

S. Karunanethi Vs. State

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Court : Chennai

Decided On : Apr-15-2008

Reported in : 2008CriLJ4754

Judge : S. Palanivelu, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 381

Appeal No. : Crl. O.P. No. 668 of 2007 and MP (MD) No. 1 of 2007

Appellant : S. Karunanethi

Respondent : State

Advocate for Def. : A. Palanichamy, Govt. Adv.

Advocate for Pet/Ap. : A. Arun Prasad, Adv.

Judgement :

ORDER

S. Palanivelu, J.

1. The petitioner is working as watchman in Prasanna Venkatachalapathy Thirukkoil, Gunaseelam of Trichy District which is coming under the respondent/Police.

2. On 14/15-8-2004 in the little hours at 2.10 a.m. the accused was found taking money from the undial in the temple by using bamboo stick covered by cello tape and thereby he had appropriated a sum of Rs. 787/-. He was got red-handed by the complainant, the hereditary trustee of the said temple along with one Subramaniam. A case was registered in Crime No. 314 of 2004 on the file of Vathalai Police Station under Section 381 IPC. Investigation was taken up and a charge-sheet was also lodged under the said Section before the Musiri Judicial Magistrate Court where the complaint was taken on file in C.C. No. 108 of 2004 and the same is pending before the said Court.

3. The above said complainant also lodged another complaint against the petitioner alleging the above said occurrence which took place on 15-8-2004 and also about various offences committed by him. He sent a complaint to the Honourable Chief Minister of Tamil Nadu as well as to the concerned authorities. On the strength of the above said complaint, the respondent/police registered a case in Cr. No. 27 of 2004 under Section 381 IPC. In the said FIR, it is stated that by pilfering the money then and there from the undial, the accused enriched himself between June 2003 and July 2004 and acquired various properties in the name of his wife; that he also got lease of coconut gardens from more than forty persons. His misappropriation goes to the tune of Rs. 4,00,000/-. The respondent/police after taking up an elaborate investigation laid charge-sheet before the above said Court under Section 381 IPC against the petitioner in which as many as 50 persons have been cited as witnesses and 50 documents have been seized for the purpose of this case. The case was taken on file in C.C. No. 94 of 2006 on the file of the Judicial Magistrate Court, Musiri.

4. The learned Counsel for the Petitioner would submit that in as much as the first complaint was taken up for investigation, a charge-sheet was laid and trial of the said case is pending before the competent Judicial Magistrate Court, it is untenable on the part of the respondents to proceed with the subsequent case in C.C. No. 94 of 2006 which is also pertaining to the same offence.

5. The learned Additional Public Prosecutor raised his objection to the contentions of the learned Counsel for petitioner.

6. It is true that the offence in the first complaint is also mentioned in the second complaint. But only in the second complaint, all the nefarious activities of the petitioner have come to light and the respondent/police has taken up serious note of it and thereafter they proceeded further. The case records pertaining to both the Crime Numbers were called for by this Court and thoroughly perused. In Crime No. 27 of 2004, the respondent/police have examined as many as fifty witnesses and seized about 50 documents by duly preparing recovery mahazars. If the complaint in Crime No. 27 of 2004 is quashed, it will be screening all the offences' committed by the petitioner. There could not be two cases with reference to a same offence. But at the same time, one of the offences in one complaint could be dealt with in other case.

7. Having regard to the circumstances of this case, it has become inevitable to direct striking off the case in C.C. No. 108 of 2005 on the file of the Judicial Magistrate Court, Musiri, which was taken on file on the strength of Crime No. 314 of 2004 registered by Vathalai Police Station. The respondent/police is at liberty to further investigate the crime lodged in the FIR in Crime No. 314 of 2004 on the file of the Vathalai Police Station and to lay additional charge-sheet under relevant provisions of law before the said Court and the same shall be taken up on file by the said Judicial Magistrate Court and the offence contained in the proposed additional charge-sheet will also be tried by the said Court which is treated to be part and parcel of the offences covered by C.C. No. 94 of 2006. The Inspector of Police, Vathalai Police Station, is directed to hand over case diary in Cr. No. 314 of 2004 to the respondent forthwith.

8. With the above said directions, the Criminal Original Petition is disposed of. Consequently connected Miscellaneous Petitions are closed.