

CrI.OP No. 7395 of 2010

G. Srinivasan v. N. Velumani

2017 SCC OnLine Mad 3676

In the High Court of Madras
(BEFORE RMT. TEEKAA RAMAN, J.)

1. G. Srinivasan
 2. S. Andal
 3. Sreelata Petitioners
- v.
- N. Velumani Respondent

CrI.OP No. 7395 of 2010

And

M.P. No. 1 of 2010

Decided on August 29, 2017, [Reserved On: 07.08.2017]

For Petitioner: Mr. V. Nicholas

For Respondent: Mr. N. Damodaran

Prayer:— Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the complaint in C.C. No. 1044 of 2009 pending on the file of the Judicial Magistrate No. 2, Coimbatore and quash the same.

ORDER

RMT. TEEKAA RAMAN, J.:— This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records relating to the complaint in C.C. No. 1044 of 2009 pending on the file of the Judicial Magistrate No. 2, Coimbatore and quash the same.

2. The respondent herein filed a private complaint against the petitioners in C.C. No. 1044 of 2009 before the Judicial Magistrate No. 2, Coimbatore under Sections 120 -B, 406, 420, 468 and 471 alleging that petitioners were running Sri. Saphthagiri Financiers and that she, her husband and her mother deposited Rs. 12,50,000/- and the petitioners had executed separate promissory notes in her favour and in favour of her husband and her mother. Her further case was that when she demanded the return of the amount, the first petitioner produced some forged receipts as if the amount has been repaid and because of the mental agony caused due to action of the petitioner her husband died. Thus she alleged that there is a criminal conspiracy between the petitioners for committing the offences.

3. On earlier occasion, the husband of the respondent herein lodged a complaint in Crime No. 970 of 2005 in B.3 Kattur Police Station, Crime Branch, Coimbatore stating that he had deposited Rs. 15,000/-, his wife Velumani (respondent) had deposited Rs. 17,500/- and his mother-in-law Lakshmiammal deposited Rs. 17,500/- on 15.10.1997 in Sri. Saphthagiri Financiers which was conducted by the 1st petitioner with the assistance of his wife and daughter i.e., the petitioners 2 and 3. He also stated in the said complaint that the petitioners received 12 payments of Rs. 50,000/- each from him and 12 payment of Rs. 50,000/- each from his wife on 18.5.2002. However the 24 payments of Rs. 50,000/- each said to have been made on 18.5.2002.

4. The counsel for the petitioner submitted that the transactions were commenced from 1993 onwards which were between the first petitioner and the respondent, her

husband and her mother in his individual capacity of the first petitioner and that the petitioners 2 and 3 herein have nothing to do with the said transactions or connected with the Sri. Sapthagiri Financiers which was proprietary concern of the first petitioner. The first petitioner has paid a sum of Rs. 10,92,000.51/- towards the interest and made endorsements on the previous promissory notes. He has also paid Rs. 8,55,000/- towards principal amount for which he has obtained receipts. The husband of the respondent has given discharge receipts. After investigation the said complaint in Crime No. 970 of 2005 was closed on 20.03.2007.

5. The learned counsel for the petitioner has further submitted that the first petitioner was the proprietor of Sri. Sapthagiri Financiers and the petitioners 2 and 3 had no connection whatsoever in the said finance business of the first petitioner. The 24 promissory notes dated 18.5.2002 for Rs. 50,000/- each were executed by the first petitioner and not by the petitioners 2 and 3. The said 24 promissory notes referred to in the list of documents of the said complaint describes the said promissory notes and the fixed deposit receipts were executed and issued by the first petitioner only. Further it has been stated in the said complaint that the receipts for the repayment of the amount were forged by the first petitioner only. There is no averments made against the petitioners 2 and 3.

6. The learned counsel has further submitted that the respondent has filed the present complaint which is purely a civil liability on the basis of the promissory notes which are barred by limitation. The respondent having failed in the earlier attempt to convert the civil disputes into Criminal action now once again has filed the present complaint with ulterior motive not only against the first petitioner but also against the petitioners 2 and 3 who have nothing to do with the disputes involved between first petitioners and the respondent.

7. The learned counsel for the respondent has submitted that the respondent-complainant is Velumani, W/odeceased Nagarajan and during the lifetime of her husband, they have made deposits with the petitioner/accused herein to the tune of Rs. 12,50,000/-. For which, he had executed deposits certified from Sapthagiri Financiers run by the petitioner's herein, as they refused to pay the amount on maturity. They gave a complaint in petition No. 27 of 2012, Coimbatore Police Station, B3, Kattur Police Station, Coimbatore. Thereafter, moved High Court in CrI.O.P No. 9521 of 2005, wherein by an order dated 26.04.2005, direction was issued to the Commissioner of Police, Coimbatore and Inspector of Police, B3 Police Station, Gandhipuram Kattur, Coimbatore to register the case and investigate in accordance with law. Thereafter, F.I.R was registered as Crime No. 970 of 2005 on 01.06.2005 and during the course of investigation, necessary documents were given to police. After the death of her husband, the police served notice in RCS. No. 32 of 2007 for Crime No. 970 of 2005, B3 Police Station for alleged offence under Section 420 of I.P.C before the Judicial Magistrate No. II, Coimbatore, dated 20.03.2007, whereby her husband Nagarajan was informed of the fact that the case has been closed as 'mistake of fact'. Since on the date of receipt of notice, the said Nagaraj was no more and he has not moved the Court. However, now she has preferred the present private complaint under Section 200 of Cr.P.C before the Judicial Magistrate No. II, Coimbatore which was taken on file as C.C. No. 1044 of 2009 for alleged offence as stated above.

8. Based on the above factual grounds, the learned counsel for the respondent has submitted that as against the complaint given by the husband of the respondent herein against the accused and Sapthagiri Financiers. Since, she was served with a copy of RCS closing the complaint under Crime No. 970 of 2005 as 'mistake of fact', she has preferred the private complaint and hence, the same is maintainable in law.

9. As per submissions of petitioner counsel, the initial complaint given by the

husband of the defacto-complainant in Crime No. 970 of 2005 on the very same set of pro-notes executed by the petitioner herein, on the very same set of facts, on the very same accused was still pending before the Magistrate Court and relied upon the copy application filed by him which was returned by the Court with endorsement that no RCS was filed.

10. Per contra, the learned counsel for the respondent has submitted that as the previous crime No. 970 of 2005 given by the respondent-husband during his lifetime has been closed as 'mistake of fact' as per the RCS notice served on her, after the death of her husband and relied upon the copy of RCS 32 of 2007 in the said crime number registered by the concerned Police Station to resolve the factual position, this Court has sought for a report from the Judicial Magistrate-II, Coimbatore, who, in his letter dated Dis. No. 1168/17, dated 31.07.2017 have stated that:

"Final Report in RCS No. 32 of 2007 was not filed before this Court in connection with Crime No. 970 of 2005 on the file of Kattur Police Station, Coimbatore".

11. In other words, the contention of the learned counsel for the petitioner that the earlier case in Crime No. 970 of 2005, Kattur Police Station, Coimbatore is pending before the Judicial Magistrate No. II, Coimbatore is found to be factually correct. It appears that though RCS notice in 32 of 2007 in Crime No. 970 of 2005, B3 Police Station was served on the family members of the defacto-complainant seems to be not filed before the concerned Magistrate Court and consequently this chaco has arisen.

12. It is seen from the records of typed set filed by the petitioner that the Copy Application filed by them before the Judicial Magistrate No. II, Coimbatore for copy of the RCS.32 of 2007, B3 Police Station, has been returned as no RCS is filed by the Investigation Officer. So, the report of the Magistrate as extracted above, goes to shown that the RCS report was not filed before the concerned Judicial Magistrate viz., Judicial Magistrate No. II, Coimbatore as such, the initial case filed by the husband of the respondent the case has not been come to the conclusion in the manner known to law, this Court is of the considered view that the private complaint filed by the present respondent subject matter of this case amounts to second F.I.R.

13. In the decision *T.T. Antony v. State of Kerala* (2001 CRL. L.J. 3329 (1), the Hon'ble Supreme Court has held that there can be no second F.I.R in respect of same cognizable offence, same incident or occurrence and further held that subjecting a citizen to fresh investigation on basis of second F.I.R is abuse of the power of process of the Court and fit case to exercise powers under Section 482 of Criminal Procedure Code.

14. In the instant case, though the respondent herein on the assumption that the RCS has been filed in the Court and in respect of case given by her husband, during his lifetime has come to an end has preferred the private complaint. However, on factual background as narrate, it is found to be otherwise and as the subsequent private complaint given by the respondent herein is based upon the same set of documents viz., fixed deposits and on the same set of facts and against the same set of persons and hence, the private complaint under Section 200 in sum and substance become the second F.I.R and which is not permissible in law. It come in effect being second F.I.R and the same cannot be in conformity with the scheme of the Criminal Procedure Code.

15. It is to be stated that apart from a vague information by a phone call or telegram, the information first entered in the diary by a Police Officer in charge of a police station is First Information Report as stated Section 154 of Cr.P.C. All other information made orally or in writing after commencement of investigation into the cognizable offence disclose from the facts mentioned in the F.I.R and made and brought to his notice during the investigation will be statement falling under which 162 of Cr.P.C.

"The scheme of the Cr.P.C is that

- (a) an officer in charge of a Police Station has to commence investigation as provided in S.156 or 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence.
- (b) On completion of investigation and on the basis of evidence collected he has to form opinion under S.169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under S.173(2) of Cr.P.C.
- (c) However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh F.I.R., he is empowered to make further investigation, normally with the leave of the Court and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of S.173, Cr.P.C.
- (d) Under the scheme of the provisions of S. 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C., only the earlier or the first information in regard to the commission of a cognizable offence satisfies the requirements of S.154, Cr.P.C. Thus, there can be no second F.I.R and consequently there can be no fresh investigation on receipt of every subsequently information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offence".

16. Since the charges in the F.I.R in Crime No. 970 of 2005 (which is still pending for R.C.S. to be filed in the Court) and the private complaint, both are in substance one and the same and hence, it is in essence a second F.I.R and fresh investigation under private complaint by the Court was unwarranted and illegal and hence, this Court is of the considered view that the proceedings in C.C. No. 1044 of 2009 is liable to be set aside.

17. However, it is made clear that since the R.C.S.32 of 2007 arising is not filed in the Court as per the report of the Judicial Magistrate and hence, the proceedings in respect of the Crime No. 970 of 2005 has not come to the conclusion consequently a simultaneous proceedings on the very same set of documents against the very same set of accused cannot be allowed to prosecute and in this view of the matter, this Criminal Original Petition is allowed.

18. It is dis-hearting to note that though the Inspector of Police, B3, Kattur Police Station, Coimbatore served the copy of the RCS with the defacto-complainant. However, for the reasons best known to him, he has not chosen to file the same before the Judicial Magistrate Court which has caused this chaco of criminal cases before the Court.

19. Had the Investigation Officer in Crime No. 970 of 2005 has properly filed the RCS before the jurisdictional Court, this proceedings which are totally unwarranted could have been avoided whereby parties are driven to different forms of the Judicial proceedings for relief. It also demonstrate the improper supervision of the higher officials who are suppose to carryout periodical inspection, once in six months, to see whether the final report, either charged or referred charge sheet, has been duly filed before the concerned Court, rather closing the files and keeping their file in the rack in Police Station.

20. It also worth mentioning here that as the RCS was not filed before the concerned jurisdictional Magistrate Court, the said Crime No. is still shown to be pending in the list of the Judicial Magistrate in the territorial jurisdictional Court which is also duly reflected in the "National Grid of pendency of the case" hence to avoid this kind of melady caused due to the mal-function and improper filing of charge sheet/referred charge sheet as resulted in this kind of unwarranted prosecution.

21. Hence, considering the nature of the flaw taken place which is resulted in filing of these cases, in exercising power conferred upon this Court under Section 482 of Cr.P.C., this Court thought to it fit to issue fiat to all Judicial Magistrate's in the state of Tamil Nadu and Puducherry.

- (a) The Deputy Superintendent of Police and Chief Judicial Magistrate, Coimbatore are required to arrange for comparison of process with all sub-Divisional Police Stations with respective Inspector and Judicial Magistrates concerned, on anyone of the holiday preferably on saturday, with prior intimation and
- (b) shall monitor whether final report as charge sheet/RCS preferred by the cases were closed; whether cases are closed under category of 'mistake of fact' or as undetectable or closed as civil dispute are duly informed to the concerned Magistrate Court so as to make an entry of the closure in a proper form in Court record and thereby avoiding the inflated pendency statistics in the criminal Courts.

22. This Court, for the reasons stated in the preceding paragraphs have allowed this Criminal Original Petition on the technical point that since the original crime No. 970 of 2005 was not closed in the manner known to law and the same is pending before the concerned jurisdictional Magistrate. It is open to the respondent herein to agitate the right before the concerned Magistrate, by taking the necessary application as provided under the law.

23. With the above observations,

- (a) this Criminal Original Petition is allowed.
- (b) The Registry is directed to circulate the copy of this order to the Commissioner of Police, Coimbatore and Superintendent of Police, Coimbatore for effective implementation of the filing the final report as charge sheet or referred charge sheet as the case may be, before the appropriate Court and also to maintain periodical inspection as required under the Police standing order, so as to give the correct figure of pendency of criminal case in the state.
- (c) The Registrar (Judicial) is required to place the copy of this order before the arrear committee, constitute as per direction of Hon'ble Apex Court and for perusal and its consideration.
- (d) The Registry is directed to circulate the copy of this Judgment to all the Magistrate Courts and Chief Judicial Magistrate Courts after obtaining necessary administrative sanction from My Lord Hon'ble Chief Justice for the above said circulation.

24. In the result, this Criminal Original Petition is allowed in C.C. No. 104 of 2009 on the file of Judicial Magistrate No. II, Coimbatore is set aside and it is observing that on and when the I.O send the file of final report R.C.S to the court, it is liberty open to the respondent herein to agitate her claim in the manner known to law and the same shall be dealt with by the Judicial Magistrate No. II, Coimbatore without being influenced by the finding in this case and independent of the averments made herein. Consequently, connected Miscellaneous Petition is closed.