

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28/02/2003

Coram

The Honourable Mr. Justice A. PACKIARAJ

CRL. R.C. No. 89 of 2001 and CRL.R.C. 97 of 2001
and
CRL. MP. Nos.509 and 510 of 2001

Criminal RC NO.89 of 2001

1. M/s. M.O. Hasan Muthoos Maricar (P) Ltd.,
by its Managing Director,
M.O.H. Iqbal,
121, Mahatma Gandhi Road,
Muthialpet, Pondicherry.

2. M.O.H. Iqbal
3. F. Shajahan
4. I. Waheeda .. Petitioners

-Vs-

1. U. Nargis
2. M/s. Agata International (P) Ltd.,
by its Managing Director, C. Durairaj,
24, Ramakrishna Street,
T. Nagar, Chennai - 17.
3. C. Durairaj
4. R. Mohan
5. Mrs. Ranjana Khanna
6. Murali Rajagopalan
7. S. Radhakrishnan .. Respondents

Criminal RC NO.97 of 2001

1. Murali Rajagopalan
2. S. Radhakrishnan .. Petitioners

vs.

1. U. Nargis
2. M/s. Agata International (P) Ltd.,
by its Managing Director, C. Durairaj
24, Ramakrishna Street,
T. Nagar, Chennai - 17.
3. C. Durairaj

4. R. Mohan
5. Mrs. Ranjana Khanna
6. M/s. M.O.Hasan Muthoos Maricar (P) Ltd.,
by its Managing Director, M.O.H. Iqbal,
121, Mahatma Gandhi Road,
Muthialpet,
Pondicherry.
7. M.O.H. Iqbal
8. F. Shajahan
9. I. Waheeda .. Respondents

Criminal Revisions against the Orders dated 1.12.2000 passed in C. C. No.336 of 2000 on the file of the Judicial Magistrate-II, Pondicherry as stated therein.

!For petitioners: Mr. G.R. Swaminathan
in Crl.RC Nos.89 and 97 of 2001

^For respondents : Mr. V. Sairam for R1 in Crl RC
No.89/2001 and in Crl.RC. No.97/2001

Mr. Ashok Kumar for R2 to R5 in
Crl.RC. 97/2001.

:O R D E R

These revisions arise out of a common order passed by the Judicial Magistrate No.II, Pondicherry in C.C. No.336 of 2000 directing the cognizance of offence under Section 120(b), 456, 467 IPC against A1 to A4 who are the petitioners in Crl.RC. No.89 of 2000 and two others viz., A9, A10 who are the petitioners in Crl. RC. No.97/2 000. The other accused namely A5 to A8 are respondents in Crl.RC. No.89 of 2001 who have also claimed the same benefit as that the petitioners in both the revisions.

2. The brief facts and circumstances which led to the filing of these revisions are as follows:-

The respondent, by name, U. Nargis filed a private complaint before Judicial Magistrate No.II, Pondicherry stating that accused Nos 1 to 4 asked for a loan from the firm of accused Nos.5 to 8 to meet their expenses for which accused Nos. 5 to 8 wanted the properties as collateral security for which they executed by a general Power of Attorney on 10.11.1997 in favour of the firm belonging to A5 to A8. As if the Power of Attorney was executed by the complainant, the signature of the complainant was forged in the said document. Based on the forged document, accused Nos. 5 to 8 with the help of accused Nos. 2 to 4 had mortgaged the property on 26.7.1997. This, in short,

is the allegation against the accused. For the purpose of disposing of these revisions, further facts are not necessary.

3. The learned Magistrate on receipt of the complaint by his Order dated 29.8.2000, ordered enquiry under Section 202 Cr.P.C. by the Superintendent of Police (South), Pondicherry. The concerned Officer apparently had taken up the matter for investigation but went on seeking time from the learned Magistrate till 20.11.2000 during which period he had adjourned the matter for more than three occasions and on those three occasions the Superintendent of Police had not filed any report and even on 20.11.2000, the learned Magistrate has made entry in the 'B' Diary stating that the report under Section 202 Cr.P.C. has not been received from the Police. Then, he had posted the matter to 27.11.2000, 29.11.2000, 30.11.2000 and 1.12.2000 for consideration. On 1.12.2000 since no report was forthcoming from the Police Officer, the learned Magistrate holding that there is a prima facie case against the accused had taken cognizance and directed summons to be issued to the accused.

4. The learned counsel for the petitioners has not filed these revisions on the ground that once the Magistrate ordered an enquiry under Section 202 Cr.P.C., by a different agency, he could not take cognizance in the absence of report being submitted by the respective agency. In other words, his contention is that the Magistrate ordered an enquiry under Section 202 Cr.P.C. mainly because he was not satisfied with the complaint and not taken cognizance at the earliest instance and it was only thereafter he sought the help of the police officer who would examine the other witnesses under Section 202 Cr.P.C. and would submit a report, on the basis of which he could come to the conclusion whether to take cognizance or not, in the absence of report being submitted, he could not take cognizance without setting aside his earlier order.

5. In support of his contention, the learned counsel also cited two decisions. The first is the case of Mohammad Atullah vs. Ram Saran reported in AIR 1981 SC 1155 wherein the learned Magistrate had taken cognizance but I am of the view that this would not help the counsel for the petitioners since in the said case, the matter was referred to the Executive Magistrate for enquiry under Section 202 Cr.P.C. He had, in fact submitted a report, but in the said report, no fresh materials were available and consequently, the Magistrate had taken cognizance, which in the opinion of the Apex Court was wrong and quashed the order passed by the Magistrate in view of the fact that the Magistrate cannot take cognizance without any reference to any further material. In the present case, no such report was forthcoming from the police. It is only on the basis of the complaint and the sworn statement, the Magistrate had taken cognizance. The Magistrate when ordered enquiry under Section 202 Cr.P.C. on 28.8.2000 did not say that there was any material that warrants cognizance to be taken but only felt it necessary that the matter be investigated by a police officer. It is only by way of caution such direction had been given by the Magistrate and no where does it disclose that he was not satisfied with the facts mentioned in the complaint or in the sworn statement.

6. The second decision referred by the learned counsel is the

case of Thimmakkal v. Kuttappa reported in 1966 L.W. (Crl.) 53 wherein the Magistrate after receiving private complaint sent it for enquiry to the police under Section 202 Cr.P.C and without waiting for the report he himself held an enquiry and therefore this Court has held that a parallel enquiry under Section 202 Cr.P.C was not permissible and hence quashed the order passed by the Magistrate.

7. Therefore, in my opinion, the contention of the learned counsel appearing for the petitioners placing reliance on the above decisions is not agreeable. The point for consideration is whether the cognizance taken by the Magistrate is correct.

8. In the decision relied on by the learned counsel appearing for the respondents, reported in 1981 LW Crl 6, (H.S. Bains and others vs. The State (Union Territory of Chandigarh) the Supreme Court has held that even if the police who had investigated the private complaint, which had been referred to them under Section 156 (3) of the Cr.P.C has referred the matter as a mistake of fact, the Magistrate is not bound to accept the report but quite independent of that could take cognizance of the offence. Therefore, the learned counsel would submit that in the present case, the learned Magistrate need not wait indefinitely for the report of the police officer but instead of giving sufficient time enabling the police to file a report and in the absence of any such report, he is not entitled to take cognizance. The above decision has been followed subsequently by the Supreme Court in various other decisions for the proposition that irrespective of the final report by the police mentioning that the case referred is a mistake, the Magistrate can take cognizance of the offence.

9. However, in the present case, the case is being investigated by the police in pursuance of the direction given by the Magistrate and in the mean time, without waiting for the report, he has taken cognizance. I am of the view that section 210 Cr.P.C would come into operation which reads as follows.

"Procedure to be followed when there is a complaint case and police investigation in respect of the same offence - (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the

Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the

complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

10. Therefore, under the circumstances of the case, I am of the opinion that the Magistrate can wait for the report from the Police and keep the matter pending without examining any witnesses for the present.

A. PACKIARAJ. J

Accordingly, I hereby direct the Superintendent of Police (South), Pondicherry to file the final report within two months from the date of receipt of copy of this order, failing which the Magistrate is entitled to withdraw his earlier order and proceed with the case.

With this observation, the revisions are ordered accordingly.

Index: yes

Internet: yes

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To

1. The Judicial Magistrate No.II,
Pondicherry.

2. The Public Prosecutor,
High Court, Madras.

3. The Superintendent of Police (South),
Pondicherry.

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