



Crl.O.P.No.1230 of 2023

and

Crl.M.P.No.653 and 654 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 15.03.2023	Orders pronounced on 30.03.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.1230 of 2023

and

Crl.M.P.No.653 and 654 of 2023

Gita

... Petitioner

Vs.

1. The State represented by
The Inspector of Police
Central Crime Branch, Team – XVII
Anti Land Grabbing Special Cell-1
Vepery, Chennai – 600 007.

2. S.Sarath Kakumanu

3. K.Beena

... Respondents

This Criminal Original Petition is filed under Section 482 Cr.P.C.
to call for the entire records connected with Charge Sheet in C.C.No.33



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of 2022 on the file of the learned Special Metropolitan Magistrate-II for the trial of Exclusive Trial of Land Grabbing Cases, Allikulam, Chennai and quash the same.

For Petitioner : Mr.T.Mohan, Senior counsel
for M/s.R.Anishkumar

For Respondent-1 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

For Respondents-2 & 3 : Mr.G.V.Sridharan

ORDER

This petition is filed to call for the entire records connected with Charge Sheet in C.C.No.33 of 2022 on the file of the learned Special Metropolitan Magistrate-II for the Exclusive Trial of Land Grabbing Cases, Allikulam, Chennai and quash the same.

2. Learned senior counsel for the petitioner challenged the final report in C.C.No.33 of 2022 on a only ground that the complaint/information, on the basis of which first information report in Crime No. 766 of 2006 for the offences under Sections 120(b), 419, 420,



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465, 467, 468 and 471 of IPC came to be registered, was signed by two persons, namely, Sarathkakumanu and K.Beena. The complaint/information can be only given by only one person and not by two persons and if more than one person joined and gave the complaint, it is impermissible under law and the proceedings initiated on the basis of such complaint/information is illegal and liable to be set aside. In support of his submission, learned senior counsel for the petitioner pressed to service the following judgments reported in:-

1. 1931 SCC OnLine Cal 34: AIR 1931 Cal 646: 1932 Cri LJ 83

(Sashadhar Achariya and another Versus Sir Charles Tegart and others);

2. MANU/TN/6105/2006 (Thethavusamy versus Radhakrishnan);

3. CDJ 2010 MHC 1043 (Swami @ Ramakrishnan Versus State by Inspector of Police, G2 Puthumanthu Police Station, Nilgiris District);

4. CDJ 2011 MHC 2973 (Maheswari & Others Versus Jayanthi & Another);



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Reddi and others); and

6. *CDJ 2017 MHC 8518 (Devarajan & Others Versus State rep. by the Assistant Commissioner of Police, Central Crime Branch, EDF-II, Vepery, Chennai & Others)*

3. In response, learned Government Advocate (Crl. Side) and learned counsel appearing for the respondents 2 and 3 submitted that the orders referred by the learned senior counsel for the petitioner related to private complaint cases. The procedure for registering a first information report on the basis of an information, investigation and trial is totally different from the procedure for institution of a private complaint and trial. In private complaint cases, an offence is taken cognizance on the basis of the complaint given by the complainant and the Magistrate shall have to examine the complainant and witnesses on oath and then, Magistrate shall take cognizance of the offences, if sufficient grounds for proceeding is made out. On the other hand, when an information in a



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cognizable offence is given in writing, that shall be entered in a book, namely, first information report register and from then onwards it is the duty and responsibility of the officer in-charge of the concerned police station to investigate the case and file a final report, on completion of the investigation under section 173 Cr.P.C. Thereafter, the concerned learned Magistrate takes cognizance of the offence on the basis of the final report. Thus, it is submitted by the learned counsel for the respondents that judgments relied by the learned counsel for the petitioners are not applicable to the facts of this case and therefore, pray for dismissal of this petition.

4. Considered the rival submissions and perused the documents.

5. Except the ground raised by the learned senior counsel for the petitioner that the complaint/information signed by two persons is not maintainable and registration of the first information report, conduct of



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the investigation and filing of a final report in furtherance of that complaint is also illegal and therefore, the proceedings is liable to be quashed, no other ground is taken in this petition.

6. Perusal of the records shows that on the basis of the complaint by one Sarathkakumanu and K.Beena, in the capacity of Directors of Hotel Snow White Private Limited and 17 other companies, making allegations of land grabbing with the use of forged power of attorney, the first information report in Crime No.766 of 2006 for offences under Sections 120(b), 419, 420, 465, 467, 468 & 471 of IPC came to be registered. After investigation, respondent police filed final report for the offences under Sections 120(B), 419, 420, 465, 467, 468 & 471 r/w.34 of IPC and the offences were taken cognizance in C.C.No.33 of 2022 and it is pending.

7. Coming to the judgments relied by the learned counsel for the petitioner in support of his submissions.



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WEB COPY (i) The judgment reported in *1931 SCC OnLine Cal 34*

(Sashadhar Acharjya and another Versus Sir Charles Tegart and others) (cited supra) relates to a private complaint wherein two complainants, viz., *Sashadhar Acharjya* and *Suhashini Debi* made a complaint. The court found that “*The first and most prominent fault is that it is a joint complaint which so far as we know is not contemplated by the Code of Criminal Procedure. The duties of a Magistrate under Section 200, Cr P.C. make this clear, because in taking cognizance of an offence on complaint he must at once examine the complainant upon oath and it is obvious that if there are two or more complainants on the same complaint it is physically impossible to fulfil the provisions of that section.*”. This judgment makes it clear that in a private complaint if two complainants joined and gave a complaint, both the complainants have to be examined on oath and it is not the scheme devised under Chapter - 15 of Cr.P.C.



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WEB COPY (ii) In the judgment reported in *MANU/TN/6105/2006*

(Thethavusamy versus Radhakrishnan) (cited supra), two Criminal Appeals were filed challenging the conviction and sentence imposed. When the appeals were heard, it was brought to the notice of the court that the complaint was preferred by two persons, namely, **Dr.J.A.Thethavusamy and Mrs.Arlette Alyisus**. Learned counsel appearing for the parties also brought to the notice of the Court the decision in the case of *Krishnamurthy R. versus M.P.Raja* reported in *(1989) MLJ (Cri.) 13* for the proposition that the complaint made by two persons jointly in respect of the one and the same occurrence or transaction is not valid. It is observed in that decision as follows:

“4. As regards the validity of the complaint is concerned, it is contended that one complaint cannot be filed by two persons; the learned Counsel appearing for the petitioners would contend that the complaint filed by two persons jointly is not in the contemplation of the scheme of the Code of Criminal



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Procedure and produced before me two decisions

(1) *Sashadhar Achairya v. Sir Charles Tegari*
(MANU/WB/0234/1931 : AIR 1931 Cal 646)
wherein it was held that "A joint complaint by
two persons is not contemplated by *the Code*"
and

(2) *Narayanaswami v. Egappa Reddi* (1961 MWN
(Crl.) 129) wherein it was held that "A
complaint could be filed by only one person.
There is no provision in *the Criminal
Procedure Code* for joint complaints".

*The learned Counsel appearing for the other side
would concede that the complaint filed as such was
not in order and that it will be possible either to file
fresh complaints or to see that one of the
complainants withdraws from the complaint.*



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5. The resulting position is that the complaint as it was filed is not valid; all the subsequent steps taken by the learned Magistrate on the complaint are to be considered as not legal and are thereby quashed. If the complaint is revised in a legal manner in one way or the other, the learned Magistrate will deal with it afresh in accordance with law.”

Following the decision reported in **(1989) MLJ (Cri.) 13** it was held that the complaint preferred by two persons namely **Dr.J.A.Thethavusamy and Mrs.Arlette Alyisus** is not valid and therefore, the conviction recorded and sentence imposed against the appellants were set aside. This judgment relates to a private complaint and it is not a case registered on the basis of the complaint/information and prosecuted by the police.



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WEB COPY (iii) The judgment reported in ***CDJ 2010 MHC 1043 (Swami @***

Ramakrishnan Versus State by Inspector of Police, G2 Puthumanthu

Police Station, Nilgiris District) (cited supra) is relied by the learned

counsel for the petitioner for the proposition that even in the case instituted on police report, it was held that the joint complaint is not maintainable and therefore, the accused were acquitted. It is seen that the offences concerned in those Criminal Appeals are Sections 376, 417, 493 and 506(ii) IPC. On the basis of the complaint given by defacto complainant, first information report in Crime No. 135 of 2000 came to be registered for the offence under section 417 IPC. After investigation, final report was filed against the accused for the offence under sections 493, 506(ii) and 376 IPC. The accused was found guilty and awarded punishment. Challenging the punishment, accused filed those criminal appeals. This Court, on considering the materials produced and the evidence available, found that trial Court's finding was void for non-consideration of the material evidence and relevant factors emerging from the prosecution case. In addition to that, it was pointed out that this



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is a case of joint complaint given by the panchayatars. The joint complaint is unknown to criminal procedure. Thus, it is observed that in the case of *Thethavusamy versus Radhakrishnan (cited supra)*, this court held that the complaint made by two persons jointly in respect of one and same occurrence is not valid in law. This is the only observation made from the case of *Thethavusamy versus Radhakrishnan (cited supra)*. The accused were acquitted mainly on the ground that the prosecution failed to prove that the accused subjected the prosecutrix to sexual act against her will and without her consent and under the false promise to marry her. The additional ground for setting side the prosecution case is that the joint complaint is not maintainable. However, this Court is of the view that relying the judgment given in a private complaint case in *Thethavusamy versus Radhakrishnan (cited supra)* for a case instituted on a police report and giving a finding that the joint complaint given by the panchayatars and the prosecution instituted on that basis is not maintainable, in the considered view of the Court and with due respect to the learned Judge, is not correct.



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complaint was given by two complainants. Though this Court observed that the complaint given by two complainants is not maintainable, relying on the decision taken in *(Maheswari & Others Versus Jayanthi & Another) (cited supra)* reported in *CDJ 2011 MHC 2973: 2011 (4) MLJ (Crl.) 198* and *Swami @ Ramakrishnan Versus State by Inspector of Police, G2 Puthumanthu Police Station, Nilgiris District (cited supra)* reported in *CDJ 2010 MHC 1043: 2010 (3) MLJ (Crl.) 284* and *M.Ravi Versus R.Palani Subramanian* reported in *2010 (1) LW Crl.16*, this Court found that the decision taken in *(Maheswari & Others Versus Jayanthi & Another) (cited supra)* and *M.Ravi Versus R.Palani Subramanian* relate to private complaint cases. The decision taken in private complaint case in *Thethavusamy versus Radhakrishnan (cited supra)* was relied in the decision taken in *Swami @ Ramakrishnan Versus State (cited supra)*. Not only that, the case came to be quashed on various other grounds as well.



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8. On the consideration of the judgments relied by the learned counsel appearing for the petitioner, it is clear that no case was quashed for the reason that the case instituted on the basis of a police report cannot be maintained for the reason that the complaint/first information was signed by two informants/complainants.

9. The case instituted otherwise than on police report commences with the complaint given by the complainant under chapter-XV of Cr.P.C, especially under section 200 Cr.P.C. Once a complaint is given, the Magistrate shall have to examine upon oath the complainant and the witnesses present and reduce into writing. If a public servant acting or purporting to act in the discharge of official duty or a Court has made a complaint or if the Magistrate makes over the case for an enquiry or trial to another Magistrate under section 192 Cr.P.C, it is not necessary to examine the complainant and witnesses. The Magistrate is required to conduct an enquiry or investigation by a police officer in some cases under section 202 Cr.P.C. After considering the statements on oath of the



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complainant and the witnesses and the result of the enquiry / investigation under section 202 Cr.P.C, if the Magistrate is of the opinion that there is no ground for proceeding, he shall dismiss the complaint with reasons under section 202 Cr.P.C. If the Magistrate is of the opinion that there is sufficient ground for proceeding, then he can take cognizance of the offence and issue summons/warrant, as the case may be.

10. Reading of these sections make it clear, the complainant has to make out a sufficient ground for proceeding for taking cognizance of an offence in a private complaint case. After taking cognizance and after the appearance of the accused, the proceeding commences by following the provisions under sections 244 to 247 of Cr.P.C under Chapter - XIX. In case of warrant cases, the complainant has to produce evidence in support of his case. If the Magistrate considers that no case is made out against the accused from the evidence, the learned Magistrate shall discharge the accused under section 245(1) Cr.P.C. Even before this



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stage, the Magistrate can discharge the accused if he considers the charge to be groundless under section 245(2) Cr.P.C.

11. If the Magistrate does not discharge the accused and is of the opinion that there is a ground for presuming that the accused committed an offence, then he shall frame charge/charges against the accused under section 246(1) Cr.P.C. If the accused claims to be tried and he wishes to cross-examine any of the witnesses whose evidences had been taken, those witnesses shall be recalled for the purpose of cross examination and re-examination under sections 246(4) and 246(5) Cr.P.C.. Then, the evidence of remaining witnesses for prosecution has to be taken under section 246(6) Cr.P.C. Thereafter, accused shall be called upon to enter/give his evidence and produce his evidence under section 247 Cr.P.C.

12. On the other hand, in a case instituted on a police report, it starts with an information given to the police in a cognizable offence



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under section 154 Cr.P.C. If an information in a cognizable offence case is given in writing, substance of the information shall have to be entered in a book to be kept by the officer in-charge of the police station, namely, first information report register. Thereafter, the police officer has the power to investigate the cognizable offence. The procedure for investigation and filing of report on the completion of investigation are dealt under Sections 157 and 173 Cr.P.C. Information to police and their powers to investigate are dealt under Chapter – XII from Sections 154 to 176 Cr.P.C. Thereafter, the Magistrate takes cognizance of the offences upon the police report under section 190 Cr.P.C. Once the cognizance is taken, summons/warrant, as the case may be, issued to the accused. The trial proceedings are governed by Sections 238 to 242 Cr.P.C in case of cases instituted on a police report in warrant cases and under sections 251 to 259 Cr.P.C in case of summons cases.

13. So far as warrant cases are concerned, after compliance of provisions under section 207 Cr.P.C, upon considering the police report



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entered in the first information report register, then the officer concerned with the particular police station takes up the investigation and then it is the duty and responsibility of the State to prosecute the accused. On the other hand, in a case instituted otherwise than on a police report, starting from the giving of the complaint till the completion of the trial, it is for the complainant to take steps to take the case forward to the next level.

15. The judgments relied by the learned counsel appearing for petitioner came to be delivered in a case instituted otherwise than on police report or on the basis of the decision taken in a case instituted otherwise than on a police report. Therefore none of the decisions are useful to the case of the petitioner. Though two persons have signed in the complaint / information in a case instituted on a police report, now trial is in progress, reached its final stage, the prayer for quashing C.C.No.33 of 2022 on the file of the learned Special Metropolitan Magistrate-II for the Exclusive Trial of Land Grabbing Cases, Allikulam, Chennai, cannot be entertained.



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12. In this view of the matter, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

30.03.2023

mra

Index :Yes

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The Special Metropolitan Magistrate-II
for the Exclusive Trial of Land Grabbing Cases,
Allikulam, Chennai.
2. The Inspector of Police
Central Crime Branch, Team – XVII
Anti Land Grabbing Special Cell-1
Vepery, Chennai – 600 007.
3. The Public Prosecutor,
Madras High Court,
Chennai.

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G.CHANDRASEKHARAN,J.

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order in
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