



WEB COPY

Crl.R.C(MD)No.831 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 09.03.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C(MD)No.831 of 2021

and Crl.MP(MD)No.9714 of 2021

Sabarinathan

...Revision Petitioner/Respondent/Petitioner

Vs.

A.Godwin Jegadeeskumar

... Respondent/Petitioner/Respondent

Prayer: This Criminal Revision Petition filed under Section 397, r/w.401 of Cr.P.C. to call for the records pertaining to the order passed by the learned Judicial Magistrate II, Madurai in Cr.M.P No.190 of 2019 in C.C No.502 of 2012 dated 07.05.2021 and set aside the same.

For Petitioner : Mr.K.Navaneetharaja
For Respondent : No Appearance

ORDER

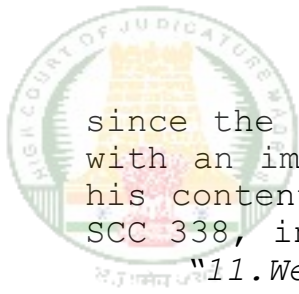
This Criminal Revision Petition has been filed to set aside the order passed by the learned Judicial Magistrate II, Madurai in Cr.M.P No.190 of 2019 in C.C No.502 of 2012 dated 07.05.2021.

2.Originally, the petitioner's mother lodged a complaint before the respondent, when he was working as Inspector of police, Sellur Police Station, Madurai. But, he failed to take any action on her complaint. As such, she lodged a complaint before the Assistant Commissioner of Police, Thallakulam on 18.01.2011. Thereafter the respondent herein received a complaint and issued CSR No. 40 of 2011. On receipt of the same, again the respondent failed to take any action against the said CSR. On taking sworn statement from the petitioner's mother, the trial Court has taken cognizance as against the accused Nos.1 to 3, for the offences under Section 448, 323, 324, 506(2) and 120(b) r/w 34 IPC and as against the respondent, for the offence under Sections 217, 506(i) IPC. Thereafter, issued summons to the respondent and the respondent filed a petition for discharge, under Section 239 Cr.P.C and 197 Cr.P.C. The Court below allowed the petition and discharged the respondent herein, on the ground that no specific allegation as against the respondent, to attract the offence under Sections 217, 506(i) IPC.

3.Though, notice served for the respondent, no one represented on behalf of the respondent, through his counsel.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The learned counsel appearing for the petitioner raised a ground that in summons case no discharge petition is maintainable,



since the offence under Sections 217 and 506(i) IPC, are punishable with an imprisonment for 2 years, or fine, or both. In support of his contention he also relied upon the Judgment reported in 2004(7) SCC 338, in which, the Hon'ble Supreme Court of India has held that

"11. We will examine the above findings of this Court in the background of the scheme of the Code which provides for consideration of complaints by Magistrates and commencement of proceedings before the Magistrate which is found in Chapters XV and XVI of the Code;

12. Section 200 contemplates a Magistrate taking cognizance of an offence on complaint to examine the complainant and examine upon oath the witnesses present if any. If on such examination of the complaint and the witnesses, if any, the Magistrate if he does not want to postpone the issuance of process has to dismiss the complaint under Section 203 if he comes to the conclusion that the complaint, the statement of the complainant and the witnesses has not made out sufficient ground for proceeding. Per contra if he is satisfied that there is no need for further inquiry and the complaint, the evidence adduced at that stage has materials to proceed, he can proceed to issue process under Section 204 of the Code.

13. Section 202 contemplates: postponement of issue of process : It provides that if the Magistrate on receipt of a complaint if he thinks fit, to postpone the issuance of process against the accused and desires further inquiry into the case either by himself or directs an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, he may do so. In that process if he thinks it fit he may even take evidence of witnesses on oath, and after such investigation, inquiry and the report of the Police if sought for by the Magistrate and if he finds no sufficient ground for proceeding he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 of the Code.

14. But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under Section 204 of the Code. Therefore what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under Section 204 of the Code. In none of these stages the Code has

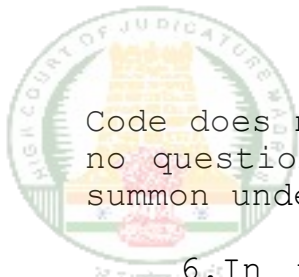


provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew's case before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under Sections 200 and 202, and the only stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play therefore the question of the accused on receipt of summons approaching the Court and making an application for dismissal of the complaint under Section 203 of the Code for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

15.It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 & 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal Courts, the remedy lies in invoking Section 482 of Code.

16.Therefore, in our opinion the observation of this Court in the case of Mathew (supra) that for recalling an order of issuance of process erroneously, no specific provision of law is required would run counter to the Scheme of the Code which has not provided for review and prohibits interference at inter-locutory stages. Therefore, we are of the opinion, that the view of this Court in Mathew's case (supra) that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law.

5.In the above case, it is held that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 & 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code, because the Criminal Procedure



Code does not contemplate a review of an order. Therefore, there is no question of discharge in the summons case that too operation of summon under Section 204 Cr.P.C.

6. In view of the above, this Criminal Revision Petition is allowed and the impugned order passed by the learned Judicial Magistrate II, Madurai in Cr.M.P No.190 of 2019 in C.C No.502 of 2012 dated 07.05.2021, is set aside. The learned Magistrate is directed to proceed with the trial, as against all the accused persons and complete the trial within six months, from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (LA & MC)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM

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

1.The Judicial Magistrate II, Madurai.

Copy to:

The Section Officer, Criminal (Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.NAVANEETHARAJA, Advocate (SR-11094[F] dated 10/03/2022)

Cr1.R.C(MD)No.831 of 2021

09.03.2022

MGJ(01.04.2022) 4P 5C