



Crl.O.P(MD).No.15913 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 29.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.15913 of 2019

and

Crl.M.P.(MD)No.9450 of 2019

1.Ramesh Kumaran
2.Natrayan

...Petitioners

Vs

1.State through the Inspector of Police,
Kodaikanal Police Station,
Kodaikanal, Dindigul District.

2.Ragavendran

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records and quash the proceedings in S.T.C.No.607 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Kodaikanal.

For Petitioners	: Mr.G.Prabhu Rajadurai
For 1 st Respondent	: Mr.M.Sakthi Kumar Government Advocate
For 2 nd Respondent	: No Appearance

ORDER

This petition is filed to quash charge sheet in S.T.C.No.607 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Kodaikanal.



Crl.O.P(MD).No.15913 of 2019

WEB COPY

2. The case of the petitioners is that the second respondent filed a private complaint as against these petitioners. Based on the complaint, the learned Magistrate has taken cognizance for the offence under Section 294(b), 323 and 506(i) of IPC. In fact on 18.12.2017 when the first petitioner was walking in Lake Road, Kodaikanal, the second respondent being the Bar President of Advocate of Kodaikanal, at that time called the first petitioner and abused and attacked him. The second petitioner is the father of the first petitioner. FIR has been registered against the second respondent in Crime No.499 of 2017 and the said case was investigated and charge sheet was filed before the learned Judicial Magistrate, Kodaikanal. The second respondent is evading from receiving summons for the past one year. In the meanwhile, the second respondent in view of the complaint given by the petitioners against him, gave a false complaint against these petitioners as if the petitioners abused and attacked him. FIR was registered in Crime No.500 of 2017 on the file of the first respondent police and the same was investigated and closed by the first respondent as 'mistake of fact'. Thereafter, the second respondent preferred a protest petition under Section 190 of Cr.P.C., and the learned Magistrate without verifying the records taken a case under Section 200 of Cr.P.C., and recorded the statements and then taken cognizance in S.T.C.No.607 of 2019 for the offence under Sections 294(b), 323 and 506(i) of IPC. The learned



Crl.O.P(MD).No.15913 of 2019

Magistrate has failed to consider that no offence made out as per the complaint and the present complaint preferred by him is against the earlier complaint. The second respondent did not even reveal the hospital name, in which he is trying to build up new version. This complaint is a counter blast for the earlier complaint given by the petitioners. Therefore, the pending S.T.C.No.607 of 2019 is liable to be quashed.

3.No counter was filed on the side of the respondents.

4.The learned counsel appearing for the petitioner has contended that the second respondent on 18.02.2017 assaulted the petitioners and thereby, the first petitioner lodged a complaint and FIR has been registered in Crime No. 499 of 2017 and thereafter, in order to counter blast to the complaint, the second respondent also lodged a complaint against these petitioners and FIR has been registered in Crime No.500 of 2017 and thereafter, the police investigated the case and closed the case in Crime No.500 of 2007 as 'mistake of fact'. Crime No.499 of 2017 was charge sheeted and the case is pending. While so in order to counter blast, the aforesaid complaint given by the petitioners, the present complaint has been lodged. The learned Magistrate also without considering the materials taken cognizance and the same is pending. Therefore, the charge sheet is abuse of process of law and the same



Crl.O.P(MD).No.15913 of 2019

is liable to be quashed.

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5.The learned Government Advocate appearing for the first respondent contended that these petitioners gave a complaint against the second respondent and FIR in Crime No.499 of 2019 was registered and investigated by the first respondent and also filed charge sheet. In the meantime, the second respondent also gave a complaint as against the petitioners and FIR in Crime No.500 of 2017 was registered and after investigation, the same was closed as 'mistake of fact'. Thereafter, the second respondent filed a protest petition before the learned Magistrate and then it was taken on file and now the case is pending.

6.No representation on the side of the second respondent.

7.In this case, the petitioner's contention is that already the first petitioner had given complaint as against the second respondent and the case was registered in Crime No.499 of 2017 and then charge sheet was filed and the same is pending. Thereafter, this second respondent had also given complaint against these petitioner and FIR was registered in Crime No.500 of 2017 and the case was investigated by the Investigating Officer and they filed report stating that it was 'mistake of fact' and thereafter, the second respondent



Crl.O.P(MD).No.15913 of 2019

filed protest petition and the same was allowed by the learned Magistrate. The sworn statement of the witnesses were recorded and cognizance was taken by the learned Magistrate. Now the petitioner have filed this petition stating that no offence is made out as against the petitioners and the cognizance taken by the learned Magistrate is liable to be quashed.

8.On perusal of the records, it is seen that the learned Magistrate has rejected the final report filed by the respondents and thereafter, treated the protest petition as private complaint and sworn statement was recorded and taken cognizance. As per sworn statement, some of the offences are made out.

9.The learned Government Advocate appearing for the first respondent relied upon the decision of the Hon'ble Supreme Court in the case of ***Zunaid v. State of U.P. And Others*** in ***Criminal Appeal Nos.2628 – 2629 of 2013***, wherein the Hon'ble Supreme Court in para nos.11 and 12 held as follows:-

“11. In view of the above, there remains no shadow of doubt that on the receipt of the police report under Section 173 Cr.P.C., the Magistrate can exercise three options. Firstly, he may decide that there is no sufficient ground for proceeding further and drop action. Secondly, he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; and thirdly, he may take cognizance of the offence under



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Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. It may be noted that even in a case where the final report of the police under Section 173 is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a Protest Petition on the same or similar allegations even after the acceptance of the final report. As held by this Court in Gopal Vijay Verma Vs. Bhuneshwar Prasad Sinha and Others ², as followed in B. Chandrika Vs. Santhosh and Another³, a Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of the police report. No doubt a Magistrate while exercising his judicial discretion has to apply his mind to the contents of the Protest Petition or the complaint as the case may be.

12. So far as the facts of the present case are concerned, the concerned CJM vide the detailed order passed on 15.11.2018 had rejected the final report submitted by the Investigating Officer and had accepted the Protest Petition, and decided to proceed further under Section 200 Cr.P.C. Such a course opted by the CJM was absolutely just, legal and proper in the facts and circumstances of the case. The said order dated 15.11.2018 remained unchallenged at the instance of the respondents-accused. It was only when the concerned CJM after recording the statements of the complainant and eight witnesses, issued summons on 11.01.2022, the respondents filed the application challenging the said order dated



Crl.O.P(MD).No.15913 of 2019

11.01.2022 under Section 482 before the High Court, and in the said application, the order dated 15.11.2018 came to be challenged by way of amendment. As such, the High Court should not have permitted the respondents-accused to amend the Application for challenging the order dated 15.11.2018 after about four years of its passing, and in any case should not have interfered with the discretion exercised by the CJM within the four corners of law. The discretionary order of 11.01.2022 passed by the concerned CJM issuing summons to the accused, after recording statements of the complainant and the eight witnesses and after recording prima facie satisfaction about the commission of the alleged crime, also did not warrant any interference by the High Court. In our opinion, the High Court has committed gross error in setting aside the orders dated 15.11.2018 and 11.01.2022 passed by the CJM.”

10.It is well settled law that on the receipt of the police report under Section 173 Cr.P.C., the Magistrate can exercise three options. Firstly, he may decide that there is no sufficient ground for proceeding further and drop action. Secondly, he may take cognizance of the offence under Section 190(1) (b) of Cr.P.C., on the basis of the police report and issue process; and thirdly, he may take cognizance of the offence under Section 190(1)(a) of Cr.P.C., on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200 of Cr.P.C. Further even in a



Crl.O.P(MD).No.15913 of 2019

case where the final report of the police under Section 173 of Cr.P.C., is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a Protest Petition on the same or similar allegations even after the acceptance of the final report. In the case on hand also, the final report filed by the police was not accepted by the learned Magistrate and then the protest petition was filed and the same was treated as private complaint and sworn statements were recorded and then taken cognizance. Hence, the aforesaid case law is squarely applicable to the present facts of the case. The order passed by the learned Magistrate is just and proper in the facts and circumstances of the case. Therefore, there is no infirmity in the order passed by the learned Judicial Magistrate.

11.In view of the above judgment and as discussed supra, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

29.09.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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Crl.O.P(MD).No.15913 of 2019

To

- 1.The Judicial Magistrate, Kodaikanal.
- 2.The Inspector of Police,
Kodaikanal Police Station,
Kodaikanal, Dindigul District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P(MD).No.15913 of 2019

P. DHANABAL,J.

Mrn

Crl.O.P(MD).No.15913 of 2019

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