

(1968) 03 MAD CK 0004
In the Madras High Court

C. Bhaktavatsalam

APPELLANT

Vs

V. Govindarajulu

RESPONDENT

Date of Decision : 05-03-1968

Acts Referred:

Citation : (1968) 2 MLJ 321

Hon'ble Judges : N. Krishnaswamy Reddy, J;N. Krishnaswami Reddy, J

Bench : Division Bench

Judgement

N. Krishnaswamy Reddy, J.—This petition has been filed by the first accused in C.C. No. 2270 of 1967 against the order of the Sixth

Presidency Magistrate overruling certain preliminary objections raised by him. The facts of the case relevant for the purpose of deciding the points

raised in this petition are briefly these:

2. The respondent V. Govindarajulu, a retired Deputy Administrator-General and Official Trustee, Madras, filed a private complaint against the

revision petitioner and two others alleging that they had committed the offence of criminal breach of trust and falsification of accounts in respect of

certain trust properties of Saidapet Annadhana Samajam which is a public charitable society, of which the petitioner was the Secretary and the

other two accused were the President and Treasurer, respectively. The Sixth Presidency Magistrate took the case on file. The revision petitioner

filed a petition before the learned Magistrate alleging firstly,, that the respondent was not a member of the Annadhana Samajam and as it is not

shown that he was interested in the Samajam or the school run by it, he is incompetent to file the complaint; secondly, that the respondent filed a

petition before the Deputy Commissioner of Crimes in respect of the same

matter and the said complaint was, referred as a mistake of fact and that subsequently he appealed to the Commissioner and the same was also dismissed and in those circumstances, the present complaint was not maintainable and its entertainment was barred; thirdly, that the complaint did not disclose any offence and so it was liable to be dismissed; and lastly, that at the instance of the respondent, a civil suit was filed in respect of the same facts alleged against the petitioner and the other accused and that the complaint filed while the suit was pending, without the sanction of the civil Court was not maintainable.

3. It has to be noted that after the Commissioner of Police disposed of the matter, the revision petitioner filed a complaint u/s 211, Indian Penal Code, against the respondent and that was dismissed. Subsequently the respondent filed the present complaint and it appears, a revision against that order is pending.

4. Learned Sixth Presidency Magistrate negatived all the contentions raised by the petitioner before him and in my opinion, rightly.

5. The learned Counsel appearing for the petitioner pressed before me the second point raised before the Magistrate, namely that the present complaint is barred as the complaint given by the respondent in respect of the same facts before the police was referred as mistake of fact and the Commissioner of Police on appeal by the respondent, refused to interfere with the order of the Police. He further contended that the present complaint is an abuse of process of Court as he had already exhausted his remedy before the police. There is absolutely no force in this contention.

The learned Magistrate took cognizance of the case u/s 190 (1) (a) of the Criminal Procedure Code. u/s 190 (1) (a), Criminal Procedure Code, a Magistrate having jurisdiction, may take cognizance of any offence upon receiving a complaint of facts which constitute such offence.

6. "Complaint" is defined u/s 4 (1) (h) of the Criminal Procedure Code as the allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a Police Officer.

7. u/s 200, Criminal Procedure Code, a Magistrate taking cognizance of an offence on complaint shall examine the complainant and the witnesses

present, if any, upon oath. u/s 202, Criminal Procedure Code, a Magistrate, on receipt of a complaint of an offence may either inquire into the case

himself or, if he is a Magistrate other than a Magistrate of the Third Class, direct an enquiry or investigation to be made by any Magistrate

subordinate to him, or by a Police Officer, for the purpose of ascertaining the truth or falsehood of the complaint. u/s 203, Criminal Procedure

Code, the Magistrate before whom a complaint is made, may dismiss the complaint, if, after considering the statement on oath (if any) of the

complainant and the witnesses and the result of the investigation or inquiry (if any) u/s 202, there is in his judgment no sufficient ground for

proceeding. These provisions make it clear that when a complaint is filed before a Magistrate, he may take cognizance of the case on examining the

complainant on oath or he may enquire himself or direct any other Police Officer for the purpose of ascertaining the truth of the case and if he is

satisfied from the examination of the complainant on oath and the report of the Police Officer that there are no sufficient grounds for proceeding

with the case he may dismiss it. What was preferred by the respondent before the Sixth Presidency Magistrate was a complaint within the meaning

of Section 4 (I) (h) of the Criminal Procedure Code. The Magistrate took cognizance of the case u/s 190 (I) (a), Criminal Procedure Code. The

learned Magistrate is fully competent to take cognizance on a complaint of a cognizable or a non-cognizable offence,. There is no prohibition under

the Criminal Procedure Code for a Magistrate, taking straightway cognizance of even a cognizable offence on a complaint preferred by the party.

If once the Magistrate had exercised his power u/s 203, Criminal Procedure Code, and dismissed such a complaint, whether a second complaint

would be barred is a matter which will very much depend upon the facts of each case. In the present case, it is not the case of the petitioner that

the Magistrate had taken cognizance of the matter already and dismissed it u/s 203, Criminal Procedure Code, and that the present complaint was

barred. But he contends that inasmuch as the information was laid in respect of the same facts covered by the present complaint to the Police

Officer and it was referred as 3 mistake of fact and on appeal, the Commissioner confirmed it, it must be deemed as dismissal of complaint by the,

Commissioner as he exercised the powers of a Presidency Magistrate in, the pithy of Madras. If as contended by the learned Counsel, the

Commissioner of Police exercised the powers of a Presidency Magistrate in respect of cognizance of cases u/s 190, Criminal Procedure Code,

there may be some force that once in that capacity the Commissioner of Police has dealt with the complaint, that the second complaint may amount

at least to abuse of process. But it appears to be clear that the Commissioner of Police has no power to take cognizance of a complaint u/s 190,

Criminal Procedure Code. u/s 7 of the Madras City Police Act, it is provided that the Commissioner shall by virtue of his office be a Presidency

Magistrate, but shall exercise his powers as Magistrate subject to such orders as may from time to time be issued by the State Government; The

State Government passed G.O. No. 1271 (Judicial) dated 13th August; 1898, which still seems to be in force is as follows:

In exercise of the power conferred upon him by Section 7 of the Madras Police Act, 1888 and in supersession of all previous orders on the

subject, the Governor-in-Council is pleased to declare that the Commissioner of Police,, Madras, shall not, in his capacity as a Presidency

Magistrate, exercise the power; of taking cognizance of offences u/s 190 of the Code of Criminal Procedure, except so far as may be necessary,

to receive "" occurrence reports"" u/s 157 and to deal with such reports u/s 159, and also to receive and dispose of reports submitted u/s 173 and

to make orders under Sub-section (3) of that section.

8. The above Government Order makes it clear that the Commissioner of Police in Madras is prohibited from exercising the power of taking

cognizance of offences u/s 190, Criminal Procedure Code. But, of course, under the same Government Order, the Commissioner of Police can

receive occurrence reports u/s 157, Criminal Procedure Code, and finally, reports u/s 173, Criminal Procedure Code, and he can also pass orders

u/s 173 (3) of the Code. An order passed by the Commissioner of Police u/s 173, Criminal Procedure Code, cannot under any circumstances be

a bar for a complaint to be filed by a party before a Magistrate who has jurisdiction to take cognizance of the complaint u/s 190, Criminal

Procedure Code. Even in a case where-the police investigate a cognizable offence in respect of the information received by them and submit a final

report u/s 173, Criminal Procedure Code, of which the Magistrate having jurisdiction takes cognizance by virtue of Section 190 (I) (b), Criminal

Procedure Code, I do not think there will be a bar for the Magistrate taking cognizance of a complaint filed by a party in respect of the same facts

u/s 190 (I) (a), Criminal Procedure Code, and proceed with the enquiry or the trial, as the case may be, or of both. The investigation by the police

of a cognizable offence has nothing to do with the Magistrate taking cognizance of the same matter on a complaint by a party. So, I am of the view

that the Commissioner of Police who passed the final orders referring the complaint given to the police as mistake of fact will not be a bar for a

complaint before a Magistrate having jurisdiction. As a matter of fact, it is the practice that when the police give a notice to the party referring the

case, such party is requested to file * complaint before a Magistrate, if so advised.

9. The learned Counsel for the petitioner relied upon two decisions of the Supreme Court, namely (I) Gopal Das v. State of Assam AIR 1961

S.C. 987 and Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, . In the earlier decision, the Supreme Court has stated that a complaint disclosing

cognizable offences may well justify a Magistrate in sending the complaint u/s 156 (3) to the police for investigation and if he does so then he would

have to proceed in the manner provided by Chapter XVI of the Criminal Procedure Code. The Supreme Court pointed out only the discretion

given to a Magistrate to direct the Police Officer to investigate the case u/s 156 (3). But this does not mean that the Magistrate has no power to

take cognizance of the case u/s 190 (1) (a) following the procedure laid down in Sections 200, 202 and 203 of the Code. It has been made clear

by the Supreme Court that the Magistrate should follow the procedure in taking cognizance of complaints even in cases where the Magistrate had

directed the police to investigate u/s 156 (3). In the second case, the Supreme Court has stated as follows:

An order of dismissal u/s 203, Criminal Procedure Code, is no bar to the entertainment of a second complaint on the same facts but it will be

entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the

nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not with reasonable diligence, have been

brought on the record in the previous proceedings have been adduced. It cannot be said to be in the interests of justice that after a decision has

been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into.

This decision will not at all apply to the facts of this case because there was no prior complaint before a Magistrate which ended in a dismissal u/s

203, Criminal Procedure Code. Similarly, another decision in Kumaraiah v. Chinna Naicker 1945 M.W.N. (CrL.) 144, is of no help to the

petitioner. That was also a case where a complaint filed by the party was dismissed u/s 203, Criminal Procedure Code, after the investigation by

the police u/s 202 of the Code and after such dismissal, a second complaint was filed. It was held that though a second complaint may not be

barred for its entertainment on the facts of the case, it might be an abuse of process. The learned Counsel for the petitioner relied upon another

decision in A.K. Roy Vs. State of West Bengal, . Even this decision is of no use in relation to the facts of this case. What is stated in that decision

is that when the police upon investigation has submitted a final report u/s 173, Criminal Procedure Code, a Magistrate cannot direct the police to

submit a charge-sheet; but he can take cognizance on the statement of facts contained in the final report, if those facts constitute an offence. I am

not able to see as to how this observation is relevant for this case.

10. I am, therefore, of the view that the complaint filed by the respondent is neither an abuse of process nor barred because of the prior

investigation by the police.