



Crl.O.P(MD)No.19588 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD)No.19588 of 2018

and

Crl.M.P(MD)Nos.8917 & 8918 of 2018

- 1.Periyasamy
- 2.Padmavathi
- 3.Ammaiyappan
- 4.Thangarasu
- 5.Gunasekaran
- 6.Boopathy
- 7.Podhigai Selvam @ Selvaraj
- 8.Palanivel
- 9.V.C.Shanmugam
- 10.Sellamani @ Sellammal
- 11.Mani
- 12.Ravindran
- 13.V.M.Suresh
- 14.V.N.Kandasamy
- 15.S.P.R.Shanmugam @ Prabhakar

... Petitioners/Accused Nos.2 to 7 and 9 to 17

Vs.

N.Nallasamy

... Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C.,to call for the records pertaining to C.C.No.357 of 2018 on the file of the learned Judicial Magistrate No.II, Karur and quash the proceedings as against the petitioners herein.



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For Petitioners : Mr.V.Kathirvelu, Senior Counsel for
Mr.L.Prabhakaran
For Respondent : Mr.S.Deenadhayalan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.357 of 2018, pending on the file of the learned Judicial Magistrate No.II, Karur.

2. The respondent initially gave a police complaint based on which Crime No.378 of 2013 was registered by the Inspector of Police, Velayuthampalayam Police Station on 20.08.2013 for various offences. The allegation that was made by the respondent was that the petitioners and the respondent are partners in a Finance Company and the first petitioner compelled the respondent to make false accounts and when the respondent refused, he was attacked. Thereafter, the respondent approached the petitioners seeking for rendition of account and demanding his share in the profit and the same was not given and the respondent was threatened. It is under these circumstances, the police complaint came to be given by the respondent. The police conducted an investigation and filed a closure report on 13.10.2017 as “mistake of fact”.



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3. While so, the respondent based on the very same set of allegations, filed a private complaint before the Court below and the Court below straightaway took cognizance of the private complaint and issued process to the petitioners. Aggrieved by the same, the present quash petition has been filed.

4. This Court heard the learned counsel appearing on either side and carefully went through the materials placed before this Court.

5. The issue that is involved in the present Criminal Original Petition is squarely covered by the earlier order passed by this Court, ***dated 27.11.2019 in Crl.O.P(MD)No.9812 of 2017 (Ganesan and others vs. Ganatpahy)***. The relevant portions in the order are extracted hereunder:

“6. In this case, it is admitted that the facts of the case, which became a subject matter of investigation by the Police in Crime No.241 of 2005 and the facts of the case which form part of the private complaint, are one and the same. The respondent had initially given a Police complaint and the concerned Police after a detailed investigation have filed a closure report before the learned Judicial Magistrate, Eraniel. A notice was issued to the respondent and since the respondent did not file a protest petition, the learned Judicial Magistrate took the closure report on file and closed the case. This order remains unchallenged.



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7. *The respondent has parallelly filed a private complaint before the very same Court and the Court has taken cognizance of the same. Even without going into the facts of the present case, it must be seen as to whether such a private complaint is maintainable.*

8. *At this juncture, it will be relevant to rely upon a judgment of this Court in the case of **A.Krishna Rao Vs, L.S.Kumar** cited by the learned counsel appearing for the petitioners 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. “

9. *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**:*

*“16. This Court also in the case of **Bhanwarlal Sharma vs. K.V.Sathyannarayanan and others**, reported in 2012 MLJ (Crl) 57, by referring to various judgments, has rendered a finding as under:*



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"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 (1) 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



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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:



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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



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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."

10. *In the present case, the respondent has parallelly initiated a second complaint on the same set of facts. The facts as projected in the complaint has already been investigated by the Police and a closure report has been filed. In spite of notice being served on the respondent, he did not file a protest petition and therefore, the closure report was taken on file and the case was closed. The respondent is now agitating the very same issue in the second complaint. Atleast, the notice of the Court below could have been drawn by the respondent regarding the closure report filed by the Police. At that point of time, the Court below could have taken note of the said fact and treated this complaint as a protest petition. Even this was not done in the present case. The Court below has completely discarded the closure report filed by the Police and has independently taken cognizance of the private complaint based on the same set of facts. In the considered view of this Court, the cognizance taken by the Court below is unsustainable in law."*

6. It is clear from the above that where a closure report is filed by the police, it is left open to the defacto complainant to file a complaint or a protest petition and the same can be either treated as a protest petition or cognizance can be taken treating it as a private complaint. However, while taking cognizance of the private complaint and before issuing the process to the accused persons, it is the duty of the Court to take into consideration the statements that were recorded by the police and the



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closure report filed. If the same is not done, parallel criminal complaint will be instituted and it will clearly amount to an abuse of process of Court. The view taken by this Court has been followed in the recent decision in *Alaguthangamani and others vs. Saravanan* reported in **(2022) 4 MLJ (Crl) 156.**

7. In view of the above discussion, this Court has no hesitation to interfere with the proceedings pending before the Court below and the continuation of proceedings clearly amounts to an abuse of process of Court. Accordingly, the proceedings in C.C.No.357 of 2018 pending on the file of the learned Judicial Magistrate No.II, Karur, is hereby quashed in its entirety and accordingly, this Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

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Index: Yes/No
Internet: Yes/No
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To
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- 1.The Judicial Magistrate No.II,
Karur.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

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