
(2010) 10 MAD CK 0116

In the Madras High Court

Case No : Contempt Petition (MD) No. 534 of 2010

K.K. Ramesh

APPELLANT

Vs

Thangavel, Inspector of Police

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 173(1), 190(1), 200
Penal Code, 1860 (IPC) — Section 147, 148, 294, 307, 324

Citation : (2010) 10 MAD CK 0116

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; R.M. Anbunithi, Government Advocate (Crl. Side), for the Respondent

Judgement

G. Rajasuria, J.—This Contempt Petition is focussed to punish the respondent herein for his wilful disobedience of the order passed by this

Court in Crl.O.P. No. 5022 of 2009 dated 29.06.2010.

2. The petitioner/party-in-person is present and the learned Government Advocate (Criminal Side) is also present along with the respondent,

namely Thangavel, Inspector of Police, C1, Thideer Nagar Police Station, Madurai.

3. The nut-shell facts would run thus:

(a) The police earlier registered a case in Cr. No. 1761 of 2008 for the offences punishable under Sections 147, 148, 341, 307, 506(2) I.P.C. as

against ten persons consequent upon the complaint having been referred to the police by the learned Magistrate concerned, u/s 156(3) Code of

Criminal Procedure The police investigated into the offence and laid the police report invoking Sections 147, 341, 294(b), 506(ii) I.P.C. The

learned Magistrate took it on file and numbered it as C.C. No. 146 of 2009.

(b) While so, the defacto complainant, the petitioner herein filed necessary petition before the learned Magistrate seeking direction from him for ordering further investigation into the matter. The learned Magistrate dismissed that petition. Whereupon, a Criminal Revision Case was filed and in that, this Court remitted the matter to the learned Magistrate and thereupon, the learned Magistrate, on 08.01.2010, directed the police to conduct further investigation. However, the police was inert and hence, the petitioner herein was constrained to file Crl.O.P. (MD) No. 5022 of 2010 and obtained a direction from this Court on 29.06.2010 and as per which, this Court directed the police to complete the investigation and file the final report within a period of one month from the date of receipt of a copy of the order, which means that by 09.08.2010, the police ought to have laid the supplementary/additional charge sheet.

4. Being dissatisfied with the procedure adopted by the police, the party-in-person filed the present Contempt Petition.

5. The counter affidavit has been filed pleading that owing to busy work and, law and order problem, the respondent police officer could not

complete the investigation and file necessary report within 09.08.2010, but he filed the final report on 06.09.2010 before the learned Magistrate.

6. The learned Government Advocate (Criminal Side) would submit that the police officer did his best and he cannot be found fault with and that

the respondent police officer may be exonerated from this contempt proceedings.

7. Whereas the petitioner/party-in-person would submit that the charge sheet filed is not in accordance with law as the police officer only invoked

Sections 147, 341, 294(b), 506(ii) I.P.C, leaving major Sections 307 and 148 etc. According to him, the police officer failed to discharge his duty

and he has not complied with the order of this Court.

8. At this juncture, I would like to point out that there is apparently delay of nearly one month for which the police officer would plead that because

of the law and order problem, he was not in a position to file the charge sheet within the stipulated time.

9. Taking into account the averments put forth by the police officer, I would like to condone the delay. However, the grievance of the petitioner is

that the police officer did not search and seize the vehicle concerned in which the accused persons came to the place of occurrence and attempted

to attack him and that as an individual, he cannot go and seize the vehicle and only the police can do it.

10. Furthermore, his case is that even though no physical injury was inflicted on him by the accused, yet he narrowly escaped from the said brutal attack leveled as against him by the accused.

11. I would like to recollect the following decisions of the Honourable Apex Court:

(i) Abhinandan Jha and Others Vs. Dinesh Mishra, .

(ii) H.S. Bains, v. The State (Union Territory of Chandigarh), reported in AIR 1980 Supreme Court 1883. An excerpt from it, would run thus:

6. It is seen from the provisions to which we have referred in the preceding paras that on receipt of a complaint a Magistrate has several courses

open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present u/s 200.

Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint u/s 203. If in his opinion there is sufficient

ground for proceeding he may issue process u/s 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the

case himself or direct an investigation to be made by a police officer or such other person as he thinks fit for the purpose of deciding whether or

not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the

complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may,

instead of taking cognizance of the offence, order an investigation u/s 156(3). The police will then investigate and submit a report u/s 173(1). On

receiving the police report the Magistrate may take cognizance of the offence u/s 190(1)(b) and straight away issue process. This he may do

irrespective of the view expressed by the police in their report whether an offence has been made out or not. The police report u/s 173 will contain

the facts discovered or unearthed by the police and the conclusions drawn by the police therefrom. The Magistrate is not bound by the conclusions

drawn by the police and he may decide to issue process even if the police recommend that there is no sufficient ground for proceeding further. The

Magistrate after receiving the police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on

the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present

u/s 200 of the Code of Criminal Procedure and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had

earlier ordered an investigation u/s 156(3) and received a report u/s 173 will not have the effect of total effacement of the complaint and therefore

the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an

investigation u/s 156(3) and receives a police report u/s 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient

ground for proceeding further and drop action; (2) he may take cognizance of the offence u/s 190(1)(b) on the basis of the police report and issue

process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of

the offence u/s 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses u/s 200. If he

adopts the third alternative, he may hold or direct an inquiry u/s 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as

the case may be.

7. In *Abhinandan Jha v. Dinesh Mishra*, the question arose whether a Magistrate to whom a report u/s 173(1) had been submitted to the effect that

no case had been made out against the accused, could direct the police to file a charge-sheet, on his disagreeing with the report submitted by the

police. This Court held that the Magistrate had no jurisdiction to direct the police to submit a charge-sheet. It was open to the Magistrate to agree

or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused, he might accept

the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect u/s

156(3). If ultimately the Magistrate was of the opinion that the fact set out in the police report constituted an offence he could take cognizance of

the offence, notwithstanding the contrary opinion of the police expressed in the report. While expressing the opinion that the Magistrate could take

cognizance of the offence notwithstanding the contrary opinion of the police the court observed that the Magistrate could take cognizance under

Section 190(1)(c)". We do not have any doubt that the reference to "Section 190(1)(c)" was a mistake for "Section 190(1)(b)". That appears to be obvious to us. But Shri Kapil Sibal urged that the reference was indeed to Section 190(1)(c) since at that time Section 190(1)(c) included the words "or suspicion" and the court had apparently taken the view that the Magistrate could take cognizance of the offence not u/s 190(1)(a) as if on a police report but u/s 190(1)(c) as if "on suspicion". We do not agree with this submission. Section 190(1)(c) was never intended to apply to cases where there was a police report u/s 173(1). We find it impossible to say that a Magistrate who takes cognizance of an offence on the basis of the facts disclosed in a police report must be said to have taken cognizance of the offence on suspicion and not upon a police report merely because the Magistrate and the police arrived at different conclusions from the facts. The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. If a complainant states the relevant facts in his complaint and alleges that the accused is guilty of an offence u/s 307 of the Indian Penal Code the Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclose an offence u/s 324 of the Indian Penal Code only and he may take cognizance of an offence u/s 324 instead of Section 307. Similarly if a police report mentions that half a dozen persons examined by them claim to be eyewitnesses to a murder but that for various reasons the witnesses could not be believed, the Magistrate is not bound to accept the opinion of the police regarding the credibility of the witnesses. He may prefer to ignore the conclusions of the police regarding the credibility of the witnesses and take cognizance of the offence. If he does so, it would be on the basis of the statements of the witnesses as revealed by the police report. He would be taking cognizance upon the facts disclosed by the police report though not on the conclusions arrived at by the police. It could not be said in such a case that he was taking cognizance on suspicion.

8. In *Tula Ram v. Kishore Singh* the Magistrate, on receiving a complaint, ordered an investigation u/s 156(3). The police submitted a report indicating that no case had been made out against the accused. The court, however, recorded the statements of the complainant and the witnesses

and issued process against the accused. It was contended that the Magistrate acted without jurisdiction in taking cognizance of the case as if upon

a complaint when the police had submitted a report that no case had been made out against the accused. This Court held that the Magistrate acted

within his powers and observed that the complaint did not get exhausted as soon as the Magistrate ordered an investigation u/s 156(3). We are,

therefore, unable to agree with the submission of Shri Sibal that the Magistrate acted without jurisdiction in taking cognizance of the offence and

issuing process to the accused notwithstanding the fact that the police report was to the effect that no case had been made out.

(iii) Tula Ram and Others Vs. Kishore Singh, .

(iv) Ram Lal Narang Vs. State (Delhi Administration), .

12. The learned Magistrate also may keep in mind the following precedents:

(i) State of M.P v. Mishrilal reported in 2003 SCC 1829.

(ii) Sudhir and Others etc. Vs. State of M.P. etc., .

(iii) Nathilal and Ors. v. State of U.P. and Anr. reported in (1990) SCC 638.

13. A mere perusal of the above said decisions would amply make the point clear that in matters of this nature, the crucial role to be played is by

the learned Magistrate concerned. It is for the petitioner to file necessary protest petition before the learned Magistrate within a period of ten days

from the date of receipt of a copy of this order expressing his grievance, whereupon the learned Magistrate has to resort to any one of the

procedures contemplated in the aforesaid decisions and accordingly, deal with the matter.

14. As such, by issuing the aforesaid direction, this Contempt Petition stands closed.