
(2015) 02 MAD CK 0177

In the Madras High Court

Case No : Criminal Revision Case (MD) No. 527 of 2014

N. Rengasamy

APPELLANT

Vs

Latha and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161(3)
Penal Code, 1860 (IPC) — Section 147, 148, 324, 341, 365

Citation : (2015) 02 MAD CK 0177

Hon'ble Judges : M. Sathyanarayanan, J.

Bench : Single Bench

Advocate : D. Malaichamy, for the Appellant; P. Kandasamy, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J.—By consent, the main revision itself is taken up for disposal.

2. The petitioner is the de facto complainant in Crime No. 57 of 2011 registered by the 12th respondent namely, the Inspector of Police, Theni Police Station.

3. It is the case of the revision petitioner/de facto complainant that between him and the 1st respondent namely, Latha @ Venkatammal, number of civil litigations are pending on the file of the jurisdictional court namely, the Court at Uthamapalayam, Theni District and the 1st respondent and her relatives were attempting to abduct the petitioner, for the purpose of grabbing his property and all of them are capable of doing criminal acts. It is further alleged by the revision petitioner/de facto complainant, such attempt was also made on 22.04.2008. When the revision petitioner/de facto complainant came to Sub Court, Theni, to attend the hearing on 13.04.2010, he was followed by the respondents 1 to 11 and they formed themselves into an unlawful assembly and prevented the revision petitioner to proceed further. The 2nd respondent asked the other respondents to abduct him and get his property. Accordingly, all of them forcibly

took the revision petitioner in an Auto and after proceeding for sometime, the 8th respondent branded his knife and forcibly obtained his signature in various blank papers and respondents 1 and 2 told him that when this fact is disclosed, he will be murdered. Respondents 6, 7 and 9 sprayed some chemically tainted powder on his eyes and consequently, he developed burning in his eyes and when he raised alarm, the public present there got assembled and the respondents 1 to 11 ran away from the scene of occurrence.

4. The revision petitioner immediately proceeded to Theni Police Station and lodged a complaint and it was refused to receive and sometime thereafter, he sent a representation to the Jurisdictional Superintendent of Police and on that representation, no proper action was taken and on account of the acts of the respondents 1 to 11, his eye sight became poor. The revision petitioner/de facto complainant would further state that he has also submitted a representation on 26.08.2010 to the Inspector General of Police, South Zone, and it was forwarded to the Superintendent of Police, Theni, and though the said official directed the Jurisdictional Police Station to enquire into, no proper action was taken and it was closed. Again, the revision petitioner submitted a representation on 16.12.2010 to the Inspector General of Police, South Zone, with a copy marked to the Superintendent of Police and Jurisdictional Police Station and once again it was refused to be taken cognizance by the Jurisdictional Police Station. Therefore, the petitioner filed a private complaint on the file of the Court of Judicial Magistrate, Theni, and it was forwarded to the Jurisdictional Police under Section 156(3) Cr.P.C, based on which, a case in Crime No. 57/2011 was registered for the alleged commission of offences under Sections 147, 148, 341, 365, 324 and 506(ii) IPC on 31.11.2011.

5. The Inspector of Police, Theni Police Station, after recording the statement of witnesses, including the revision petitioner/de facto complainant, has concluded that the 1st respondent/1st accused is none other than his wife and the said fact has been deliberately suppressed and prior to marrying the 1st respondent, the revision petitioner already married twice and though he filed a petition for divorce against the 1st respondent, the court directed him to live together and between them, there are very many litigations pending and that in order to get a favourable verdicts in the litigations pending between him and the 1st respondent, he has chosen to lodge the said complaint and citing the said reason, he has closed the case as mistake of fact and filed RC.No.1272063 on the file of the Court of Judicial Magistrate at Theni.

6. The revision petitioner/de facto complainant filed a protest petition in Crl.M.P. No.8086 of 2014 stating among other things that the Jurisdictional Police did not properly record statements and also not examined the concerned witnesses and without conducting a fair and proper investigation, has closed the case as mistake of fact. He is still under the apprehension that his life is in danger and therefore prayed for further investigation.

7. The Court of Judicial Magistrate, Theni, vide impugned order dated 27.10.2014

has dismissed the protest petition on the ground that it is not even the case of the revision petitioner/de facto complainant that his statement has not been recorded and further found that the investigating officer has recorded the statement of witnesses under Section 161(3) of Cr.P.C. and at the time of enquiry in the protest petition, a document evidencing the treatment for eyes, given to the petitioner was filed and it is dated 11.06.2012, whereas the alleged occurrence took place on 13.04.2010. The learned Magistrate held that the said document produced by the petitioner shows that he has taken treatment nearly after two years from the commission of the crime and therefore, it cannot be believed. The lower court further found that after filing the final report, some documents have been brought into being by the revision petitioner/de facto complainant, only for the purpose of the case and also found that the revision petitioner had suppressed the fact that he is the husband of the 1st respondent and also suppressed the material fact relating to the pendency of many civil litigations and therefore, he has failed to approach the court with clean hands. The lower court citing the said reasons, dismissed the protest petition. Aggrieved by the same, the present revision is filed by the de facto complainant.

8. Learned counsel appearing for the petitioner would vehemently contend that even for registration of the case, the revision petitioner/de facto complainant was made to run from pillar to post and at last, his prayer was answered by the trial court and it ordered investigation of the case under Section 156(3) of Cr.P.C. Thereafter only, FIR came to be registered on 31.01.2011 and in spite of the orders passed by the lower court, the Jurisdictional Police did not conduct investigation in a fair and proper manner and colluded with the accused and closed the case as mistake of fact and the lower court without appreciating the contentions put forth by the petitioner in the protest petition, has simply chosen to accept the final report filed by the Jurisdictional Police and therefore prays for interference.

9. Per contra, Mr.P.Kandasamy, learned Government Advocate (Crl.Side) would submit that 12th respondent on a fair and proper investigation of the case, has rightly concluded that the case is required to be closed as mistake of fact. The learned Magistrate after due and fair application of mind has also dismissed the protest petition and therefore prays for dismissal of the revision.

10. In response to the said submission, learned counsel for the petitioner would submit that the Jurisdictional Court in any event, ought to have examined the revision petitioner/de facto complainant on oath, to find out the truth and veracity of the averments made in the protest petition and it has failed to do so. In support of his submission, he placed reliance on the decisions reported in Vasanti Dubey Vs. State of Madhya Pradesh, and Sita Ram and Others Vs. The State of U.P. and Rajendra Bhushan, .

11. This Court paid its" best attention to the rival submissions and also perused the materials available on record in the form of typed set of documents.

12. According to the revision petitioner/de facto complainant, the alleged occurrence took place on 13.04.2010 and on that date, the revision petitioner after attending the court hearing at Sub Court, Theni, was returning and at that time, he was abducted by all the accused and his signatures were forcibly obtained in number of blank papers under the threat of murder and some of the accused has also sprayed chemically tainted powder on his eyes and he developed burning in his eyes and though he immediately lodged a complaint, it did not fructify and many attempts made by him to get redressal through the higher officials of the Jurisdictional Police also ended in futile and therefore, the petitioner lodged a private complaint and the Jurisdictional Court has ordered enquiry under Section 156(3) Cr.P.C. and thereafter, FIR came to be registered on 31.01.2011 nearly after one and half years from the date of occurrence.

13. This Court has gone through 161(3) statement as well as the final report closing the case as mistake of fact. It is to be pointed out at this juncture that the 1st respondent is none other than the wife of the revision petitioner/de facto complainant and admittedly, very many civil litigations are pending between them in the Jurisdictional District Court as well as the Sub Court Uthamapalayam at Theni District. It is the version of the de facto complainant that the alleged occurrence took place on 13.04.2010. However, in the complaint, he has not given any specific date as to when he has first approached the Jurisdictional Police and as per his complaint on 26.08.2010, he submitted a representation to the Inspector General of Police, South Zone, and no action was taken, which necessitated him to file a private complaint. Based on the orders passed by the Jurisdictional Magistrate under Section 156(3) Cr.P.C., FIR came to be registered.

14. The grievance expressed by the petitioner is that his statement has not been properly recorded. However, in the considered opinion of this Court, it is not so. The 12th respondent has recorded the statement of relevant witnesses and in fact, one of the witnesses has also spoken about the personal character of the petitioner/de facto complainant. The 12th respondent/investigating officer after conclusion of the enquiry has reached the conclusion that on account of pending litigations, the petitioner has chosen to make such kind of allegation and therefore, closed the case as mistake of fact. In fact, the Jurisdictional Court also has gone through 161(3) statement recorded by the Jurisdictional Police and reached the conclusion that the petitioner has deliberately suppressed the material fact and failed to approach the Court with clean hands and only to gain unfair advantage in pending civil litigation, he has chosen to make such kind of allegation.

15. In *Sita Ram and Others Vs. The State of U.P. and Rajendra Bhushan*, , dismissal of the protest petition came to be set aside, for the reason that the concerned Magistrate has not discussed any evidence collected by the investigating officer during investigation and he has not even made reference to such findings. But in the case on hand, the Jurisdictional Magistrate has referred to the statement recorded by the Jurisdictional Police under Section 161(3) Cr.P.C

and reached the conclusion.

16. In *Vasanti Dubey Vs. State of Madhya Pradesh*, , the Hon''ble Supreme Court has laid down the proposition that de hors the closure report of the case filed by the police/investigating agency, the Jurisdictional Court can take cognizance on applying its mind independently to the case.

17. This Court, with regard to the said proposition laid down by the Hon''ble Supreme Court, is of the view that there cannot be any difficulty in accepting the same. But the facts of the present case would disclose that the learned Magistrate has duly applied his mind to the materials collected by the investigating agency during the course of investigation and rightly concluded that the closure report filed by the police is acceptable and rightly dismissed the protest petition.

18. This Court on independent application of mind to the entire materials placed before it, is of the view that there is no error apparent or infirmity in the reasons assigned by the Jurisdictional Court for dismissing the protest petition. This Court finds no reason to interfere with the impugned order. Therefore, the revision petition is dismissed. It is open to the revision petitioner to work out his remedy in the manner known to law, if so advised. No costs.