



Crl.O.P(MD).No.4848 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.4848 of 2019

and

Crl.M.P.(MD)Nos.3016 and 3017 of 2019

1.P.S.Sharfudeen
2.R.Nagarajan
3.N.S.Elangovan
4.S.Ariven Nisha
5.S.Sayida Begam
6.Subi @ Suveriya Begam
7.Saibunisha

...Petitioners

Vs

B.Mohammed Kalifullah

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to the case in C.C.No.241 of 2018 pending on the file of the Judicial Magistrate Court No.III, Dindigul, and quash the same.

For Petitioners
For Respondent

: Mr.G.Karuppasamy Pandiyan
: Mr.M.Sheik Abdullah

ORDER

This petition is filed to quash the charge sheet in C.C.No.241 of 2018, pending on the file of the Judicial Magistrate Court No.III, Dindigul,

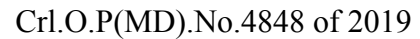


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and 204(2) of Cr.P.C., The trial Court has not passed any order in the negative final report filed by the Police. In the mean time, the private complaint was taken on file. There is a civil dispute between the respondent and his sister, who is no other than the wife of the first petitioner. Therefore, in order to settle the civil dispute, the respondent has filed private complaint by mentioning false allegations. Hence, the charge sheet in C.C.No.241 of 2018 pending on the file of the learned Judicial Magistrate No.III, Dindigul is liable to be quashed.

3.No counter was filed by the respondent.

4.The learned counsel appearing for the petitioners has argued that the defacto complainant who is practicing as an advocate, has given a complaint alleging that on 30.06.2017 at about 07.12 a.m., when the defacto complainant went to Dindigul Railway station for see of his client, all the accused were walking near the Railway station at that time, after seeing the defacto complainant, all the accused wrongfully restrained him and threatened to withdraw the civil case and also assaulted him with sticks and robbed his wrist watch. The defacto complainant filed a complaint before the learned Judicial Magistrate No.III and the same was forwarded to Town Police Station and registered FIR and the same was closed as 'mistake of fact'. While



5. The learned counsel for the respondent has argued that the petitioners on the date of occurrence, abused the defacto complainant with filthy language and caused criminal intimidation and thereby, the respondent has filed this complaint and the learned Judicial Magistrate forwarded the said complaint under Section 156(3) of Cr.P.C., to the concerned police station and FIR also registered and thereafter closed the case as 'mistake of fact' and then the petitioner filed this complaint and the learned Judicial Magistrate has rightly taken cognizance for the offence under Sections 294(b), 341 and 506(ii) of IPC.

6. Heard both sides and perused the materials available on records.

7. On perusal of the records, it is observed that the respondent herein gave a complaint before the learned Judicial Magistrate No.III, Dindigul, alleging that on 30.06.2017 at about 07.12 a.m., near Railway station, when



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the petitioners were walking on seeing the second respondent, all the petitioners chased him and threatened him by showing dangerous weapons and asked him to withdraw the case against the first petitioner. The respondent being a practicing advocate has filed a private complaint before the learned Judicial Magistrate No.III, Dindigul and the same was forwarded to the jurisdictional police station and the police also investigated the matter and filed negative final report. Thereafter, the respondent filed another complaint and learned Judicial Magistrate also taken cognizance under Sections 294(b), 341 and 506(ii) of IPC. In the private complaint, he alleged that the petitioners abused the defacto complainant with filthy language wrongfully restrained and caused criminal intimidation. Further the learned Judicial Magistrate No.III, Dindigul recorded the sworn statement of the complainant and one witness and based on the said statements of witnesses had taken cognizance for the offence under Sections 294(b), 341 and 506(ii) of IPC.

8.On careful perusal of the sworn statement of the complainant, there is no mention about the obscene words uttered by the accused and did not state anything to attract the provisions under Section 294(b) of IPC. Further according to the statement of the complainant, all the accused chased him and threatened with deadly weapons and not stated anything about the wrongful restrained caused by the accused and no evidence to constitute the ingredients



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of the offence under Section 341 of IPC. The complainant stated in the sworn statement that all the accused attempted to assault him and threaten with deadly weapon and thereby caused criminal intimidation. The above said allegations made in the statement are vague and not mentioned about kind of threats by the petitioners and thereby no prima facie material to constitute the offence under Section 506(ii) of IPC.

9.As far as other offences mentioned in the complaint are concerned, the learned Judicial Magistrate has not taken cognizance for all the offences and only had taken cognizance under Sections 294(b), 341 and 506(ii) of IPC. According to the statement of witness Nagaraj, he witnessed the occurrence and one Nagaraj and Karupaiah along with others chased the complainant and used obscene words and threatened to withdraw the case. The complainant himself has not stated about the obscene words and wrongful restrain. Thereby the statement of the witness Nagaraj alone is not sufficient to make out the prima facie case to take cognizance. As per statement of witness Nagaraj, one Karupaiah and Nagaraj had involved in the occurrence but in the police complaint, name of that Karupaiah was not mentioned. It is admitted fact that the civil dispute is pending between the parties.

10.On careful reading of complaint, it shows that it is an exaggerated



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one not a natural one. The complainant being an advocate has not given the complaint before the jurisdictional police station immediately after the occurrence but sent the complaint to Superintendent of Police and then filed the petition under Section 156(3) of Cr.P.C., before the learned Judicial Magistrate No.III, Dindigul. Further the defacto complainant not even sent a copy of the complaint to the police station and no reason stated for non sending the complaint to the jurisdictional police station. The general procedure is if any incident happened, the affected person shall go to concerned jurisdictional police station to give complaint, if they failed to take any action and then go to the Superintendent of Police office but in this case the complainant being a practicing advocate after the alleged occurrence did not go to police station for giving complaint straight away sent complaint to the Superintendent of Police, through registered post.

11.According to Section 154(1) of Cr.P.C., every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant. As per Section 154(3) of Cr.P.C., any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the



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Superintendent of Police concerned.

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12. Without following these procedures, the defacto complainant directly sent the complaint to the Superintendent of Police. This conduct of the complainant would show his intention. Moreover already the investigation agency has investigated the case and filed negative report and closed the case as 'mistake of fact'. Thereafter the respondent herein filed a complaint but the statement recorded by the learned Judicial Magistrate also does not reveal the prima facie offence for taking cognizance.

13. The learned counsel appearing for the petitioner would rely upon the judgment of this Court in the case of **A. Krishna Rao v. L.S. Kumar** reported in **(1998) 1 CTC 329**, wherein this Court in para no.4 held as follows:

“Learned counsel for the respondent relied upon a decision of this Court is Manoharbal v. Vashdev 1983 L.W. (CrI.) 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.



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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."

14.A careful reading of the aforesaid judgment, it is clear that if the learned Magistrate has accepted the RCS and the second complaint should be filed only after setting aside the order passed by the learned Magistrate in the referred charge sheet. In the case on hand, already referred charge sheet was filed and thereafter no order was passed by the learned Magistrate and while pending aforesaid referred charge sheet, private complaint has been filed under Section 200 of Cr.P.C. Thereby, the petition is not maintainable when the matter is pending before the learned Judicial Magistrate.

15.The learned counsel appearing for the respondent relied upon the



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judgment of the Hon'ble Supreme Court in the case of **Sathish Kumar Jatav**

v. State of U.P. and others in **Criminal Appeal No.770 of 2022**, wherein the

Hon'ble Supreme Court in para no.6.3 held as follows:-

“Even from the impugned order passed by the High Court it appears that while quashing the criminal proceedings, the High Court has observed that no useful purpose will be served by prolonging the proceedings of the case. The aforesaid cannot be a good ground and or a ground at all to quash the criminal proceedings when a clear case was made out for the offence alleged.”

16.A careful reading of the judgment, it is clear that the High Court cannot quash the proceedings by observing that no useful purpose will be served by prolonging the case and the same is not a good ground. In this case, the complainant being an advocate without going before the jurisdictional police station has straight away sent to the Superintendent of Police and thereafter, filed the petition before the learned Magistrate under Section 156(3) of Cr.P.C., and the same was forwarded to jurisdictional police station and police after enquiry closed the case as 'mistake of fact'. Thereafter, without awaiting order of Magistrate, the complainant presented the impugned complaint before the same Magistrate. On careful perusal of records, it is observed that the closure report of the case in FIR in Crime No.305 of 2017



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was sent to the jurisdictional Magistrate on 16.08.2017 and the same was received by the Magistrate Court on 24.10.2017. After receipt of closure report notice, the petitioner has not approached the Magistrate Court by filing protest petition. The learned Magistrate issued notice to the defacto complainant in Cr.M.P.No.2606 of 2018 and thereafter, posted for objection of defacto complainant. Thereafter, lastly posted on 17.08.2018, for filing objection by the defacto complainant but no records found to show order passed in the said Cr.M.P.No.2606 of 2018. But in the meantime, on 06.08.2018, the same complainant filed another complaint in Cr.M.P.No.3819 of 2018 before the same Magistrate for the same occurrence. The learned Magistrate also examined the witnesses and recorded some statements and then taken cognizance for the offences under Sections 294(b), 341 and 506(ii) of IPC. But not passed any order in Cr.M.P.No.2606 of 2018, which was posted for filing objections. Without passing orders in the application which was taken for deciding the closure report, this present complaint was taken on file. A careful reading of the complaint, it shows the exaggeration and intention of the complainant.

17.Further the same complainant filed a petition in Crl.O.P.(MD)No. 17798 of 2021 to expedite the trial proceedings in C.C.No.241 of 2018 by suppressing the pendency of this petition and the stay was granted by this Court in this petition and got orders in his favour.



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P. DHANABAL,J.

Mrn

18.Therefore, the attitude of the respondent shows his malafide intention and thereby, it is a clear abuse of process of law. Therefore, the above said C.C.No.241 of 2018 taken on file by the learned Judicial Magistrate No.III, Dindigul is liable to be quashed.

19.Therefore as discussed supra, this Criminal Original Petition is allowed and the impugned charge sheet in C.C.No.241 of 2018 pending on the file of the learned Judicial Magistrate No.III, Dindigul is hereby quashed. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Judicial Magistrate No.III, Dindigul.

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