

(2004) 03 MAD CK 0111

In the Madras High Court

Case No : Criminal O.P. No. 4118 of 2004 and Criminal M.P. No's. 1137 and 1138 of 2004

K.C. Palanisamy, C.K. Palanisamy, A. Shanmugam and N. Krishnaraj

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2004) 03 MAD CK 0111

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : S. Ashok Kumar, for the Appellant; V. Jayaprakash Narayanan, Government Advocate (Crl.Side), for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—This petition has been filed u/s 482 to quash the charge against the petitioners pending in C.C.No.18 of 2003 pending

on the file of the Judicial Magistrate-III, Coimbatore.

2. The brief facts of the case are as follows: The respondent police filed charge sheet against the petitioners alleging that with the common intention

of committing offences of forgery of valuable securities and using them as genuine they filed the same before the Deputy Registrar of Chits,

Coimbatore in ARC No.309 to 314 of 2001 and thus A1 committed an offence u/s 467 IPC r/w 471 IPC and A2 to A4 u/s 467 r/w 471 and 34

IPC.

3. The final report filed by the respondent has been taken on file as C.C.18 of 2003 on the file of the Judicial Magistrate-III , Coimbatore. The

contention of the learned counsel for the petitioners is that the charge against the petitioners/accused should be quashed on the ground that even as

per the averments made in the final report, the accused are alleged to have committed an offence u/s 467, 468 and 472 and also read with sec. 34

IPC with intent to use the forged documents as genuine in the false claim petition filed by Cheran Chit Funds Pvt. Ltd., against the complainant

K.Venkatachalam before the Deputy Registrar of Chits, Coimbatore in ARC Nos.309 to 314 of 2001.As per the final report itself, on 25.5.2002

the proceedings before the Deputy Registrar of Chits in ARC Nos.309 to 314 of 201 are pending. In such circumstances, the learned Magistrate

ought not to have taken cognizance of the offences alleged in the final report since taking cognizance of the offence alleged to have been committed

in respect of the document produced or given in evidence in a proceeding in any court is barred under Sec. 195(1)(b) of Cr.P.C., Further, such a

complaint shall be given only by the Court where the alleged documents have been used. Therefore, the cognizance taken by the learned

Magistrate is against the provisions of the Court and entertaining the very complaint itself is abuse of process of court and the proceedings are

liable to quashed.

4. Learned counsel would rely upon the decision reported in Daulat Ram Vs. State of Punjab, wherein the Supreme Court has held as follows:

(Para-3&4)

3. The only question in this case is whether a complaint in writing as required by S. 195 had been presented by the public servant concerned. The

public servant who was moved by the appellant was undoubtedly the Tehsildar. Whether the appellant wanted the Tehsildar to take action or not,

the fact remains that he moved the Tehsildar on what is stated to be a false averment of facts. He had charged Hans Raj and Kans Raj with

offences under the Penal Code and he had moved his superior officer for action even though he might have stated in the letter that it was only for

his information. We are prepared to assume that he expected that some action would be taken. In fact his second letter that he had compromised

the matter and the proceedings might be dropped clearly shows that he anticipated some action on the part of his superior officer. The question is

therefore whether under the provisions of S. 195, it was not incumbent on the

Tehsildar to present a complaint in writing against the appellant and not leave the Court to be moved by the police by putting in a charge sheet. The words of S. 195 of the Criminal Procedure Code are explicit. The

Section reads as follows:

(1) No Court shall take cognizance --

(a) of any offence punishable under Ss. 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned,

or of some other public servant to whom he is subordinate;

.....

The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance

except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide

therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police

officers in filing the charge sheet had satisfied the requirements of S. 195. The words ""no court shall take cognizance"" have been interpreted on

more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the

section.

(4) Now the offence under S. 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action.

Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be

taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt

that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the

complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a

complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State

Government tries to support the action by submitting that S. 195 had been complied with inasmuch as when the allegations had been disproved,

the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calender." (sic) This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of S. 195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

Subsequently in the decision reported *Sachida Nand Singh Vs. State of Bihar* 1998 SCC 660, wherein the Supreme Court has held as follows:

(Paras 6&7)

6. A reading of the clause reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. There is no dispute before us that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. There is also no dispute that if forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person. If so, will its production in a court make all the difference?

7. Even if the clause is capable of two interpretations we are inclined to choose the narrower interpretation for obvious reasons. Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise (*Abdul Wahed Khan V. Bhavani*).

Thereafter in SLP(Crl) No.4111 of 2000 the said case was referred to a larger bench by a Bench of Hon"ble three Judges wherein the Supreme

Court has held as follows:

The question for consideration in this case is whether though the allegation in the complaint filed relates to an act of forgery of a document which

is the subject matter of a pending probate proceeding, bar u/s 195, Cr.P.C., for taking cognizance would apply or not. In Sachida Nand Singh Vs.

State of Bihar Aar. (1998)2 SCC 493, the 3-Judge Bench of this Court have come to a conclusion that unless and until the alleged forgery is

said to have been committed in respect of a document, which was in the custody of the Court, then the bar u/s 195 will not get attracted. This

broad conclusion has not taken into consideration as to how the alternative in section 195(1)(b)(ii) of the Code of Criminal Procedure "was given

in evidence in a proceeding" could be construed. In the aforesaid premises, we think it appropriate that the matter should be referred to a larger

Bench and the records of the proceeding may be placed before Hon"ble the Chief Justice of India for constituting a larger Bench to consider this

question. Pursuance to the summons issued in the complaint case, the accused must appear before the Magistrate and then apply for bail and on

such an application for bail being filed, he may be released on bail. The further proceeding in the criminal case may thereafter be stayed. The

probate proceeding may come to logical conclusion as expeditiously as possible.

5. From the above said decisions it is clear that under Sec. 195(1)(b) of Cr.P.C., no court shall take cognizance of any offence punishable under

Sections. 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant

to whom he is subordinate. So far as the case on hand is concerned, even assuming that the petitioners committed offence under Sections 467,

468 and 472 IPC before the Deputy Registrar of Chits in the Proceedings ARC Nos.309-314 of 2001 which is still pending, only the concerned

Deputy Registrar of Chits should have filed a complaint based on which charge should have been framed against the petitioners/accused. But, no

such complaint has been forwarded by the said Deputy Registrar of Chits, Coimbatore. A case has been registered on the complaint of one

K.Venkatachalam who is a party to the proceedings in ARC Nos.309 to 314 of

2001 said to be pending. Therefore in such circumstances, the final report filed by the respondent police is not maintainable since the court cannot take cognizance of the offence, unless the same is complained in writing by the public servant concerned, i.e., the Deputy Registrar of Chits, Coimbatore in this case. Therefore, the proceedings in C.c.No.18 of 2003 pending before the Judicial Magistrate No.3, Coimbatore is liable to be quashed. Accordingly the same is quashed. The Crl.O.P is allowed. Consequently the connected Crl.M.Ps are closed.