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Court : Chennai

Decided On : Nov-26-1974

Reported in : 1975CriLJ994

Judge : Varadarajan, J.

Appellant : Nathan

Respondent : Vaithinathan and ors.

Judgement :

ORDER

Varadarajan, J.

1. The petitioner herein filed a private complaint on 22-9-1974 in the Court of the Judicial Second Class Magistrate, Vridhachalam against the respondents for offences punishable under Sections 147, 148, 447, 324 and 307 read with. Section 149 of the Indian Penal Code, alleging that the nine respondents committed the various offences during the-luncheon interval on 5-9-1974 in the premises of the petitioner. There is an allegation in the complaint that at 2 p.m. on the same day a complaint was given, to the police and that no action was taken. It is stated that the petitioner himself had been arrested on 5-9-1974 when he went to the police station, evidently on the complaint given to the police by some or all* of the respondents, and was released on bail only on 18-9-1974. Subsequently, he presented a private complaint on 22-9-1974 as stated!!.. above. The learned

Judicial Second Class-Magistrate forwarded the complaint to Vridhachalam police for investigation and report, under Section 156 (3) of the Code of Criminal Procedure, 1973 On the next day, the petitioner filed Criminal Miscellaneous Petition No. 898 of 1974 before the Magistrate questioning' , the competency of the Magistrate to send the complaint to the police for investigation. The learned Magistrate dismissed that petition holding that he is empowered, by Section 202 of the Code of Criminal Procedure, to send the complaint for investigation and report by the police. This petition is directed against that order.

2. It is conceded by the learned Counsel for the petitioner that the learned Magistrate is specifically empowered in this behalf and Section 190 of the Code is applicable. Section 156

(3) of the Code says that any Magistrate empowered under Section 190 of the Code may order such an investigation as mentioned by Section 156

(1) which says that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII of the Code. Therefore, any Magistrate empowered! under Section 190 of the Code may order such an investigation of cognizable offence alleged to have been committed. But the learned Counsel for the petitioner would say that the Magistrate has not taken the complaint on his file and the Magistrate could not direct an inquiry .under Section 156

(3) for two reasons, (i) that he has not taken the complaint on file and (ii) that the offence under Section 307 of the Indian Penal Code alleged in the complaint to have been committed is exclusively triable by the Court of Session. It is not possible to accept the contention of the learned Counsel for the petitioner that the Magistrate could exercise the powers under Section 156

(3) only after he takes I the complaint on file; for Section 156 does not say so. Merely because an offence under Section 307 of the Indian Penal Code is alleged in the complaint to have been committed, it could not be stated that it should

appear to the Magistrate before he exercises the powers conferred by Section 156 (3), that the offence complained of is triable exclusively by the Court of Session. The proviso to Section 202

(1) of the Code which says that no such direction for investigation shall be made where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, would apply only when the Magistrate applies in his mind and finds out whether an offence exclusively triable by the Court of Session appears to have been committed as alleged in the complaint. Therefore, I find that the learned Magistrate had the power, before taking the complaint on file, to direct an investigation to be made by the police. There is a further difficulty for the petitioner and that is by reason of Section 397

(2) of the Code of Criminal Procedure, 1973, the powers of revision, conferred by Sub-section

(1) of Section 397 shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. The order under Section 156

(3) had been passed by the learned Magistrate in the inquiry into the complaint given by the police. Therefore, Section 397

(2) would apply, Therefore, no revision, lies against the interlocutory order passed by the learned Magistrate. The revision petition is dismissed.

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