

Janahi Vs. Peter Rose.

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Court : Chennai

Decided On : Mar-09-2012

Judge : P.R.Shivakumar, J.

Appeal No. : CRL.R.C(MD)No.331 of 2011

Appellant : Janahi.

Respondent : Peter Rose.

Advocate for Def. : Mr.RM.Sivakumar, Adv.

Advocate for Pet/Ap. : Mr.K.P.Narayanakumar, Adv.

Judgement :

Prayer

Criminal Revision case filed under Sections 397 and 401 Cr.P.C., to call for the records pertaining to the order passed by Chief Judicial Magistrate, Kanyakumari at Nagercoil in Crl.M.P.No.2293 of 2010 dated 11.02.2011 and set aside the same.

ORDER

1. This criminal revision case has been preferred against the order of the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil, dated 11.02.2011 made in

CrI.M.P.No.2293/2010. The circumstances under which the present criminal revision case came to be filed, can be narrated in a nutshell.

2. Based on the complaint of the revision petitioner, a case was registered on the file of Karungal Police Station in Crime No.276/2010 for alleged offences punishable under sections 454 and 380 IPC. The Sub-Inspector of Police, who conducted investigation, submitted a negative final report in the said case on the file of the learned District Munsif cum Judicial Magistrate, Eraniel. A copy of a document purporting to be an intimation given to the de- facto complainant (the petitioner in the revision case) was also produced in the said court. Subsequently, the petitioner filed a protest petition praying that the learned District Munsif cum Judicial Magistrate, Eraniel, should not accept the final report and on the other hand should take cognizance of the offences based on the materials collected during the investigation. Incidentally in the said protest petition, the de-facto complainant therein (the present revision petitioner) had submitted that the signature found in the notice regarding the presentation of the referred charge-sheet was not her signature and the same had been forged by someone else. The learned District Munsif cum Judicial Magistrate, Eraniel, without passing any order on merit, simply closed the protest petition stating that the de-facto complainant could take separate action. Thereafter, the revision petitioner chose to approach the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil by way of a private complaint praying for the prosecution of the first respondent herein for offences punishable under sections 454 and 380 Cr.P.C. based on the facts on which Crime No.276/2008 on the file of Karungal Police Station had been registered and a negative final report had been filed and also for prosecuting and punishing the second respondent herein for alleged offences under sections 109, 166, 167 and 218 of Indian Penal Code based on the allegation that the document containing a forged acknowledgment had been produced before the District Munsif cum Judicial Magistrate, Eraniel in Crime No.276/2010 as proof of service of notice regarding presentation of a referred charge-sheet. The learned Chief Judicial Magistrate, Kanyakumari at Nagercoil, after recording the sworn statements of the complainant and the witnesses produced by the complainant, postponed the issue of process and passed an order dismissing the complaint under section 203 Cr.P.C. after considering the complaint, the sworn statements

and other materials. As against the said order of the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil dated 11.02.2011, the present criminal revision case came to be filed.

3. The arguments advanced by Mr.K.P.Narayanakumar, learned counsel for the revision petitioner, by Mr.RM.Sivakumar, learned counsel for the first respondent and by Mr.S.Deenadhayalan, learned counsel for the second respondent are heard. The materials available on record are also perused.

4. Two objects were sought to be achieved by the revision petitioner by preferring a private complaint on the file of the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil. The first one was to make the Chief Judicial Magistrate take cognizance of a case against the first respondent herein for offences under sections 454 and 380 IPC for which a police case had been registered in Crime No.276/2010 on the file of Karungal Police Station, Kanyakumari District and a negative report came to be filed on the file of the jurisdictional magistrate, namely the District Munsif cum Judicial Magistrate, Eraniel. The second object sought to be achieved was to make the Chief Judicial Magistrate take cognizance of an offence of forgery and the related offences allegedly committed in respect of a document produced before the District Munsif cum Judicial Magistrate, Eraniel in a judicial proceeding. The learned Chief Judicial Magistrate, chose to dismiss the petition in respect of both the prayers holding the complaint against the first respondent to be the second one and hence the same could not be maintained and holding the complaint against the second respondent to be one barred under section 340 Cr.P.C.

5. Learned counsel for the revision petitioner would contend that the learned District Munsif cum Judicial Magistrate, Eraniel failed to take into account the information furnished by the revision petitioner, in the form of averments made in the protest petition, to the effect that one of the documents produced in the case before the said court was a forged one and exercise his powers by conducting a preliminary enquiry contemplated under section 340(1) Cr.P.C. and on the other hand, simply passed a one line order to the effect that the de-facto complainant/protest petitioner could initiate separate proceedings. It is the further

contention of the learned counsel for the petitioner that because of such an order passed by the learned District Munsif cum Judicial Magistrate, Eraniel, the petitioner had to approach the District Magistrate, namely the Chief Judicial Magistrate, Kanyakumari at Nagercoil. Learned counsel for the revision petitioner would try to justify the preference of the complaint before the learned Chief Judicial Magistrate, pointing out the powers given to the appellate court under section 340(2) of Cr.P.C. with the contention that the Judicial Magistrate being subordinate to the Chief Judicial Magistrate, the Chief Judicial Magistrate should be construed to be the appellate authority and that the same was the reason why the said complaint was preferred on the file of the Chief Judicial Magistrate, Kanyakumari at Nagercoil. This court is not in a position to countenance the above said contention. For better appreciation, the entire section 340 Cr.P.C. is reproduced hereunder:

340. Procedure in cases mentioned in section 195.-(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction; (d) take sufficient scrutiny for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-

section(1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section(4) of section 195. (3) A complaint made under this section shall be signed,- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the court as the Court may authorise in writing in this behalf. (4) In this section, "Court" has the same meaning as in section 195.

6. As per section 340(1) of Cr.P.C., if the court either upon an application or otherwise is of the opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in sub clause (b) of sub section (1) of section 195 Cr.P.C. which appears to have been committed in or in relation to a proceeding in that court or as the case may be in respect of a document produced or given in evidence in a proceeding in that court, such court may, after conducting a preliminary inquiry, record a finding to that effect, make a complaint in writing and send it to a Magistrate of the first class having jurisdiction. Supplementary powers that can be exercised while doing so, have also been enumerated. It cannot be disputed that the revision petitioner wanted to prosecute the second respondent herein for offences which are covered by section 195(1) Cr.P.C. As such no court can take cognizance of such offences except on a complaint preferred by the concerned court in relation to whose proceedings the offence was committed or in whose proceedings the document was produced. Therefore, it is quite obvious that for the prosecution of the second respondent for the offences alleged in the complaint made before the Chief Judicial Magistrate, a complaint by the learned District Munsif cum Judicial Magistrate, Eraniel is a must. Therefore, the complaint so far as it relates to the offences allegedly committed by the second respondent, has been rightly held to be barred as per the provisions of section 195(1)(b) of Cr.P.C.

7. The learned counsel for the revision petitioner has made an attempt to show that the Judicial Magistrate, being subordinate to the Chief Judicial Magistrate, sub clause (2) of section 340 stands attracted and hence the complaint could be

construed as an application preferred to a court to which appeals ordinarily lie from the court in respect of whose proceedings the offence was committed. This court is not in a position to countenance the above said contention also. Sub clause (2) of section 340 refers to the court to which the court mentioned in sub clause (1) is subordinate within the meaning of sub section (4) of section 195 Cr.P.C. as the alternative court which can prefer such a complaint. The Court of Chief Judicial Magistrate can never be construed as an appellate court or a court to which appeals ordinarily lie from the judgments of the court of the District Munsif cum Judicial Magistrate. Section 195(4) reads as follows:

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that -

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

It refers to the court to which an appeal shall ordinarily lie as the appellate court, which can exercise the power of the original court for preferring a complaint contemplated under section 195 and 340(1) of Cr.P.C. The hierarchy of appellate courts in respect of appeals against conviction has been provided in section 374 Cr.P.C. Appellate courts have been prescribed in respect of appeals against acquittal in section 378 Cr.P.C. Nowhere in the Code of Criminal Procedure, the court of Chief Judicial Magistrate is prescribed as the appellate court for ordinarily hearing the appeals from the court of Judicial Magistrate of first class. Therefore,

the contention of the learned counsel for the revision petitioner that the judicial magistrate being subordinate to the Chief Judicial Magistrate, the latter could have exercised the power of the Judicial Magistrate cannot be accepted.

8. So far as that part of the complaint relating to the offences for which crime No.276/2010 had been registered and a negative report had been filed on the file of the learned District Munsif cum Judicial Magistrate, Eraniel is concerned, admittedly, the Chief Judicial Magistrate is not the jurisdictional magistrate for taking cognizance of the offences, as the territorial jurisdiction has been conferred on the District Munsif cum Judicial Magistrate, Eraniel. In fact after the filing of the negative final report, the revision petitioner chose to file a protest petition to make the District Munsif cum Judicial Magistrate, Eraniel reject the final report and take cognizance of the alleged offences based on the materials collected by the investigating agency, which the learned District Munsif cum Judicial Magistrate, declined. It is obvious from the order of the learned District Munsif cum Judicial Magistrate that the avenue for the redressal of the grievance of the revision petitioner was not closed once for all by such order. On the other hand, the learned District Munsif cum Judicial Magistrate, Eraniel had chosen to direct the revision petitioner to take separate proceedings, meaning that the revision petitioner could prefer a private complaint so as to make the Magistrate follow the private complaint procedure to take cognizance of the offences. It can also be meant that for making the court to prefer a complaint under section 195(1)(b) r/w 340 Cr.P.C., a separate application could be made. Without properly appreciating the order passed by the learned District Munsif cum Judicial Magistrate, Eraniel, the revision petitioner seems to have rushed to the court of the Chief Judicial Magistrate, Kanyakumari at Nagercoil with a private complaint clubbing offences that cannot be taken cognizance of without complaint under section 340 Cr.P.C. r/w section 195(1)(b) Cr.P.C. and an offence for which private complaint could have been filed in the proper court, namely the court of the jurisdictional magistrate, more so, when the police case resulted in the negative final report and the petition for rejection of the negative report was not favourably considered. Under such circumstances, this court cannot find fault with the order passed by the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil, dismissing the complaint holding that there was no sufficient ground for proceeding against the

respondent in the complaint preferred before the Chief Judicial Magistrate.

9. However, learned counsel for the revision petitioner has pointed out the fact that the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil, without confining the scope of the order to the jurisdiction, has gone beyond the same and made an observation that the complaint was a second one and hence the same could not be entertained, as a reason for rejecting the complaint so far as the allegations made against the first respondent were concerned. This court finds substance in the above said contention made by the learned counsel for the petitioner. But the same shall not be a sufficient ground to reverse or set aside the order of the learned Chief Judicial Magistrate dismissing the complaint in CrI.M.P.No.2293/2010 on his file. The order can be sustained on the ground of absence of jurisdiction alone and not on the ground that the complaint is a second complaint.

10. Learned counsel for the revision petitioner has made a meek attempt to contend that the learned Chief Judicial Magistrate ought to have returned the complaint directing the complainant to approach the proper court when the complaint was preferred in a wrong court. If at all the petitioner had chosen to prefer a complaint simpliciter against the first respondent for the offences which are not covered by section 340(1) of Cr.P.C., then such a contention may be a sound one. In the case on hand, the revision petitioner has chosen to club the offences for which a private complaint could have been filed and the offences for which an application to the concerned court for preferring the complaint could have been made in one and the same private complaint and therefore the revision petitioner cannot be heard to contend that the learned Chief Judicial Magistrate has failed in his duty to direct the petitioner to go to the proper court for filing a private complaint against the first respondent.

11. For all the reasons stated above, this court comes to the conclusion that the order of the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil is bound to be sustained barring the fact that one of the reasons assigned, namely the complaint against the first respondent being the second one would make the complaint not maintainable, is bound to be expunged. In all other respects, the

order of the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil impugned in this criminal revision case is confirmed. By the confirmation of the order of the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil, this court does not mean that the revision petitioner cannot approach the jurisdictional court, namely the court of the District Munsif cum Judicial Magistrate, Eraniel by way of a private complaint as against the first respondent and by way of an application under section 340(1) as against the second respondent, if it is not otherwise barred.

12. With the above observation, the criminal revision case is disposed of.

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