(2011) 09 MAD CK 0239

Madras High Court (Madurai Bench)

Case No: Criminal RC (MD) No. 546 of 2011 and M.P. (MD) No. 2 of 2011

Muthukrishnan		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: Sept. 15, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 167(2), 173(2), 173(8), 190(1)
- Penal Code, 1860 (IPC) - Section 120, 406, 468, 477

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: ARL. Sundaresan, for M/s. J. Anandkumar, for the Appellant; P. Kandasamy Government Advocate (Crl. Side), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Honorable Mr. Justice S. Palanivelu

1. This petition filed under Sections 397 and 401 of the Criminal Procedure Code to call for the records relating to the order of the learned Judicial Magistrate, Karaikudi, dated 03.01.2011 in Crime No. 255 of 2008 on the file of the respondent and set aside the same and consequently, allow the revision.

Heard both sides.

2. The petitioner was working as Head Surveyor in Karaikudi Taluk. He along with five other officials was charged in Crime No. 255 of 2008 under Sections 120(b),406,468,477 IPC. The respondent police took up the case for investigation on 13.03.2010 and filed a final report stating that "action dropped". He has assigned the reasons for dropping the action stating that that issue register was not written and that certain approval plans were not available in spite of contacting the municipality concerned and hence, there is no use in proceeding with the investigation. When the matter was placed before the learned Judicial Magistrate

concerned, he directed further investigation in the case observing that the report was received from the handwriting expert, that the investigating officer has not applied his mind properly, that the alleged beneficiaries who corrected the records were not examined, that mere reasons that records were not given to the investigating officer cannot be accepted and that he has to proceed according to law and seize the relevant records for necessary investigation. This is the order challenged before this Court in revision.

3. The learned Senior Counsel Mr. A. R. L. Sundaresan would contend that the learned Judicial Magistrate has no authority nor power to pass an order suo motu directing the police for further investigation, that the petitioner is neither a beneficiary nor an offender, but he is the custodian of the records alone, that if there were any corrections and interlineations in the registers, they were made only by the Tahsildar concerned, in which the petitioner has no role to play, that in the departmental proceedings the petitioner has been discharged from all the charges and hence, the order challenged before this Court has to be set aside.

4. The learned Senior counsel for the petitioner placed much reliance upon the decision of the Supreme Court reported in Reeta Nag Vs. State of West Bengal and Others, , wherein it is observed as follows:

19. What emerges from the above-mentioned decisions of this Court is that once a charge sheet is filed u/s 173(2) Cr.P.C. and either charge is framed or the accused are discharged, the Magistrate may on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the Investigating Authorities permit further investigation u/s 173(8). The Magistrate cannot suo motu direct a further investigation u/s 173(8), Cr.P.C or direct a re-investigation into a case on account of the bar of Section 167(2) of the Code.

20. In the instant case, the Investigating Authorities did not apply for further investigation and it was only upon the application filed by the de facto complainant u/s 173(8), was a direction given by the learned Magistrate to re-investigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a re-investigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the defect complainant.

21. Since no application had been made by the investigating authorities for conducting further investigation as permitted u/s 173(8), Cr.P.C the other course of action open to Magistrate as indicated by the High Court was to take recourse to the provisions of Section 319 of the Code at the stage of trial.

5. Parallel action was initiated against the petitioner under disciplinary proceedings in which as much as four charges were framed against this petitioner. Findings of the enquiry officer is produced for perusal of this Court which shows that towards

all the first three charges which pertain to issuance of pattas and corrections in the regular records, he has been absolved of the charges. Insofar as the fourth charge is concerned, it is to the effect that he has acted in such a way enabling the police to take criminal action. Even though all the material charges found to be not proved against the petitioner, the last charge alone was found to be proved, since the present criminal complaint is pending.

6. In view of the principles laid down in the above-said decision, the learned Judicial Magistrate cannot suo motu direct further investigation u/s 173(8) or direct an investigation. Section 173(8) does not contemplate nor empower a learned Judicial Magistrate to order further investigation on the request of the defect complaint. Nothing in the provision under sub-section 8 of Section 173 Criminal Procedure Code provides for filing of application by the defect complaint for further investigation. In this context, in the absence of request by the investigation officer for further investigation, it is not open to the learned Judicial Magistrate to suo motu order further investigation, since the investigation officer, after perusal of the materials found that further action has to be dropped and that he laid a final report as such.

7. It is well settled principle that when the charges in a domestic enquiry initiated against the individual are not established and if the enquiry officer chooses to exonerate individual, the criminal proceedings has to come to a halt. When the individual is given clean chit in the domestic enquiry proceedings by exonerating from the charges, the criminal action on the charges akin to the same cannot exist nor continue as per law. The proposition has been illuminatingly highlighted in the decision of Hon''ble Supreme Court in 1996 SCC (Cri.) 897 P.S. Rajya v. State of Bihar, wherein, Their Lordships in para:53, have held as follows:

23. Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27.03.1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.

7.1. In a latest decision of this Court, V. Periya Karuppiah, J. in an order passed in Crl. O.P. (MD) No. 752 of 2011, dated 04.03.2011, G. Sankaralingam v. The Inspector of Police, CCIW CID, Nagercoil and another has followed the above said decision and held that when the departmental proceedings and the criminal proceedings are one and the same and the departmental proceedings had left the person, there is no

need in accepting the said case ended in departmental proceedings and the criminal proceedings could not be pursued.

8. Per contra, Mr. Kandasmay, learned Government Advocate (Crl. Side) would contend that there is no wrong in the order passed by the Court below that only finding that necessary materials are missing in the investigation, the learned Judicial Magistrate has passed the order for further investigation and that there is no ground made out to interfere with the order.

9. In support of his contentions, he placed much reliance upon a Supreme Court judgment reported in 2005 SCC (Crl) 404, Gangadhar Janardan Mhatre Vs. State of Maharashtra, wherein Their Lordships have observed that when the final report is placed before the learned Judicial Magistrate among other things he is entitled to take cognizance u/s 191(1)(b) Cr.P.C of the code even if the police report is to the effect that no case is made out against the accused for which he has to direct the issue of process to the accused. The operative portion of the said judgment goes thus:

9. When a report forwarded by the police to the Magistrate u/s 173(2)(i) is placed before him several situations 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 either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation u/s 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). The position is, therefore, now well settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers u/s 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking

cognizance of a case u/s 190(1)(a) though it is open to him to act u/s 200 or Section 202 also. [See India Carat (P) Ltd. v. State of Karnataka.]

10. In the present case, the learned Judicial Magistrate has not followed the procedure laid down in Section 190(1)(b) CrPC by issuing process when he was not satisfied with the conclusion arrived at by the investigating officer in the final report.

11. In view of the above said settled positions of law, I am of the considered opinion that the order challenged before this Court is not sustainable which is liable to be set aside and it is accordingly set aside.

In the result, the criminal revision case is allowed.