

(2004) 06 MAD CK 0111

Madras High Court

Case No: Criminal O.P. No. 3524 of 2004

Dr. Jayaramakrishnan

APPELLANT

Vs

Mookan Pattam Kettiyar

RESPONDENT

Date of Decision: June 25, 2004**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 156, 157, 173, 200
- Penal Code, 1860 (IPC) - Section 145, 307, 34, 344, 347

Hon'ble Judges: S. Ashok Kumar, J**Bench:** Single Bench**Advocate:** R. Anand, for the Appellant; N. Duraisamy, for the Respondent**Final Decision:** Dismissed

Judgement

S. Ashok Kumar, J.

This is an application to call for the entire records in C.C. No.50 of 1995 from the file of the Judicial Magistrate No.4 Tirunelveli, and quash the same in so far as the petitioner is concerned.

2. The brief facts of the case are as follows:

The petitioner is a practitioner in Medicine in K.G. Hospital at Tirunelveli. One, Anainjiperumal, brother-in-law of the complainant respondent was treated For 23 days in the said hospital, for which, the complainant paid Rs.500/-. For the treatment, the complainant has told the Medical Officer that the father of Anainjiperumal's wife will pay the money. On 21.9.994, at about 10.00 p.m., A2 to A5 came to the house of the respondent/ complainant in an auto-rickshaw and compelled him to get into the vehicle. When the complainant refused, they forcibly took him in the auto-rickshaw to the hospital and detained him in a room in the hospital. When the complainant raised an alarm, A2 to A5 threatened to murder him by giving him poisonous injection. Out of fear, he stayed in the room. While he was detailed in the hospital, the respondent's wife Sudalai Muthammal sent a lawyer's

notice to A1; but A1 refused to receive the notice. On 27.9.1994, the complainant's wife sent a telegram to the Superintendent of Police. The complainant was unlawfully detained in the hospital for eleven days without proper food and water. On 1.10.1994, A2 to A5 took the complainant in a car and dropped him at his house at Manappadai and threatened that they will take him again in the car and detain him unless he settles the arrears for the treatment of Ananjiperumal. The complainant's wife, out of fear, pledged her daughter's golden ring and paid Rs.500/- to A2. Again, the petitioner demanded a further sum of Rs.2,000/- and threatened to murder the complainant if he failed to pay Rs.2,000/-. When the complainant was detained in the hospital, A2 to A5 forcibly obtained the signature of the complainant in some stamp papers. The complainant lodged a complaint before the Taluk Police Station, Palayamkottai, on 3.10.1994. Since no action was taken, on 4-10-1994, the complainant gave a complaint to the Assistant Superintendent of Police. On his orders, the police obtained a statement from the complainant which was registered as Crime No.523 of 1994. Without proper investigation, the police have referred the same as mistake of fact. Even though the police got the names and addresses of A4 and A5, they have not mentioned the same in the report submitted by the police.

The petitioner Jayaramakrishnan is A1 in C.C. No.50 of 1995 on the file of the learned Judicial Magistrate, No.4, Tirunelveli. A private complaint was filed by the respondent against the petitioner and others for the alleged offences under Sections 145, 344, 365, 347, 385, 307 read with 34, IPC. The gist of the complaint is as narrated earlier.

According to the complainant, the accused have committed the offences punishable, under Sections 145, 344, 365, 347, 385, 307 read with 34, IPC. The case was taken on file and the same is pending trial.

3. In this petition, the petitioner contends that the earlier complaint preferred by him before the police has been referred as mistake of fact, and on the very same set of facts, a second complaint cannot be lodged. According to the petitioner, except the name of the petitioner in the accused column, no overt act or allegation is stated by the complainant in the complaint. Without having any participation over the crime, the institution of proceedings as against the petitioner is untenable. According to the petitioner, the complainant has not a clear intention of cheating by evading the payment for the treatment which was given to the brother-in-law of the complainant. In order to escape from the liability, he has made the present complaint as a weapon and now he is using the same against the petitioner. Therefore, the petitioner prays to quash the proceedings in C.C. No.50 of 1995 on the file of the Judicial Magistrate No.4, Tirunelveli.

4. On the complaint of the respondent, the Palayamkottai Taluk Police have registered a case in Crime No.523 of 1994 against five persons, alleging that the petitioner and others have forcibly kidnapped the complainant from his house,

detained him in the hospital for more than ten days and got his signature in various stamp papers and threatened him to murder him unless he paid Rs.2,500/-; and Rs.500/- was paid by the complainant. After the registration of the case, the police have referred the matter as mistake of fact on the ground that the complaint is exaggerated, and to escape From the liability of arrears for the treatment given to the brother in-law of the complainant, this complaint has been Filed by the complainant. The complainant was also served with a notice by the police mat his complaint has been referred as mistake of fact. Subsequently, the respondent filed a private complaint against the petitioner and others which was taken on file as C.C. No.50 of 1995. Now, the petitioner, Al in the said case, wants to quash the complaint on the simple ground that in a case referred by the police as mistake of fact, a second complaint on the same set of facts is not maintainable.

5. In this case, before dropping further proceedings, the learned Magistrate has not given any notice to the complainant.

6. In [Bhagwant Singh Vs. Commissioner of Police and Another](#), the Hon"ble Supreme Court has held as follows:

"When the report forwarded by the Officer-in-charge of a police station to the Magistrate under sub-section (2X0 of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things (i) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of the three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceedings or takes the view that though there is sufficient ground for proceeding against others mentioned in the first Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose; wholly or in part. Moreover, when the interest of the informant in

prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, subsection 2 of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. The Court is accordingly of the view that in a case where the Magistrate to whom a report is forwarded under Sub-section 2(ii) of Section 173 decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report, and the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

7. In this case, the learned Magistrate has not passed a detailed order as to how the report filed by the police has been accepted. If the learned Magistrate has passed an order by applying his mind in order to find out whether to accept or drop the proceedings and in the said process, the complainant is heard after intimation and the Magistrate records the reasons for doing so, then the said order can be termed to be a judicial order, as held by the Hon"ble Supreme Court. Mere writing of orders endorsing as "lodged", "filed" or "mistake of fact" will not amount to a judicial order, as held by the Hon"ble Supreme Court and when such a judicial order is not passed, the complainant cannot be prevented from ventilating the grievance through the same Court by filing a second complaint and the same has been held in *Chelliah v. Vesuvadial*, 1998 2 L.W. (Cri.) 566.

8. In [India Carat Pvt. Ltd. Vs. State of Karnataka and Another](#), , the Supreme Court has held as follows:

"Where after the investigation made by the police pursuant to a report as to commission of offence given to it, a report that further investigation was not required as the case was of civil nature was submitted to the Court, and on the informant approaching the Additional Chief Metropolitan Magistrate for quashing of the police report, the Magistrate on a perusal of the investigation records came to the view that a prima facie case was made out against the accused and consequently passed an order for a calendar case being registered against him for offences punishable under Sections 408 and 420 of the Penal Code and for summons being issued to him u/s 204 of the Code, it would not be said that the Magistrate was not entitled to direct registration of case against accused without following the procedure laid down in Section 200. It could not be said that the Magistrate should have called upon the informant to find out whether he was challenging the police report and if so, to make a sworn statement and also examine

his witnesses and thereafter only the Magistrate should have decided whether cognizance should be taken of the offences and process issued to the accused."

9. In *Jatinder Singh & Others v. Ranjit Kaur*, 2001 (1) ACJ 581 (S.C.) : 2001(1) Supreme 417, the Hon'ble Supreme Court has held that when a complaint has been dismissed for default and not on merits, there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts.

10. From the judgments referred to above, it is clear that the second complaint on the same set of facts is permissible on the following contingencies:

(i) the second complaint could be entertained only in exceptional circumstances and if a special case is made out;

(ii) An order of dismissal u/s 203, Cr.P.C. is not a bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances i.e., where the previous order was passed on an incomplete record, or where the facts could not be brought on record in spite of due diligence;

(iii) Second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out; and

(iv) If the proposed second complaint comes under the above parameters, as laid down by the Apex Court referred to above, the second complaint is permissible. But, it is for the petitioner to satisfy the lower Court by establishing a special case in order to maintain the second complaint.

11. As far as the case on hand is concerned, the police have referred the case on the ground that the complaint is exaggerated and the complainant has filed the complaint in order to escape from the liability to make the payment to the hospital run by A1 for the treatment given to the brother-in-law of the complainant.

12. The fact that the brother-in-law of the complainant was treated by A1 is not in dispute and the fact that there is arrears of money due from the complainant for the treatment given to the brother-in-law of the complainant also is not in dispute. The allegation of the complainant is that for the balance of money payable, petitioner and others have forcibly kidnapped the complainant from his house, detained him in the hospital for more than ten days without proper food and water and was forced to sign certain blank stamp papers. Whether the version of the complainant is real or exaggerated is a matter to be decided after adducing evidence. The complaint filed by the complainant has been referred as exaggerated and in order to escape from the liability of payment of money. The complainant cannot be prevented to mitigate his right by way of Filing a second complaint on the same set of facts.

13. The petitioner has not produced any order of the learned Magistrate to show that while accepting the police report, whether he applied his mind, to record the

complainant's complaint as mistake of fact.

In the above circumstances, I do not find any reason as to why the complaint filed by the respondent should be quashed. Hence, the petition deserves no merits and the same is dismissed. Consequently, Cri. M.P.No.918 of 2004 is closed.