

**(2010) 09 MAD CK 0352**

**Madras High Court**

**Case No:** Criminal O.P. No. 19968 of 2010

M. Vijayakumar

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Sept. 22, 2010

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 211, 380

**Citation:** (2010) 6 CTC 504 : (2011) 8 RCR(Criminal) 1793

**Hon'ble Judges:** G.M. Akbar Ali, J

**Bench:** Single Bench

**Advocate:** N. Sudharsan, for the Appellant; Hassan Mohamad Jinnah, Additional Public Prosecutor, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

G.M. Akbar Ali, J.

This Petition is filed, seeking a direction to call for the records in C.C. No. 168 of 2010 on the file of the learned Judicial Magistrate No. II, Salem and to quash the same. The learned Counsel for the Petitioner submits that, in between 9.10.1999 and 3.11.2009, a theft took place in the residence of the Petitioner, in which, a Kodak Camera and cash of Rs. 1,900/- was stolen. The Petitioner gave a Complaint to the Respondent Police on 10.12.2009 and the same was registered in Cr. No. 2221 of 2009 for the offence punishable u/s 380, IPC against on Jamaludeen and four others.

2. The learned Additional Public Prosecutor stated that the Respondent investigated the matter for the offence punishable u/s 380, IPC and on conclusion of investigation, charge for the offence u/s 380, IPC as against the proposed accused was dropped and a charge for the offence punishable u/s 211, IPC for giving false Complaint was filed by the Respondent before the learned Judicial Magistrate and the same was taken on file in C.C. No. 168 of 2010. challenging the final report filed against the Complainant himself, the Petitioner is before this Court.

3. Mr. N. Sudharsan, learned Counsel appearing for the Petitioner submits that for an offence punishable u/s 211, IPC, the Respondent-Investigating Officer himself cannot file a Charge Sheet and take cognizance of offence unless a Complaint is given by aggrieved person.

The learned Counsel also relied on a decision, reported in [Dujai Vs. The State and Another](#), in which, Lucknow Bench of Allahabad High Court held as follows:

5... Section 211 contemplates that a Complaint, should be instituted before; a Court either by the accused himself or at his instigation. Where no Complaint is filed before a Court against a person, even if the allegation made in a report earlier is completely false, Section 211, I.P. Code will not be applicable...

Section 211, IPC reads as follows:

False Charge of offence made with intent to injure.-- Whoever, with intent to cause injury to any person, institutes or causes to be instituted any Criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such Criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

4. A Complaint has been given by the Petitioner for the offence punishable u/s 380, IPC, for which, a case has been registered in Cr. No. 2221 of 2003 initially u/s 380, IPC. However, on investigation, the Respondent filed a final report against the Complainant for giving a false Complaint. On investigation, if the Respondent found that it is a false Complaint, they ought to have forwarded a final report stating that it is a mistake of fact or Complaint is not true. Instead of that, without obtaining a Complaint from the alleged accused, the Respondent ought not to have proceeded the same Complaint to file a report u/s 211, IPC.

5. The offence u/s 211, IPC is non-cognizable, bailable and non-compoundable. To invoke Section 211, IPC, a Complaint has to be filed before the Court by the accused himself. Considering the above, liberty is given to the accused person in the original Crime Number to institute a Complaint. In the result, the Criminal Original Petition is allowed and the proceedings in C.C. No. 168 of 2010 on the file of the learned Judicial Magistrate No. II, Salem is quashed.