

Senthil Kumar Vs. N.Bharathi Mohan

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Court : Chennai

Decided On : Jun-26-2014

Judge : T.S.Sivagnanam

Appellant : Senthil Kumar

Respondent : N.Bharathi Mohan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

26. 06.2014 CORAM: THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
CRL.O.P.No.15366 of 2013 1.Senthil Kumar 2.Murthy 3.John Basha @ Basha
4.Venkatesan ... Petitioners Vs. N.Bharathi Mohan ... Respondent/Defacto
Complainant Prayer : Criminal Original Petition filed under Section 482 of the
Criminal Procedure Code, praying to call for the records relating to in
P.R.C.No.136 of 2010 on the file of the Judicial Magistrate Court, Tambaram and
quash the same. For Petitioner : Mr.V.R.Appaswamee For Respondent :
Mr.R.Vijayakumar for Mr.K.G.Senthil Kumar

ORDER

This petition filed under Section 482 Cr.P.C., is to quash P.R.C.No.136 of 2010, on
the file of the Judicial Magistrate Court, Tambaram. The said case was taken on
file based upon a complaint filed by the respondent herein under Section 200
Cr.P.C. for offences under Section 341, 324, 326 & 307 IPC read with Sections 34

and 109 IPC.

2. The petitioners are the accused 1 to 4 in the said case. According to the petitioners, the second petitioner and the father of the defacto complainant were running a financial company jointly as partners and at the time, the second petitioner was residing with his wife in the first floor of the defacto complainant's house for rent. It is stated that the second petitioner had to leave his native place, as his mother-in-law was ailing and his wife had handed over the gold ornaments to the respondent to keep them in safe custody till they come back. The allegation is that when they returned and asked for the jewells, evasive reply was given. Again a demand was made and it is alleged that the respondent's father made certain allegations. It is further stated that on account of the defamatory words used by the father of the defacto complainant, the second petitioner's wife committed suicide and hence, the second petitioner gave a complaint against the defacto complainant and his father and the same has been registered in Crime No.469 of 2001, for alleged offences under Section 406 and 306 IPC. Thereafter, the case was committed to the Court of Sessions by Judicial Magistrate, Tambaram in PRC.No.38 of 2003, and the Principal Sessions Judge, Chengalpet, took up the case on file as S.C.No.602 of 2005. While the case was pending trial, the father of the defacto complainant gave a complaint before the Sankar Nagar Police Station against the petitioners herein stating that they had caused grievous injuries to the defacto complainant. Based on the same, a case was registered in Crime No.162 of 2008, under Sections 341, 324 and 307 IPC. The Investigating Officer on investigation came to the conclusion that the second petitioner is not involved in the alleged occurrence and excluded him from the case by removing the offence under Section 307 and file an alteration report. Thereafter, the case was charge sheeted against the petitioners 1, 3 & 4 under Sections 341, 325 and 109 IPC and the same is pending trial as C.C.No.446 of 2008, on the file of the Judicial Magistrate Court at Tambaram.

3. It is further stated by the petitioner that the final report of the case in C.C.No.446 of 2008, Police have listed 11 witnesses and five official witnesses. The grievance of the petitioner is that while the matter was pending before the Court in respect of the same occurrence and in respect of the same subject matter of C.C.No.446 of

2008, the respondent/defacto complainant filed a private complaint under Section 200 Cr.P.C., for offences under Sections 341, 324, 326 and 307 IPC read with Section 34 and 109 IPC. It is further stated that without considering the facts, the learned Judicial Magistrate has taken the complaint on file and numbered it as PRC.No.136 of 2010 and issued summons to the petitioners/accused. The present petition has been filed to quash the said case in PRC No.136 of 2010.

4. Mr.V.R.Appaswamee, learned counsel appearing for the petitioner after elaborately referring to the facts and to the averments made in the petition submitted that the private complaint could not have been taken on file for the same occurrence for which already a case has been registered, investigation conducted and an alteration report filed and it has been committed to sessions. Therefore, the order of Magistrate taking on file the private complaint is vitiated and the complaint is liable to be quashed on the ground of maintainability. Further, it is submitted that for a single occurrence, two criminal proceedings cannot be initiated against the same accused and the learned Magistrate failed to take into consideration Article 20(2) of the Constitution of India and it is a clear case of double jeopardy. The learned counsel referred to the allegations contained in the FIR registered by the Police and the allegations contained in the private complaint and endeavoured to submit that it is for the same occurrence and the same list of witnesses and therefore, it is undoubtedly a case of double jeopardy.

5. Further, it is submitted that the present complaint itself has been filed with intention to harass the petitioners and as counterblast, since the case against the defacto complainant is pending under Section 306 IPC. It is reiterated that the allegations contained in the Police case and in the private complaint is one and the same and identical versions and the private complaint does not indicate any different version. Therefore, it is submitted that the intention of the defacto complainant is to roping all the family members and cause mental torture to the petitioners. Further, the learned counsel submitted that no protest petition was filed by the respondent/complainant, when an alteration report was filed in the Police case and though the second petitioner was initially named in the FIR, subsequently after thorough investigation, the Investigating Officer found that the second petitioner is noway involved and accordingly, deleted his name and also

deleted the offence under Section 307 IPC. Therefore, the private complaint is not maintainable.

6. The learned counsel further referred to Section 210(2) Cr.P.C., and submitted that learned Magistrate failed to conduct any enquiry and did not call for the Police report, mechanically entertained the complaint and therefore, the private complaint is liable to be quashed. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Kolla Veera Raghav Rao vs. Gorantla Venkateswara Rao & Anr., reported in 2011 2 MWN (CR) 1 (SC), and the decision of this Court in the case of Mokkaraj & Ors., vs. Pandiyammal, reported in 2012 (6) CTC803 7. Mr.R.Vijayakumar, learned counsel appearing for the respondent submitted that a false case has been instituted by the second petitioner against the respondent/complainant in crime No.469 of 2001 and the respondent was acquitted in the said case, as the prosecution failed to prove the case against the respondent/complainant. It is further stated that knowing fully well about the weakness of the prosecution case in S.C.No.602 of 2005, the first and second petitioners/accused decided to do away with the respondent/complainant and engaged the third and fourth petitioners/accused to kill the respondent. It is further submitted that on 14.03.2008, the first and second petitioners brought the third and fourth petitioners near to the shop at the time of delivery of water can and both of them took up knives and making certain utterances, indiscriminately assaulted the respondent/complainant with knives on the right and left side of the neck with a view to kill him and also other places of the body. The learned counsel submitted that the injuries were very serious, the respondent was in a pool of blood and there was a 10cm wound as a results of the knives having pierced across the neck and therefore, the respondent's father lodged a complaint, which was registered as Crime No.162 of 2008, for offences under Sections 341, 324 and 307 IPC, citing the petitioners 1 and 2 along with two others as accused. After investigation, the Sankar Nagar Police deleted the name of the second petitioner. According to the learned counsel for the respondent this was done to help the second petitioner. The learned counsel further submitted that the respondent took first aid in the Government Hospital, Chrompet, and then was admitted in Balaji Multi Speciality Hospital, Guindy and he was in Intensive Care and for more than 15 days, with ventilator support.

8. It is further submitted that the Doctors from the Apollo Hospital have performed surgery and they have given wound certificate describing the deep cut injuries on right and left side of the ear and other laceration injuries. The Doctors who did the plastic surgery have also given statement and suppressing all these facts, the Shankar Nagar Police deleted the offence under Section 307 IPC and removed the second petitioner's name from the charge sheet filed before the Judicial Magistrate Court, Tambaram. The respondent after having come to know of the same, filed a private complaint under Section 200 Cr.P.C., by adding the second petitioner as the accused for offence under Section 307 IPC. The learned counsel submitted that the petitioners have connived and instigated the third and fourth petitioners to make an attempt on the life of the respondent and the offence under Section 307 IPC is fully attracted. It is further submitted that it is incorrect to state that the same witnesses have been examined. It is stated that excluding the complainant, 13 witnesses were examined, which includes six Doctors to prove the occurrence, circumstances, injuries and treatment.

9. It is further submitted that all the four petitioners filed a petition under Section 204 Cr.P.C., to dismiss the case. This petition was dismissed by the learned Judicial Magistrate by order dated 27.11.2012. The learned counsel further submitted that the double jeopardy will come into play only when there is a conviction or acquittal and in this regard, reference was made to Section 300 Cr.P.C. Further, it is submitted that the offence under Section 307 IPC is a separate offence. The learned counsel referred to the deposition of the various witnesses namely, Dr.Dhanakirthi and Dr.Sasi Bashu, who were spoken about the injuries. The learned counsel further submitted that the provisions of Section 190(1A) and 190(2B) would stand attracted only when the private complaint is filed first. However in the instant case, the police case was filed first, the petitioners 1 & 2 were named with the FIR, thereafter, after investigation while filing the final report, alteration was made, name of the second petitioner was deleted and offence under Section 307 IPC was also deleted. Therefore, the question of violation of provisions of Section 190 Cr.P.C., does not arise. In support of his contention, the learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in the case of Harjinder Singh vs. State of Punjab & Ors., reported in (1985) 1 SCC422 Manikandan vs. Pandian & Ors., reported in 1989 Supp (2)

SCC648 and Pal Alias Palla vs. State of Uttar Pradesh reported in (2010) 10 SCC123 10. Heard the learned counsels appearing on either side and perused the materials available on record.

11. The short issue which falls for consideration is as to whether the private complaint filed by the respondent/complainant which has now been taken on file as P.R.C.No.136 of 2010, for offences under Sections 341, 324, 326 and 307 IPC read with Sections 34 and 109 IPC against all the petitioners should be quashed.

12. The first contention of the learned counsel appearing for the petitioner is that the police complaint was lodged at the first instance, the petitioners 1 and 2 were named in the FIR, the Police investigated the matter, found that the second petitioner had no role, therefore, deleted his name and also deleted the offence under Section 307 IPC and filed an alteration report. In such circumstances, in respect of the same occurrence, the respondent cannot file a private complaint and the Magistrate mechanically took the same on file without even calling for the Police report, and there is violation of Section 210 Cr.P.C. Further, the learned counsel submitted that it is a case of double jeopardy and reliance was placed on the decision of the Hon'ble Supreme court in the case of Kolla Veera Raghav Rao, (supra), and the decision of this Court in the case of Mokkaraj (supra). Further, the learned counsel by referring to Article 20(2) of the Constitution of India submitted that no person can be prosecuted and punished for the same offence more than once.

13. While resisting the contentions raised by the petitioner, the learned counsel for the respondent would state that the question of double jeopardy will not get attracted and the said plea can be raised only when there is an earlier conviction or acquittal for the same offence. In this regard, Section 300 Cr.P.C., was referred to and the illustrations given under Section 300. Further, it is submitted that there is no violation of the provisions of Section 190(1A) and the question would arise only when the private complaint is filed at the first instance.

14. After elaborately hearing the learned counsels appearing for the parties and perusing the materials placed on record, this Court has no hesitation to hold that the present case cannot be said to be a case of double jeopardy. Admittedly, the

petitioners have not been acquitted for an earlier offence and the decision of the Hon'ble Supreme Court in the case of Kolla Veera Raghav Rao, (supra), wherein the appellant was already convicted and therefore, the Hon'ble Supreme Court held on the same facts, he cannot be tried and punished for IPC offence or any other statute.

15. In the decision of Mokkaraj (supra), the defacto complainant therein lodged a complaint which was registered for offences under Sections 342, 324, 323 and 506 IPC read with 34 IPC, after investigation, charge sheet was filed against the petitioners 1 to 4 therein and thereafter, the complainant filed a petition under Section 390 Cr.P.C., and the petitioners 5 to 6 therein were added as accused A5 and A6 and the case was pending. While so, a private complaint was filed by the respondent therein in respect of the same offence and it was contended that it was a case of double jeopardy. The Court after analysing the entire case held that the charge sheet filed by the Police and the private complaint are in respect of the same alleged occurrence and the incidents explained in both the complaints are same and the ingredients are same and no new occurrence has been shown and therefore, held that the respondent therein is attempting to prosecute the petitioners twice. The said decision is clearly distinguishable on facts.

16. The grievance of the defacto complainant in the case on hand is that the second petitioner/accused is guilty of offence under Section 307 and his name should not have been deleted at the time of filing the charge sheet in the Police case. Further, it is the case that there are medical evidence to prove the knife injuries on both sides of neck and in this regard, witnesses have been examined and the statements have been obtained. Therefore, the decisions rendered in the case of Mokkaraj (supra), does not render any support to the case of the petitioners.

17. As pointed out by the Hon'ble Supreme Court in the case of Manikandan, (supra), the private complaint contained reasons as to why the respondent thought fit to move the learned Magistrate. The grievance is that though the ingredients of the offence of Section 307 were fully present and the injuries were recorded, the Police erroneously deleted the name of the second petitioner and omitted the

offence of Section 307 by filing an alteration report. Therefore, the learned Magistrate had rightly entertained the private complaint.

18. As regards the case of double jeopardy, as already observed that it is not a case of prior conviction, which has occurred and in respect of the same allegation, a second case has been given as a private complaint. Further, the averments in the private complaint and what prompted the respondent to approach the Magistrate is a very relevant factor in the case on hand. Therefore, the contention that it is a case of double jeopardy stands rejected and there is no infringement of Article 20(2) of the Constitution of India.

19. The submissions of the learned counsel appearing for the petitioner by referring to Section 210 Cr.P.C., also does not merit acceptance, as in the present case, the private complaint was not filed before the Magistrate, when the Police was conducting the investigation, but after the charge was laid and only thereafter, the respondent/complainant had a grievance, since the name of the second petitioner was dropped and the offence under Section 307 was deleted. Therefore, when cognizance has already been taken on a Police report and subsequently, complaint is filed with a different version together with medical evidence, which were not subject matter of the Police report, then the provision of Section 210 Cr.P.C., will not be attracted.

20. Hence, for all the above reasons, the petitioners have not made out any case for interference. Accordingly, the Criminal Original Petition fails and it is dismissed. Consequently, connected miscellaneous petition is closed. 26.06.2014 pbn Index :Yes/No Internet:Yes/No T.S.SIVAGNAM, J.

pbn To Judicial Magistrate Court, Tambaram. Pre-Delivery Order in CRL.O.P.No.15366 of 2013 26.06.2014

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