

Murugesan and ors. Vs. Kothandam

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Court : Chennai

Decided On : Nov-06-1969

Reported in : 1970CriLJ1183

Judge : Krishnaswamy Reddy, J.

Appellant : Murugesan and ors.

Respondent : Kothandam

Judgement :

ORDER

Krishnaswamy Reddy, J.

1. This petition has been filed by Accused 1 to 3 in C. C. No. 3792 of 1933 on the file of the Sub-Magistrate of Tindivanam, to quash the proceedings-before the said Magistrate against them on the ground that the second complaint on which the learned Magistrate had taken cognisance of the case, is not maintainable.

2. The brief facts of the case are these : The respondent filed a private complaint against the three petitioners under Sections 355 and 341, I. P. C., in respect of an occurrence which took place in Tindivanam at about 8-30 p.m. on 3-10-1968. The complaint was filed on 4-10-1968. The learned Sub-Magistrate on the same day noted in the petition of the complainant itself that it disclosed the commission of the offence under Sections 341 and 355, I. P. C., which were cognisable. He,

therefore, forwarded the complaint to the Sub-Inspector of Police, Tindivanam for investigation under Section 156 (3), Criminal P. C., and report under Section 173 (2), Criminal P. C., on or before 18-10-1968. The Sub-Inspector, Tindivanam, investigated the case but had not submitted Ms report under Section 173, Criminal P. C., to the Sub-Magistrate. It appears that the police had sent a notice to the respondent on 8-11-1968 informing him that there was no-material to proceed further in the matter. On receipt of this notice, the respondent filed a second complaint making the same allegations found in the earlier complaint on 8-11-1968. The learned Sub-Magistrate : asked the Head clerk to put up the R. C. S. (referred charge sheet) on the same day. A note was put up that no report was received from the police on the first complaint, on the same day. The learned Sub-Magistrate returned the complaint to the respondent on the ground that no final report from the Sub-Inspector was received in respect of his earlier complaint and directed him to re-present the complaint after 18-11-1968. It appears that no steps were taken to remind the Sub Inspector of Police to send the report. On 20-11-1963, the respondent represented the complaint and again it was returned to the respondent with an endorsement that the final report was not received from the police and the complaint might again be represented after 23-11 1968. Even after this, there was no reminder to the police, nor the police had submitted the report. The respondent re-presented again the complaint on 30-11-1963. On 30-11-1968, the Sub Magistrate took a sworn statement from the respondent and took the case on file under Section 355, I. P. C., against the first petitioner and under Section 341, I. P. C., against petitioners 2 and 3 and posted the case on 10-12-1963 for the appearance of the petitioners, On the summons issued to the petitioners, they appeared through their advocate and filed an objection on 4-1-1969 stating that the process issued to the petitioners was not in order as the report from the police officer was not received in respect of the same complaint and requested the Court not to proceed with the hearing of the case without taking action on the police report to be submitted by them. The sub-Magistrate, on the objection petition, made the following note:

The S. H. O. (Station House Officer) concerned has not sent in his report so far. The complainant has been served with refer notice and he has filed it with 'his present complaint. Hence issue of summons to the accused is in order.

Against this order, this petition has been filed,

3. The learned Counsel for the petitioners submitted that the order of the lower Court taking cognisance of the second complaint on the same facts before finally passing an order on the first complaint was contrary to law and without jurisdiction and further submitted that the lower Court should have obtained the report from the police and applied its mind to the materials disclosed in the investigation and taken appropriate action on such a report in respect of the first complaint itself. It was further contended that after having directed the police to investigate the case under Section 156 (3), Criminal P. C., the Magistrate must have followed the procedure of taking action under Chap. 14 and as provided under Section 173, Criminal P. C.

4. The undisputed facts for the purpose of appreciating the contentions of the learned Counsel for the petitioners are these : In respect of the complaint filed by the respondent on 4-10-1968, the Magistrate had directed the Sub-Inspector of Police, Tindivanam, to investigate under Section 156 (3), Criminal P. C., and submit a report under Section 173, Criminal P. C.. The investigation was accordingly done by the Police officer under Chap. 14. Criminal Procedure Code. No final report was submitted under Section 173, Criminal P. C. to the Sub-Magistrate. In the meanwhile, a second complaint was filed by the respondent in respect of the same facts alleged in the first complaint and the Magistrate took cognisance of the case after taking sworn statement from the respondent and issued process to the petitioners. The Sub Magistrate had not taken steps to insist upon the report by the police before he took cognisance of the case under the second complaint. Till now, the police have not filed a report under Section 173, Criminal P. C.

5. The question, therefore, now is whether the Magistrate was right in taking cognisance of the second complaint on the same facts without calling for the report from the police to be submitted by them under Section 173, Criminal P. C. and applying his mind to it to take further action in the matter,

6. We are not concerned with the question whether the Magistrate had power before cognisance of the complaint to direct the police officer to investigate under

Section 156 (3), Criminal P. C. Once the, Magistrate exercised his powers under Section 156 (3), Criminal P. C., and directed the police to submit a report under Section 173, Criminal P. C., the Magistrate should insist upon the police officer for submitting the report under Section 173, Criminal P. C., before taking further action in this matter. The investigation was done by the police under Chap. 14, Criminal P. C., which should ultimately result in the submission of a report under Section 173, Criminal P. C. The relevant provision of Section 173, Criminal P. C. reads thus ::

(1) Every investigation under this Chapter shall be completed without unnecessary delay, and as soon as it is completed, the officer in charge of the police station; shall (a) forward to a Magistrate empowered to take cognisance of the offence, on a police report, a report in the form prescribed by the State Government setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether (he accused (if arrested) has been forwarded in the custody, or has been released on his bond, and, if so, whether with or without sureties and (b) communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

It is, therefore, clear that in an investigation done under Chap. 14 of the Criminal P. C. as soon as such investigation is completed, the officer in charge of the police station shall submit a report with the particulars mentioned in Section 173 (1) (a) to the Magistrate empowered to take cognisance of the offence on a police report under Section 190 (b), Criminal P. C. The very object of the Magistrate having directed the police officer to investigate the complaint presented to him was to have full details in respect of the allegations made in the complaint to examine the witnesses in the course of such investigation and to do all other things that the Investigating officer is empowered to do, so that the Magistrate before taking cognisance of the case, will have sufficient materials collected in the course of the investigation. Otherwise, the order made by the Magistrate for investigation by the police will have practically no effect at all. The Magistrate must have insisted upon getting a report under Section 173, Criminal P. C., from the police. It is clear from

the records that the Magistrate has not at all taken steps to insist upon the Police officer to submit the report. I am of the view that, before the report was submitted, the entertainment of a second complaint in respect of the same facts which was the subject matter of the investigation by the police, will amount to abuse of process. What the magistrate should have done in this case is that before taking cognisance of the second complaint, he should have insisted upon the police officer for submitting his report under Section 173, Criminal P. C. and after obtaining the report, considered the facts disclosed in the investigation and taken necessary action on that report itself. The Magistrate has got discretion, after obtaining the report from the police officer under Section 173, Criminal P. C. either to accept the report or if he differs from the report of the police officer, to take appropriate action. It is true, that a notice was served on the complainant by the police officer who was in charge of the investigation and that there was no material to proceed further in the matter and on that the complainant filed the second complaint. So far as the Magistrate is concerned, when he thought fit at the first instance when the first complaint was filed that it should be investigated by the police officer under Section 156 (3). Criminal P. C., there is No. justification for him to change his mind without calling for a report and looking into it, and take cognisance of the second complaint on the same materials, I, therefore, hold that the cognisance of the second complaint and the issue of process to the revision petitioners, in the circumstances of this case, will amount to abuse of process. I, therefore, quash the proceedings in C. C. 3792 of 1988 pending on the file of the Sub-Magistrate, Tindivanam. The Sub-Magistrate is directed to call for the report from the police officer who was directed to investigate the case and dispose it of according to law.

7, The revision petition is allowed with the above observations.