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CRL.R.C.(MD).No.383 of 20.



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.04.2023

Delivered on : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.383 of 2023

A.Mohammed Nasir

: Petitioner

Vs.

1.A.Mydeen Pillai

2.Mohammed Mustafa

3.Abdul Rashik

4.Dharik Mohammed

5.Vasheer Mohammed

6.The Inspector of Police,
Boothapandy Police Station,
Kanniyakumari District.

: Respondents

(R6 is suo-motu impleaded as per order of the Court, dated 02.02.2023 in CrI.M.P.(MD)No.1827/2023 in CrI.R.C(MD)No.SR16639/2018)

PRAYER: Criminal Revision Petition has been filed under Section 397(1) r/w 401 of Cr.P.C, to call for the records in pursuance of the order passed by the learned District Munsif cum Judicial Magistrate, Boothapandi in C.M.P.No.6203 of 2016, dated 01.02.2018 and set aside the same.

For Petitioner : Mr.V.Kathirvelu, Senior Counsel,
for Mr.C.M.Mari Chellaiah Prabhu



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For R1 : Mr.R.Anand,
for Mr.R.Ponkarthikeyan,
For R2 to R5 : No Appearance
For R6 : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor.

ORDER

The Criminal Revision is directed against the order passed in C.M.P.No.6203 of 2016, dated 01.02.2018 on the file of the learned District Munsif cum Judicial Magistrate, Boothapandi, dismissing the private complaint.

2.The petitioner/defacto complainant, by alleging that the complaint to the jurisdictional Police was not registered and his complaints to the Police Higher Officials were of no avail, has filed a private complaint under Section 200 Cr.P.C and the same was taken on file as C.M.P.No.6203 of 2016 on the file of the District Munsif cum Judicial Magistrate, Boothapandi. Subsequently, on the basis of the complaint lodged by the petitioner/defacto complainant, FIR came to be registered in Crime No.9 of 2017 on 10.01.2017 against the respondents 1 to 5 for the alleged offences under Sections 420, 465, 467, 468 and 120(B) IPC.



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3. The 6th respondent, after completing the investigation, has filed a negative report on 27.06.2017 before the jurisdictional Court and the learned Magistrate, after receipt of the final report, has issued RCS notice to the petitioner/complainant. The petitioner/complainant, after receipt of the said RCS notice, has entered into appearance and filed his objections. The learned Magistrate has conducted enquiry under Section 202 Cr.P.C in the pending C.M.P.No.6203 of 2016 by recording the statements of the witnesses produced by the petitioner/complainant. Since the private complaint under C.M.P.No.6203 of 2016 and the negative report in RCS.No.20 of 2017 were pending with respect to the same complaint, the learned Judicial Magistrate, upon considering the materials available on record and on hearing the arguments of both the sides, has passed the impugned common order, accepting the final report in RCS.No.20 of 2017 and thereby closing the FIR in Crime No.9 of 2017 as mistake of fact and dismissed the private complaint in C.M.P.No.6203 of 2016 under Section 203 of the Code of Criminal Procedure. Aggrieved by the dismissal of the private complaint in C.M.P.No.6203 of 2016, the defacto complainant has preferred the present Criminal Revision.



4. The case of the complainant is that he is a member of Uduman Lebhai Sahib Mosque Trust (ULSMT), that the Mosque owned by the said trust was managed by the USLMT trustees; that the said trust had created the scheme in O.S.No.55 of 1096 in the year 1992; that the said suit is still pending on the file of the Principal Sub Court, Nagercoil; that the Muttavalli Mydeen Plaintiff/first respondent herein/first accused has misappropriated funds of USLMT and also misused his power and hence, several civil and criminal cases are pending against him; that the Muttavalli/first respondent and others had conspired together and fraudulently conducted a general body meeting and created a false minutes book; that the Muttavalli/first respondent and others had created false documents to amend the rules of USLM Trust, which was against the decree in O.S.No.55/1096 (A.S.No.209/1010) from the year 1921; that they had created a forged document as if a general body meeting was conducted on 03.11.2013 in the presence of 238 members and all of them had signed in the said document; that the petitioner's signature has also been impersonated as 205th member in the minutes book, but the petitioner was in his shop on that day; that one of the trust member Shaideen has filed a Writ Petition in W.P(MD)No.4799 of 2015, challenging the order of removal, that they have produced the forged minutes book in the above writ petition; that the petitioner on seeing the same on 26.02.2016 has preferred



a complaint before the Boothapandi Police Station as well as to the Superintendent of Police, Nagercoil to take action against the respondents 1 to 5 and that since there was no action, the petitioner has approached this Court in Crl.O.P.No.4224 of 2016, seeking direction to the Boothapandi Police to register the FIR on the basis of the complaint lodged.

5. It is the further case of the complainant that the sixth respondent Police, after receipt of fresh compliant, issued a receipt in C.S.R.No.307 of 2016; that since the Police has not taken any steps, the petitioner has filed a contempt petition and that thereafter, FIR came to be registered in Crime No.9 of 2017, dated 10.01.2017 under Sections 420, 465, 467, 468 and 120(b) of IPC; that since the first accused is a powerful person, the sixth respondent Police without conducting proper investigation has filed a report referring the matter as 'mistake of fact'; that thereafter, the petitioner has filed a private compliant under Section 200 Cr.P.C, that the learned Magistrate clubbed both the referred charge sheet and private complaint and passed a common order, dated 01.02.2018 in a casual manner dismissing the private complaint by observing that the complainant allegations are vague, without considering the serious charges of forgery and falsification of records.



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6. The learned Senior Counsel appearing for the petitioner would contend that the main case of the complainant is that his signature has been impersonated as 205th member in the minutes book of USLM Trust, but the learned Magistrate has given a finding that the petitioner has not proved that his signature was impersonated in the minutes book and that the learned Magistrate has committed a grave error in law in not considering the fact that in order to entertain a private complaint under Section 200 Cr.P.C, *prima facie* case has to be seen and should not have dealt with the matter as if there was no possibility of conviction.

7. The learned Senior Counsel appearing for the petitioner would further contend that filing of a negative report or even acceptance of the said negative report by the jurisdictional Court will not debar or prevent the complainant to prefer a private complaint under Section 200 Cr.P.C and that the learned Magistrate has committed a grave mistake in clubbing both the private complaint under Section 200 Cr.P.C and the final report in R.C.S.No.20 of 2017 and passing a common order, as the same is unknown to criminal law.

8. The learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the first respondent have relied on the same



decision of this Court in ***Alaguthangamani and Others Vs. Saravanan*** reported in ***Manu/TN/3757/2022***, but different passages in support of their contentions. The learned Senior Counsel for the petitioner has relied the following passages :

13. At this juncture, it is necessary to refer the three Judge Bench judgment of the Hon'ble Supreme Court in Kishore Kumar Gyanchandani vs. G.D. Mehrotra And Another reported in AIR 2002 SC 483 and the Hon'ble Apex Court has specifically held that even if the Magistrate accepts the final report submitted by the Police, the right of the complainant to file a regular complaint is not taken away and the relevant portion is extracted hereunder:

“4. When the matter was listed before a two-Judge Bench of this Court, thinking that there is some divergence of views, it referred the matter to a three-Judge Bench. On examining the different provisions of the Code of Criminal Procedure as well as the decisions of this Court relevant on the question, we see no divergence in the matter. It is too well settled that when police after investigation files a final form under Section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of the Code. The Magistrate may not take cognizance and direct further investigation in the matter under Section 156 of the Code. Where the Magistrate accepts the



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final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 201 of the Code and takes cognizance if the materials produced by the complainant make out an offence. This question has been raised and answered by this Court in the case of Gopal Vijay Verma V. Bhuneswar Prasad Sinha and Ors., where under the view of the Patna High Court to the contrary has been reversed. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding.”

14. It is also necessary to refer the decision of the Hon'ble Supreme Court in State of Rajasthan Vs. Aruna Devi and others reported in 1995 SCC (1) 1.

“3. A perusal of the impugned judgment of the High Court shows that it took the view that the Magistrate had no jurisdiction to take cognizance after the final report submitted by police had been once accepted. Shri Gupta, appearing for the appellant, contends that this view is erroneous in law inasmuch as Section 173(8) of the Code permits further investigation in respect of an offence after a report under sub-section (2) has been submitted. Sub-section (8) also visualises forwarding of



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another report to the Magistrate. Further investigation had thus legal sanction and if after such further investigation a report is submitted that an offence was committed, it would be open to the Magistrate to take cognizance of the same on his being satisfied in this regard.

*4. Shri Francis for the respondents, however, contends that the order of the Magistrate taking cognizance pursuant to filing of further report amounted to entertaining second complaint which is not permissible in law. To substantiate the legal submission, we have been first referred to *Pramatha Nath Taluqdar v. Saro Ranjan Sarkar*¹, in which a three-Judge Bench of this Court dealt with this aspect. A perusal of the judgment of the majority shows that it took the view that dismissal of a complaint under Section 203 of the Code is no bar to the entertainment of a second complaint on the same facts; but the same could be done only in exceptional circumstances some of which have been illustrated in the judgment. Further observation in this regard is that a fresh complaint can be entertained, inter alia, when fresh evidence comes forward. In the present case, this is precisely what had happened, as on further investigation being made, fresh materials came to light which led to the filing of further report stating that a case had been made out.”*



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15. Considering the above, the position of law is well settled that as per the Code of Criminal Procedure, the defacto complainant is entitled to file a private complaint even if the case is lodged with the police is referred or closed. The right of the defacto complainant to proceed with his complaint, even after the acceptance of the negative report of the police by the Judicial Magistrate is very much available.

16. Considering the above, the contention of the learned Counsel for the petitioners that since the learned Magistrate has already accepted the negative report, the filing of the private complaint is not maintainable, cannot be accepted.

9. The position of law, above referred, has already been settled and there is no dispute about the legal position that the defacto complainant is entitled to prefer a private complaint, despite the acceptance of the negative report of the concerned Police by the jurisdictional Court.

10. In the case on hand, as already pointed out, the petitioner has filed a private complaint under Section 200 Cr.P.C and during the pendency of the same in C.M.P.No.6203 of 2016, FIR came to be registered and after investigation, negative report came to be filed. Neither the learned Magistrate nor the respondents have taken such a stand that since the negative report was accepted, the private complaint filed by the petitioner is not legally maintainable.



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11. Before entering into further discussion, it is necessary to refer the judgment of Hon'ble Supreme Court in ***H.S.Bains, Director, Small Savings-cum Deputy Secretary Finance, Punjab Vs. State (Union Territory of Chandigarh*** reported in ***(1980) 4 SCC 631***, wherein the Hon'ble Apex Court has elaborately discussed the courses open to a Magistrate on receipt of a complaint and on receipt of a report filed under Section 173 of Cr.P.C and the said passage is extracted hereunder :

“6. It is seen from the provisions to which we have referred in the preceding paragraphs that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Sec. 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Sec. 203. If in his opinion there is sufficient ground for proceeding he may issue process under Sec. 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an



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investigation under Sec. 156(3). The police will then investigate and submit a report under Sec. 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Sec. 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report under Sec. 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Sec. 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Sec. 156(3) and received a report under Sec. 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Sec. 156(3) and receives a police report under Sec. 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Sec. 190(1)(b) on the basis of the police report



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and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report:

(3) he may take cognizance of the offence under Sec. 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Sec. 200 If he adopts the third alternative, he may hold or direct an inquiry under Sec. 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.”

12. The learned counsel for the first respondent has relied on the following passages in *Alaguthangamani's* Case above referred :

17. Though the respondent in his private complaint filed under Section 200 Cr.P.C., has mentioned about the registration of F.I.R., in Cr.No.73 of 2015 and filing of final report, he has not raised any averments as to how and why the negative report filed by the police is not correct and the same cannot be accepted. More importantly, the learned Magistrate, who conducted enquiry under Section 202 Cr.P.C., and passed the impugned order under Section 204 Cr.P.C., has not at all considered the final report filed by the concerned police, the statements recorded under Section 161 Cr.P.C., and the other documents filed along with the final report.

18. The learned Counsel for the petitioners has relied on the judgment of this Court in *Narayanamma and Others Vs. Chikka Venkateshaiah* reported in (2019)4 MLJ (Crl.) 616 and the learned Judge of this Court after referring various decisions, has held as follows:



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“20. It is clear from the above judgments that if the learned Magistrate wants to convert the protest petition into a private complaint, he has the jurisdiction to do so. However, at the time of taking cognizance, the learned Magistrate has to necessarily apply his mind on the closure report filed by the police and the statements recorded by the police during the course of investigation. This exercise has not been done by the Court below, while converting the protest petition in to a private complaint and taking cognizance of the same.”

19. In the case on hand, the learned Magistrate has not even whispered anything about the negative report filed by the police and the statements recorded by them during the course of investigation. Generally, while taking cognizance of a private complaint, after conducting enquiry under Section 202 Cr.P.C., the learned Judicial Magistrate is expected not to pass any elaborate order, but he is duty bound to record his satisfaction that there are prima facie materials to proceed against the accused.

13. In the case on hand, since the petitioner has already preferred the private complaint before the registration of FIR and the filing of the negative report, the question of raising any averments as to how and why the negative report by the police is not correct. It is evident from the impugned order that the petitioner/complainant, after receipt of RCS notice,



has filed his objections to the negative report. The learned Magistrate has, upon considering the negative report and the documents filed along with that report and also the private complaint and the sworn statement of the complainant and the statement of the other witnesses produced by the complainant and also the documents produced by the complainant, passed the impugned order. Though the learned Magistrate has not specifically observed that the private complaint in C.M.P.No.6203 of 2016 was dismissed under Section 203 Cr.P.C, but, it is evident from the impugned order that the learned Magistrate after recording the sworn statement of the complainant has also recorded the statement of six witnesses produced by the complainant. As rightly contended by the learned counsel for the first respondent, the learned Magistrate after conducting enquiry under Section 202 Cr.P.C, has dismissed the complaint under Section 203 Cr.P.C.

14. Regarding the negative report, the learned Magistrate has issued R.C.S. notice to the complainant and after considering the objections raised by the petitioner/complainant and also the documents produced by the Police along with negative report, has passed the order accepting the negative report and thereby closing the FIR as 'mistake of fact'. Absolutely, there is no bar or prohibition for clubbing the private complaint and the negative report, as both were available before the Magistrate at the relevant



point of time and as such, the passing of common order cannot be found fault with.

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15. Now coming to the merits of the case, the main compliant of the petitioner is that the respondents 1 to 5 had created false records as if a general body meeting was conducted and that the petitioner's signature has been impersonated in the trust minutes book.

16. The learned Magistrate, considering the evidence available on record, has specifically observed that the petitioner and some persons were already removed from the trust and that therefore, the question of inviting to the general body meeting or getting the signatures of the petitioner and his people does not arise at all. The learned Magistrate has further observed that the records produced would reveal that a notice was issued on 26.10.2013 intimating that a general body meeting would be convened and that general body meeting was convened on 03.11.2013 and that as per resolution passed in the said meeting, the Mosque referred in the complaint was attached with the Wakf Board and the same was notified in the Government Gazette, dated 06.08.2014.



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17. As rightly contended by the learned counsel for the first respondent, the petitioner without challenging the resolution passed in the general body meeting of the trust and the consequent Government Order, has lodged the above complaint to convert the civil dispute into a criminal matter.

18. Considering the materials available on record, the order of the learned Judicial Magistrate in dismissing the private complaint in C.M.P.No.6203 of 2016 cannot be found fault with. Except the above, the petitioner has not canvassed any other ground to impugn the dismissal order. Hence, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

19. In the result, the Criminal Revision is dismissed.

05.06.2023

NCC : Yes/No
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To

- 1.The District Munsif cum Judicial Magistrate,
Boothapandi.
- 2.The Inspector of Police,
Boothapandy Police Station,
Kanniyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

das

Pre-deliver order made in
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