Dr. Jayaramakrishnan Vs Mookan Pattam Kettiyar

Court: Madras High Court

Date of Decision: June 25, 2004

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 154, 156, 157, 173, 200
Penal Code, 1860 (IPC) â€" 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 Al; but Al refused to received he 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 or 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 n the car and detain him unless he

settles the arrears for the treatment of Anainjiperumal. 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 AS, they have not mentioned the same in the report submitted by the police.

The petitioner Jayaramakrishnan is Al 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 hot 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 arid 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. Ranj it 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 i 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.