022

6.The learned Counsel for the Respondent invited the attention of this

Court to the contents of the private complaint, wherein it has been stated that based on the order passed in the said Writ Petition, there was clashes in the village, in which the Respondent was injured in his eyes, for which he had taken treatment. When there was case and counter case, the Police had not acted impartially as per the Police Standing Orders 566.2.

7.The Police had closed the FIR based on the complaint of the Respondent as mistake of fact and filed a report in the Court. The Respondent came to know that belatedly only after filing Crl.O.P.(MD) No. 376 of 2020. The said petition was closed directing the Respondent as Petitioner to approach the learned Judicial Magistrate concerned and file protest petition. Accordingly, he had filed Cr.M.P.No.1297 of 2020 seeking further investigation. The learned Judicial Magistrate closed the petition and directed the Respondent, who is the Petitioner in Cr.M.P.No.1297 of 2020 to file the private complaint.

8.It is the further submission of the learned Counsel for the Respondent that Crl.O.P.(MD) No.376 of 2020 was disposed of by this



CrI.O.P.(MD) No.15687 of 2022

Court on 10.01.2020. Cr.M.P.No.1297 of 2020 was filed on 18.03.2020 seeking further investigation, which was closed by the learned Judicial Magistrate directing the Petitioner therein to file the private complaint. It is the further submission of the learned Counsel for the Respondent that throughout 2021, the parties were not allowed inside the Court. Therefore, he had filed it only belatedly after the COVID-19 lock down restrictions were relaxed and the Court started function.

9.The learned Counsel for the Respondent invited the attention of this Court to the averments contained in the Writ Petition, the subsequent filing of the complaint, which was closed as mistake of fact by the Investigation Officer and the filing of the final report against the Respondent before the Court concerned. He would further submit that the petition is not maintainable in the facts and circumstances of the case and it is liable to be dismissed.

10.By way of additional typed set of papers, the learned Counsel for the Petitioners had furnished the details furnished by Paramakudi Taluk



Crl.O.P.(MD) No.15687 of 2022

Police Station to the petition filed by the Petitioners seeking details of the case in Crime No.70 of 2018.

11.The learned Counsel for the Respondent also relied on the very same information furnished by Paramakudi Taluk Police Station, in which it has been stated that in Crime No.70 of 2018, the accused had not obtained bail or anticipatory bail or station bail. Therefore, it is the contention of the learned Counsel for the Respondent that it gives presumption that the police had not acted fairly as per the Police Standing Order 566.2.

12.In the light of the particulars mentioned by the learned Counsel for the Respondent, the vehement objection of the Respondent is accepted by this Court, in the light of the facts of the case, which is distinguished from the reported order of the learned single Judge of this Court in Crl.O.P.(MD) No.5324 of 2021 (***R.Thulasiram and another Vs. Chinnapandi***) dated **08.04.2022**.

13.In fine, this Criminal Original Petition is dismissed. The learned Judicial Magistrate, Paramakudi is directed to dispose of the petition filed



Crl.O.P.(MD) No.15687 of 2022

by the Petitioners, if any, seeking dispensing with the personal appearance of them. Consequently, connected Miscellaneous Petitions are closed.

Internet: Yes/No

10.11.2022

Index: Yes/No

mm

To

1. The Judicial Magistrate,
Paramakudi.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD) No.15687 of 2022

SATHI KUMAR SUKUMARA KURUP, J.

mm

Crl.O.P (MD) No.15687 of 2022

10.11.2022