Criminal O.P. No. 15197 of 2013 and M.P. No. 1 of 2013

S. Karunanithi v. Sivananda Ra

2014 SCC OnLine Mad 595 : (2014) 1 LW (Cri) 509

(BEFORE P. DEVADASS, J.)

S. Karunanithi ..... Petitioner

v.

1. Sivananda Rao
2. The Inspector of Police, Krishnagiri Taluk Police Station, Krishnagiri District ..... Respondents

For Petitioner: Mr. V. Parthiban for Mr. E. Kannadasan

For Respondents: Mr. N. Suresh for R-1

Mrs. Shabana, (Govt. Advocate Crl. Side) for R-2.

Criminal O.P. No. 15197 of 2013

And

M.P. No. 1 of 2013

Decided on March 7, 2014

Criminal Law — Criminal Procedure Code, 1973 — S. 482 — Inherent Powers of High Court — Quashment of proceedings — Power of quashment under — Nature and scope — Explained — Held, this power is very wide and enormous in nature — There are self imposed limitations — However, when there is injustice — When there is flagrant violation of law — This Court has to exercise its inherent power and restore justice — In the instant case the Investigation Officer filed negative final report before to the learned Magistrate to the effect that it was a false case — Learned Magistrate disagreed with the conclusion of the Investigation Officer and took cognizance thereon — Held, if learned Magistrate elects to accept the report of the Investigation Officer closing the case — he must issue notice to the complainant — Receive his objection — If any the learned Magistrate has to treat the protest petition as a complaint and follow the complaint procedure and if he finds any prima facie case — He can take cognizance under S. 190(1)(a) CrPC — In the instant case merely on the fact that the complainant had objected to the negative final report — The learned Magistrate took cognizance on 26-4-2011 — He did not apply his judicial mind — For the first time on 29-1-2013 — The learned Magistrate mentioned about filing of a protest petition by the complainant and adjourned the case to 18-3-2013 and to 8-4-2013 awaiting filing of protest petition — Ultimately, on 9-5-2013 the learned Magistrate straightway took cognizance on the negative final report — Illegality/Legality — On the fact that taking cognizance as against a person — Has serious consequence — If it is not properly exercised — It will militate against Art. 21, Constitution of India — Held, an order by the learned Magistrate directing a person to face a criminal case without applying his judicial mind is an illegal order — In the instant case, the materials presented by the Investigation Officer along with the final report to the court tallied with the opinion expressed by the Investigation Officer — On the facts, held, the learned Magistrate did not apply his judicial mind in taking the case on file — On the fact that securing justice is also a facet of the inherent power of this Court under S. 482 — The principles laid down in Bhajanlal was held squarely applicable to the facts of the case — The entire criminal proceedings quashed

(Paras 27, 28, 30, 31, 35, 38, 40 and 41)

Abhi Nandan Jha v. *Dinesh Mishra*, AIR 1968 SC 117; *Tata Iron and Steel Co. Ltd.* v. *Inspector of Police, Ccb, Egmore, Madras*, 1989 LW (CRL) 155; *Dr. Mrs. Nupur Talwar* v. *CBI, Delhi*, 2012 Crl. LJ SC 954; *Dharam Pal* v. *State of Haryana*, 2013 (9) Scale 207 SC; *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, *reliance placed on*

Maneka Gandhi v. *Union of India*, (1978) 1 SCC 248, *referred to*

ORDER

Petitioner, who is the sole accused in C.C. No. 27 of 2011, on the file of the learned Judicial Magistrate No. II, Krishnagiri, came forward with this petition under Section 482 Cr.P.C. to quash the entire criminal proceedings in the said calendar case.

2. Petitioner/Karunanithi and first respondent/Sivananda Rao are colleagues in the State Sericulture Department in Krishnagiri. First respondent's daughter is Subashini. First respondent lodged complaint with the second respondent/Inspector of Police, Krishnagiri Taluk Police Station alleging that on 16.8.2007 at about 11 a.m., in his house, in the presence of his wife Chitra, Boopalan, Elango and Kamalanathan, he gave Rs. 2 lakhs to the petitioner to get admission for Subashini and his brother-in-law's daughter in certain teacher training institutions. However, petitioner did not pay as agreed. He further alleged that on 24.5.2010, at about 8 a.m., in the house of the petitioner, when he demanded the said Rs. 2 lakhs, petitioner beaten him with a casuarina stick, thrown a knife at him and criminally intimidated him.

3. Since there was no further action on his complaint, in this court, first respondent filed Crl.O.P. No. 18259 of 2010. This Court directed the second respondent to register a case and investigate. Thereupon, the second respondent registered a case in Crime No. 575 of 2010 under Sections 420 and 506(i) IPC. The Investigation Officer examined the witnesses and recorded their statements. Ultimately, he filed final report before the learned Judicial Magistrate No. II, Krishnagiri that it is a false case.

4. The learned Magistrate gave notice to the first respondent. Thereafter, he took cognizance in C.C. No. 27 of 2011 for offences under Section 420 and 506(i) IPC as against the petitioner. The case is pending. So far, no witness has been examined.

5. Mr. V. Parthiban, the learned counsel appearing for the petitioner would submit that without following the requirement of law and the principles laid down in several cases, the learned Magistrate has simply taken cognizance. What the learned Magistrate did was against law. It is illegal. Thus, under such circumstances, issuing summons under Section 204 Cr.P.C. to the petitioner militates against Article 21, Constitution of India.

6. In this connection, the learned counsel for the petitioner would cite *ABHI NANDAN JHA* v. *DINESH MISHRA* [AIR 1968 SC 117], *TATA IRON AND STEEL CO. LTD* v. *INSPECTOR OF POLICE, CCB, EGMORE, MADRAS*, [1989 LW(CRL) 155] and *DR. MRS NUPUR TALWAR* v. *C.B.I, DELHI*, [2012 Crl. LJ SC 954].

7. The learned counsel for the petitioner would further submit that the Investigation Officer has rightly formed opinion on the evidence collected by him that it is a false case. Thus, he rightly filed the negative final report. However, the learned Magistrate disagreed with the Investigation Officer and took cognizance without any basis. It is abuse of process of law. Even taking the materials as such there is no possibility of conviction at all. In the circumstances, the petitioner cannot be asked to undergo the ordeal of a criminal trial. In the facts and circumstances, to meet the ends of justice, in exercise of jurisdiction under Section 482 Cr.P.C., this Court can step in to undo the ongoing injustice. In this respect, the learned counsel would cite the celebrated *STATE OF HARYANA* v. *BHAJANLAL*, [1992 Supp (1) SCC 335].

8. On the other hand, the learned Government Advocate(Crl. Side) appearing for the 2nd respondent would submit that the learned Magistrate is entitled to disagree with the opinion of the Investigation Officer and take cognizance on the final report filed

before him. Thus, the action of the learned Magistrate cannot be faulted. In this respect, the learned Government Advocate (Crl. Side) would cite the Constitutional Bench decision in *DHARAM PAL* v. *STATE OF HARYANA*. [2013 (9) SCALE 207 SC].

9. The learned counsel for the first respondent/de facto complainant would reiterate the submissions of the learned Government Advocate(Crl. Side) and he would also refer to *DHARAM PAL* (supra). The learned counsel would further submit that perusing the complaint and the statement of witnesses recorded under Section 161 Cr.P.C., the learned Magistrate rightly took cognizance. When the Magistrate elects to do so, there is no need to issue prior notice to the de facto complainant nor receiving of a protest petition from him. The merit of the matter has to be decided during trial on the basis of the evidence let in. In such circumstances, petitioner has to face the trial. Thus, he cannot ask for quashment of the proceedings pending before the trial court.

10. I have given anxious consideration to the arguments of the learned counsels, perused the entire materials on record and the decisions cited.

11. When a complaint discloses commission of a cognizable offence, a case is to be registered under Section 154 Cr.P.C. It is registration of 'F.I.R'. Such a registration is a condition precedent for the Investigation Officer to investigate the case. (See Section 156 Cr.P.C). Necessarily he has to follow the procedure prescribed in Section 157 Cr.P.C., such as visiting the scene of crime, examination of witnesses, recovery of case -properties, collection of scientific evidence and arrest of the accused, if need be etc. Such collection of evidence is investigation (See Section 2(h) of Cr.P.C.)

12. Long back, in 1945, in *EMPEROR* v. *KHWAJA NAZIR AHAMED* [AIR 1945 PC 18], the Privy Council held that in India the process of investigation is the province of police, Courts interfering into that will arise only when the police proceed into a matter, which does not disclose a cognizable offence or where there is flagrant violation of any mandatory provisions of law.

13. On the evidence collected by him, the investigation officer has to form his opinion as to whether it discloses any offence or it does not discloses any offence and accordingly he is duty bound to report result of his investigation in the prescribed form to the jurisdiction Magistrate under Section 173 Cr.P.C. It is called 'Final Report'.

14. It would be appropriate here to note Section 173(2) Cr.P.C, which runs as under:-

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) The names of the parties;

(b) The nature of the information;

(c) The names of the persons who appear to be acquainted with the circumstances of the case;

(d) Whether any offence appears to have been committed and, if so, by whom;

(e) Whether the accused has been arrested;

(f) Whether he has been released on his bond and, if so, whether with or without sureties;

(g) Whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

15. When a report under Section 173 Cr.P.C. contains information that it discloses commission of cognizable offence/s it is called 'positive final report'. Often it is wrongly and inappropriately called 'Charge sheet'. In some parts of India, it is called 'Challan'. It is not that such a final report must always be a positive final report. It should not be, because, such report exhibits expression of opinion of the Investigation Officer formed on the basis of materials collected by him during investigation. Some times, the materials so collected may not disclose any offence at all. In such circumstances, he is bound to report the Court accordingly. Then it is called 'Refer charge sheet', 'negative final report'. Once the positive or negative final report is filed before the Court, the job of the Investigation Officer is over. But, not the Magistrate. Thereafter, his function begins. He has to discharge his judicial function.

16. When it is a positive final report, what the learned Magistrate has to do has been stated in Section 190 Cr.P.C. It runs as under:-

190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) Upon receiving a complaint of facts which constitutesuch offence.

(b) Upon it police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

17. Section 190 Cr.P.C., speaks about taking cognizance on the final report filed by the Investigation Officer. It is taking judicial notice of the offence/s complained of. It may arise under three circumstances. (i) It may be based on a complaint containing allegations as to commission of an offence. (See Section 190(1)(a) Cr.P.C.). It is based on the consideration of complaint and sworn statement recorded from the complainant and his witnesses. (See Section 200, 202 Cr.P.C). This is called a 'complaint case'. Secondly, such cognizance may also be taken based on a police report filed under Section 173 Cr.P.C. (See Section 190(1)(b) Cr.P.C.). It is called a 'police case'. Thirdly, cognizance could be taken by the learned Magistrate based on his own knowledge. For instance, when an offence is committed in his presence. In such circumstances, there need not be any complaint by a person or a police report under Section 173 Cr.P.C. (See Section 190(1)(c) Cr.P.C).

18. For our purpose, Section 190(1)(b) Cr.P.C. is relevant. Before us, it is a police case. We are concerned with a final report filed under Section 173(2) Cr.P.C. It is a negative final report. In such circumstances, what the learned Magistrate has to do has been stated in several cases. It is relevant here to note the notable among them and the principles laid down therein.

19. The earliest among those decisions is the celebrated *ABHI NANDAN JHA* v. *DINESH MISHRA* [AIR 1968 SC 117]. In this case, the Hon'ble Apex Court had occasion to deal with the question as to what the Magistrate has to do when a negative final report is filed before him by the Investigation Officer. Though *ABHI NANDAN JHA* (supra) arose under the Old Code of 1898, as regards the point in issue, there is no difference both under the Old Code of 1898 and the New Code of 1973.

20. In *ABHI NANDAN JHA* (supra), the Hon'ble Apex Court laid down the following guidance.

“Now, the question as to what exactly is to be done by a Magistrate, on receiving a report, under Section 173, will have to be considered. That report may be in respect of a case, coming under Section 170, or one coming under Section 169. We have already referred to Section 190, which is the first section in the group of sections headed ‘Conditions requisite for Initiation of Proceedings.’ Sub-section (1), of this section, will cover a report sent, under Section 173. The use of the words ‘may take cognizance of any offence’, in sub-section (1) of Section 190, in our opinion, imports the exercise of a ‘judicial discretion’, and the Magistrate, who receives the report, under section 173, will have to consider the said report and judicially take a decision, whether or not to take cognizance of the offence. From this it follows, that it is not as if, that the Magistrate is bound to accept the opinion of the police that there is a case for placing the accused, on trial. It is open to the Magistrate to take the view that the facts disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify an accused being put on trial. On either of these grounds, the Magistrate will be perfectly justified in declining to take cognizance of an offence, irrespective of the opinion of the police. On the other hand, if the Magistrate agrees with the report, which is a charge-sheet submitted by the police no difficulty whatsoever is caused, because he will have full jurisdiction to take cognizance of the offence, under Section 190(1)(b) of the Code. This will be the position, when the report, under Section 173, is a charge-sheet.

15. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a ‘final report’? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under Section 156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If, ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under Section 190(1)(b), notwithstanding the

contrary opinion of the police, expressed in the final report."

21. In *TATA IRON AND STEEL CO. LTD* v. *INSPECTOR OF POLICE, CCB, EGMORE, MADRAS*, [1989 LW(CRL) 155], when similar question crop up before this Court, this Court observed as under:-

"6. Thirdly, the contention of the Revision Petitioner is that the Magistrate should not blindly accept the report of the Police Officer, and that he should, on the contrary, apply his mind and come to an independent conclusion whether to take the case on file or not under S.190, Cr.P.C. In fact, when the Magistrate gets a negative report under S.173, Crl.P.C., he should chose between one of the four causes: (1) to accept the report and drop the proceedings. (2) to direct further investigation to be made by the police, (3) to investigate himself or order for the investigation to be made by another Magistrate under S.159, Crl.P.C. (4) to take cognizance of the offence under S.200, Crl.P.C., as a private complaint, when the materials are sufficient in his opinion and if the complainant is prepared for that course.

22. In *DR. MRS NUPUR TALWAR* v. *C.B.I, DELHI*, [2012 Crl. LJ SC 954], the Hon'ble Apex Court has held as under:-

"18. Section 190 of the Code lays down the conditions which are requisite for the initiation of a criminal proceeding.

19. At this stage the Magistrate is required to exercise sound judicial discretion and apply his mind to the facts and materials before him. In doing so, the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion irrespective of the views expressed by the Police in its report and may prima facie find out whether an offence has been made out or not.

20. The taking of cognizance means the point in time when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence which appears to have been committed.

21. At the stage of taking of cognizance of offence, the Court has only to see whether prima facie there are reasons for issuing the process and whether the ingredients of the offence are there on record.

22. The principles relating to taking of cognizance in a criminal matter has been very lucidly explained by this Court in *S.K. Sinha, Chief Enforcement Officer* v. *Videocon 14 International Ltd.* - (2008) 2 SCC 492, the relevant observations are set out:

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by "someone".

"20. Taking "Cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can

be said to have taken cognizance".

26. Reference in this connection may be made to a three Judge Bench decision of this Court in the case of *India Carat Private Ltd.* v. *State of Karnataka* (1989) 2 SCC 132. Explaining the relevant principles in paragraphs 16, Justice Natarajan, speaking for the unanimous three Judge Bench, explained the position so succinctly that we would rather quote the observation: as under:-

The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 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, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused……"

23. In *DHARAM PAL* v. *STATE OF HARYANA*, [2013 (9) SCALE 207 SC] a Constitutional Bench of the Hon'ble Apex Court observed as under:-

"23. The view expressed in *Kishun Singh's* case, in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the Final Report that may be filed by the police authorities under Section 173(3) of the Code and to proceed against the accused persons dehors the police report, which power the Session Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(3) of the Code, he was helpless in taking recourse to such a course of action while the Session Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.

24. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column No. 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter."

24. We have seen that a final report filed under Section 173 Cr.P.C. may be positive and may be negative also. If it is a positive final report disclosing commission of an offence, as per Section 190 Cr.P.C., the learned Magistrate has to take cognizance thereon. But, when it is a negative final report, such as 'mistake of fact', 'mistake of law', 'false case', a 'civil case', 'accidental fire' 'undetectable etc'. In such a case, what the learned Magistrate has to do has not been expressly stated in the Code of Criminal Procedure. But, reading the scheme of administration of criminal justice deviced in the

Code referring to Section 2(h), 154, 156, 173, 190 Cr.P.C. in such circumstances, what the learned Magistrate has to do has been laid down by the Hon'ble Apex Court and the High Courts in their decisions.

25. *ABHI NANDAN JHA* (supra) holds the field even now. On the final report, when there is sufficient ground for proceeding further the learned Magistrate has to take cognizance and he issue summons to the accused [See Section 204 Cr.P.C]. It may be a 'summon-case' or a 'warrant-case'. Issuing process to the accused under Section 204 Cr.P.C. is common to both for the police case, and private complaint. The order under Section 204 Cr.P.C., summoning the accused to attend the Court, has serious consequences.

26. Keeping the provisions of law and the principles of law so far we have been in our view, we shall revert back to our case.

27. In the case before us, the Investigation Officer filed negative final report before to the learned Magistrate to the effect that it is a false case. It would be appropriate to extract hereunder how the learned Magistrate has proceeded with the said final report. It runs as under:-

"In the Court of the Judicial Magistrae No. II, Krishnagiri.

F.I.R. No. 875/2010

Complaint: S.I. of Police, Taluk P.S.

Crime No. 575 of 2010, U/s.420, 506(i) of IPC

Accused Name: S. Karunanithi, S/o Shanmuga Gounder

Hearing: 12.10.2010

Sir,

Submitted with case record in Crime No. 575/2010 U/s 420, 506(i) of I.P.C. The Inspector of Police, Taluk P.S. has filed a treated as "FALSE" of charge the F.I.R. as T.F.

Notice of complainant call on 16.03.2011.

Sd/-

04.03.2011

Judicial Magistrate

Krishnagiri

16.03.2011

Fresh notice to the defacto complainant call on 26.04.2011.

Sir,

Received Copy

Sd/-

Head Constable 737

Sd/-

16.03.2011

26.04.2011

Informant present serious objections to close the case as Mistake of Fact. Hence the negative final report take an of file call on 26.05.2011.

(emphasis supplied)

Sd/-

26.04.2011

26.05.2011

Accused present for copies call on 14.06.2011.

J.M.

26.05.11

14.06.2011

Accused present for copies call non 14.07.2011.

J.M.

14.06.2011

14.07.2011

Accused present for copies call on 29.08.2011.

J.M.

14.07.2011

29.08.2011

Accused Present for preparing copies call on 08.11.2011.

J.M.

29.08.2011

08.11.2011

Accused present for preparation of copies call on 23.12.2011.

J.M.

08.11.2011

23.12.2011

Accused absent 317 petition filed allowed for preparation of copies call on 24.02.2012.

J.M.

23.12.2011

24.02.2012

Accused present for copies call on 16.04.2012.

J.M.

24.02.2012

16.04.2012

Accused Present for copies call on 29.05.2012.

J.M.

16.04.2012

29.05.2012

Accused absent 317 petition filed allowed for reposted to 12.06.2012.

J.M.

24.02.2012

12.06.2012

Accused present copies furnished for time extended 14.06.2012.

J.M

12.06.2012

14.06.2012

Accused absent 317 petition filed allowed call on 18.06.2012.

J.M.

14.06.2012

18.06.2012

Accused absent 317 petition filed allowed reposted to 17.07.2012.

J.M.

18.06.2012

17.07.2012

Accused absent 317 petition filed allowed J.M. Is MC 10.08.2012.

J.M.

17.07.2012

10.08.2012

Accused absent 317 petition filed allowed, call on 10.09.2012.

J.M.

10.08.2012

10.09.2012

J.M.

on OD accused absent call on 16.10.2012.

J.M.

10.09.2012

16.10.2012

Accused absent 317 petition filed allowed for further proceeding call on 19.10.2012.

J.M.

16.09.2012

19.10.2012

Accused absent 317 Cr.P.C. filed allowed for further proceeding call on 29.10.2012.

J.M.

19.10.2012

29.10.2012

Accused absent 317 petition filed allowed call on 30.11.2012.

J.M.

29.10.2012

30.11.2012

Accused absent 317 petition filed allowed for further proceeding call on 06.12.2012.

J.M.

30.11.2012

06.12.2012

Accused present issue notice to the defacto complainant call on 21.12.2012.

J.M.

06.12.2012

21.12.2012

Accused absent 317 Cr.P.C. Petition filed and allowed awaid a/d from the defacto complainant call on 08.01.2013.

J.M.

21.12.2012

08.01.2013

Accused present await a/d from the defacto complainant and issue notice to the defacto complainant through police call on 29.01.2013.

J.M.

08.01.2013

29.01.2013

Defacto complainant present for filing protest petition call on 16.03.2013.

(Emphasis supplied) J.M. 29.01.2013

16.03.2013

18.03.2013

Taken up today defacto complainant absent for further proceedings call on 08.04.2013.

J.M.

18.03.2013

08.04.2013

The Defacto complainant present for filing protest petition call on 09.05.2013.

(Emphasis supplied)

J.M.

08.05.2013

09.05.2013

The defacto complainant present he pray some time for filing protest petition this court take the negative report of the police as C.C. No. 27/2011 until the case is take congnizance, the accused appearance is dispensed thereafter if necessary summons to be issued to the accused for filing protest petition call on 17.05.2013.

(Emphasis spplied)

J.M.

09.05.2013”

28. In the case before us, based on the materials, considering the complaint and statement of witnesses, the Investigation Officer formed the opinion that it is a false case. Thus he filed his report accordingly before the learned Magistrate. It is a negative final report. Thereafter, the learned Magistrate disagreed with the conclusion of the Investigation Officer and took cognizance thereon. If the materials presented discloses commission of an offence, the learned Magistrate can disagree with the conclusion of the Investigation Officer and take action accordingly or if it so demands he can direct further investigation. But, if he elects to accept the report of the Investigation Officer closing the case, he must issue notice to the complainant, receive his objection, if any. Such ‘objection petition’ is also known as ‘protest petition’. It is a protest by the defacto complainant to the conclusion arrived at by the Investigation Officer. Thereafter, the learned Magistrate has to treat the protest petition as a complaint and follow the complaint procedure and if he finds any prima facie case, he can take cognizance under Section 190(1)(a) Cr.P.C.

29. The consequence of taking cognizance under Section 190 Cr.P.C. is summoning or directing a person under Section 204 Cr.P.C. to face the case. An order under Section 204 Cr.P.C. has many serious consequences. It is open to judicial scrutiny. If not properly exercised, it will violate the personal liberty guaranteed to the people under Article 21, Constitution of India, which declares that “no one shall be deprived of his ‘life’ or ‘liberty’ except by procedure established by law”. By following a fair and reasonable procedure liberty of an individual can be curtailed. (See *MANEKA GANDHI* v. *UNION OF INDIA*, [AIR 1978 SC 597].

30. Now, in the case before us, on 26.4.2011 itself, merely on account of the fact that the complainant has objected to the negative final report, the learned Magistrate had taken cognizance. He did not apply his judicial mind. He has summoned the accused. Directed the Court to furnish copies under Section 207 Cr.P.C. For the first time, on 29.1.2013, the learned Magistrate mentions about filing of a protest petition by the complainant and adjourned the case to 18.3.2013 and to 8.4.2013 awaiting filing of protest petition. Ultimately, on 9.5.2013, the learned Magistrate straightway took cognizance on the negative final report in C.C. No. 27 of 2011.

31. It is well settled that the Magistrate can disagree with the negative final report filed by the Investigation Officer and take cognizance thereon, if there are materials to do so. But, before doing so, he must see whether there is any ground to proceed further. He must apply his judicial mind and then take decision. We have already stated that taking cognizance as against a person, has serious consequence. If it is not properly exercised, it will militate against Article 21, Constitution of India. Any order as against law is an illegal order. An order by the learned Magistrate directing a person to face a criminal case without applying his judicial mind is an illegal order. This is what the nature of the order passed by the learned Magistrate No. II, Krishnagiri in C.C. No. 27 of 2011. It will not stand the scrutiny of law. It is unsustainable in law.

32. Now, we will go to the second limb of the argument of the learned counsel for the appellant.

33. Section 482 Cr.P.C. reads as under:-

482. Saving of inherent power of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

34. Section 482 Cr.P.C. has three dimensions. It is intended (i) to implement any order passed under the Code of Criminal Procedure. (ii) to prevent abuse of process of any Court and (iii) to secure the ends of justice. Exercise of inherent power under Section 482 Cr.P.C. is not controlled by any other provisions of the Code. This is an independent power of the High Court. Actually, Section 482 Cr.P.C. does not confer any new or special power to the High Court. By the very fact of it being established as a Court of justice, this Court has inherent power 'to do justice and to prevent injustice'. Such a power has been possessed by the High Court by the fact of it being a Court from the very movement of its establishment. Section 482 Cr.P.C. 'saves', 'preserves' this pre-existing power of the High Court to do justice, interfere where there is injustice. Even before the Old Code of 1898 this power was with the Court. Queen Victoria's Charter, Indian High Courts Act, 1861 did not deprive this Court of its inherent power to do justice. High Court's power has been saved in the New Code of 1973.

35. This power is very wide and enormous in nature. There are self imposed limitations. Guidelines are also available in the section itself. But, when there is injustice, when there is flagrant violation of law, this Court has to exercise its inherent power and restore justice.

36. In *STATE OF HARYANA* v. *BHAJANLAL*, [1992 Supp (1) SCC 335], the Hon'ble Apex Court laid down certain guidelines for the exercise of power under Section 482 Cr.P.C.

37. The Hon'ble Apex Court observed as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

38. Although, there cannot be an elaborate trial in proceedings under Section 482 Cr.P.C. and a prosecution shall not be stifled at its nascent stage with reference to guideline (3) and (5) of para 102 in *BHAJANLAL* (supra), it may be necessary to refer to the materials presented by the Investigation Officer.

39. In this case, the first respondent complained of commission of two occurrences. First is on 16.8.2007, in the presence of his wife Chitra, Boobalan, Elango, Kamalanathan, Raj, Raj's daughter Iravathi, Amalraj and his father Venkatraman, on which he alleges that he gave Rs. 2 lakhs to the petitioner. Second occurrence is on 26.4.2011, that is in the house of the accused, when the first respondent demanded back his money, petitioner had assaulted him with a casuarina stick and criminally intimidated him, and it was witnessed to by witnesses.

40. In her statement under Section 161 Cr.P.C. Chitra has stated that no amount was given by her husband to the petitioner in her house. Iravathi, Raj, Amalraj and Venkatraman have also stated in their statement that in their presence, no amount was paid by the first respondent to the petitioner. Subashini, the daughter of the first respondent also did not say in her statement that her father has paid amount to the petitioner. None of the witnesses stated that the petitioner had assaulted the first respondent with a casuarina stick. There was no injury to the first respondent. There is no medical certificate.

41. In such circumstances, analyzing the evidence collected by him, the Investigation Officer formed his opinion that it is a false case and accordingly filed the negative final report before the learned Magistrate. The learned Magistrate disagreed with the conclusion of the Investigation Officer and took cognizance in C.C. No. 27 of 2011 without following proper procedure and law. If there are materials, undoubtedly, the learned Magistrate has power to do so. But, the materials presented by the Investigation Officer along with the final report to the court tallies with the opinion expressed by the Investigation Officer. It is clear that the learned Magistrate has not applied his judicial mind in taking the case on file. Thus, injustice has been meeted out to the petitioner. Thus, justice has to be restored to him. Securing justice is also a facet of the inherent power of this Court under Section 482 Cr.P.C. The principles laid down in *BHAJANLAL* (supra) squarely applies to the facts of this case. Thus, necessarily we must also sustain the second limb of the argument of the learned

counsel for the petitioner.

42. In view of the foregoings, this Criminal Original Petition is allowed. The entire criminal proceedings in C.C. No. 27 of 2011 pending on the file of the learned Judicial Magistrate No. II, Krishnagiri is quashed. Consequently, connected M.P. is closed.