

(2007) 12 MAD CK 0182

In the Madras High Court

Case No : Criminal O.P. (MD) No. 9643 of 2005, Criminal MP. (MD) No. 6292 of 2005 and M.P. (MD) No. 1 of 2006

Dasan

APPELLANT

Vs

State of Tamil Nadu and Sundar Raj

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 200, 202, 203

Citation : (2008) 2 LW(Cri) 840

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R. Devaraj, for the Appellant; Siva Ayyappan, G.A. for Respondent No. 1 and C. Rajakumar, for the Respondent

Judgement

S. Nagamuthu, J.—The petitioner is one of the accused in C.C. No. 182 of 2005 on the file of the learned Judicial Magistrate No. II,

Kuzhithurai. He has come forward with this petition seeking to quash the said proceedings.

2. The second respondent is the defacto complainant in this case. Originally there was another case in C.C. No. 75 of 1996 against the second

respondent herein, before the learned Judicial Magistrate No. II, Kuzhithurai for certain offences. The said case ended in acquittal on 22.08.1996.

The second respondent is working in Indian Army. The petitioner herein was the defacto complainant in the said case.

3. According to the present allegations, the petitioner along with the second accused, who was a Record Clerk in the said Court created a forged

document, as if the same was issued by the learned Judicial Magistrate No. II, Kuzhithurai stating that the case in C.C. No. 57 of 1995 was

pending as on 22.08.1996. The said certificates were produced before the employer of the second respondent by the petitioner with a view to see

that he is removed from service. When the second respondent was called upon to explain, he told his employer that the case in C.C. No. 57 of

1995 ended in acquittal even on 22.08.1996 itself. Thereafter, the second respondent approached the learned Judicial Magistrate No. II,

Kuzhithurai and then came to know that the petitioner and the second accused who was then a Record Clerk of the Court have created the said

forged documents. Thereafter, the second respondent has filed a private complaint before the learned Judicial Magistrate No. II, Kuzhithurai on

12.07.2000 against the petitioner for alleged offence of forgery and other offences.

4. The learned Judicial Magistrate took cognizance of the offences and recorded the statement of the second respondent u/s 200 Cr.P.C. on

27.02.2001. Thereafter, the learned Judicial Magistrate by order dated 17.10.2002 in CMP. No. 3873 of 2000 directed the first respondent

herein to investigate into the allegations as required u/s 202 Cr.P.C. and submit a report. The said order was duly communicated to the first

respondent.

5. The first respondent, on a misconception as if it is an order made u/s 156 (3) of Cr.P.C. registered a case in Crime No. 31 of 2003 on

26.12.2003. Thereafter, the first respondent investigated the case and filed a final police report on 06.01.2005. The learned Judicial Magistrate by

order dated 06.10.2005, took cognizance on the said police final report and ordered issuance of process to the petitioner and to the second

accused. The petitioner challenges the said case in C.C. No. 182 of 2005.

6. Heard the learned Counsel for the petitioner, learned Government Advocate (Crl.Side) and the learned Counsel for the second respondent.

7. The learned Counsel for the petitioner would submit that the order taking cognizance by the learned Judicial Magistrate is without jurisdiction

and the same is illegal and therefore the entire proceedings require to be quashed. The learned Government Advocate (Crl.Side) would however

submit that since there was a direction issued by the learned Judicial Magistrate to investigate, a case was registered, investigated and a report was

duly filed. Therefore, according to the learned Government Advocate (Crl.Side)

there is nothing illegal on the part of the learned Magistrate to take cognizance on the said final report. The learned Counsel appearing for the second respondent would submit that the procedure adopted by the learned Judicial Magistrate is not legal and therefore appropriate direction may be issued.

8. I have considered the rival contentions and also perused the records carefully.

9. This case is a classic example as to how a learned Judicial Magistrate as well as the first respondent, the Inspector of Police have misunderstood

the provisions of the Code of Criminal Procedure. In the instant case, on the private complaint filed, learned Judicial Magistrate took cognizance

on the date of filing of the complaint itself. Thereafter, the learned Judicial Magistrate has proceeded to record the statement of the complainant u/s

200 Cr.P.C rightly. Having considered the facts and circumstances, the learned Judicial Magistrate rightly thought it fit to refer the case to the

Police u/s 202 Cr.P.C. for investigation and for submission of report. A perusal of the order of the learned Judicial Magistrate would clearly show

that he has rightly invoked and referred only Section 202 Cr.P.C and he has not referred to Section 156(3) Cr.P.C. at all. But the Inspector of

Police had misunderstood the said direction of the learned Magistrate and had chosen to register a case on the said complaint. There can be no

second opinion that the registration of the case is not legal. Thereafter he investigated into the allegations and finally submitted a final report.

10. The Officer who investigated the case again misunderstood the provision and had chosen to file a final report u/s 173 Cr.P.C instead of

submitting a report as required u/s 202 Cr.P.C. The learned Judicial Magistrate also has misunderstood the provision and has taken cognizance

treating the said report of the Police Officer as a report u/s 173 Cr.P.C. Thereafter he issued summons to the accused. Having taken cognizance

once on the private complaint, and when the said case is pending on his file, it is absolutely illegal on the part of the learned Magistrate to take

cognizance again in respect of the same offence, treating the report of the police as the one filed u/s 173 Cr.P.C. Therefore, I cannot have even

slightest hesitation to quash the proceedings in C.C. No. 182 of 2005 since the very order taking cognizance is illegal.

11. At the same time, mere quashing the said calendar case would not be in the

interest of justice as the said course would render the second respondent who is an aggrieved party remediless. Therefore, as rightly pointed by the learned Counsel for the second respondent, necessary directions are to be issued. It is to be remembered that no act of Court shall prejudice a party. Applying the said principle and considering the request of the learned Counsel for the second respondent and also considering the facts and circumstances, the following order is passed.

a) the entire proceedings in C.C. No. 182 of 2005 on the file of the learned Judicial Magistrate No. II, Kuzhithurai is quashed.

b) the learned Judicial Magistrate No. II, Kuzhithurai is directed to treat the report of the first respondent filed as a final report only as a report u/s

202 Cr.P.C. and to consider the same along with the private complaint filed originally and the statement of the complainant recorded u/s 200

Cr.P.C. and to proceed further either to pass an order u/s 203 Cr.P.C. or to issue process u/s 204 Cr.P.C. by independently assessing the

materials available on record.

12. The criminal original petition stands disposed of as indicated above. Consequently, connected miscellaneous petitions are closed.