

Mrs.Vimala Rajaram vs The Inspector Of Police on 3 July, 2012

Author: C.S.Karnan

Bench: C.S.Karnan

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.07.2012

Coram

THE HON'BLE MR.JUSTICE C.S.KARNAN

Crl.R.C.No.512 of 2012

1.Mrs.Vimala Rajaram
2.Mrs.Jhansi Rani

.. Petitioners

Vs.

The Inspector of Police,
K4, Anna Nagar Police Station,
Chennai-600 040.

.. Respondent

Prayer :- Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., to cal

For Petitioner : Mr.R.Prasadh

For Respondent : Mr.C.Balasubramaniam
Additional Public Prosecutor

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ORDER

The revision petitioners/ petitioners/accused have preferred the present revision against the order passed in C.M.P.No.5079 of 2010 in C.C.No.2470 of 2010, on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

2. The short facts of the case are as follows:-

The defacto complainant / SR Naidu had filed a private complaint against the accused A1 and A2 before the V Metropolitan Magistrate, Egmore, Chennai. It was submitted that A1 is the owner of the house No.S-113, 6th Main Road, Anna Nagar, Chennai-40 and A-2 is the President of "All India Democratic Women's Association" briefly called as "AIDWA". The portion of the said premises in the building of A1 was gifted by A1 to A2's organization. It was submitted that the rental agreement was entered into between A1 and S.R. Naidu and on that basis A1 agreed to receive Rs.7,500/- per month towards rent and Rs.1,00,000/- was paid as advance and an institution under the name and style of "Classic Academy" was commenced and coaching in English language was conducted. The defacto complainant has further submitted that there was some problem between the builder and A1 and that he mediated between them and since he was helpful, the third floor of the premises was assigned to the defacto complainant. Subsequently, A1 started to give trouble by way of making many complaints and A2 joined with A1 to enable A1 to dispossess the defacto complainant from the said premises. In pursuance to the above act, on 16.05.2008, at about 4 p.m., the accused trespassed into the class of the defacto complainant, which is in the portion of A1's premises and threatened to kill the complainant and several complaints made in this regard to the Police did not yield any result and therefore, a private complaint was made on 16.07.2008, against the accused under Section 190(1) and 200 of Cr.P.C. for having committed offence under Section 120 B, 448 and 506 (ii) IPC and was endorsed under Section 156(3) of Cr.P.C. by this Court for investigation. The above complaint was referred to the Inspector of Police, K4, Anna Nagar Police Station for investigation and report. The Sub Inspector of Police, K4 Police Station registered the case in Crime No.448 of 2008. The said complaint was investigated and a final report was filed on 29.01.2009 before this Court. The final report disclosed that the complaint was not true and there was no evidence and hence, it was declared as a mistake of fact. On receipt of the aforesaid final report by this Court, further investigation was ordered under Section 173(8) of Cr.P.C., which resulted in filing the above case in C.C.No.2470 of 2010.

3. Subsequently, the accused have filed a petition in CrI.M.P.No.5079 of 2010 in C.C.No.2470 of 2010, stating that the earlier final report disclosed that there were false details in the complaint and other records and the case was referred as 'mistake of facts'. It was submitted that the direction of the Court to further investigate under Section 173(8) of Cr.P.C. is a continuation of the earlier final report filed under Section 173(2) of Cr.P.C. and consequently the final report under Section 173(2) of Cr.P.C. and all documents including the statement of witnesses recorded under Section 161 of Cr.P.C. ought to have formed as part and parcel of the present final report. It was submitted that from the record, it appears that the case has been re-investigated and not further investigated under Section 173(8) of Cr.P.C. and as such, the present investigation is contrary to Section 173(8) of Cr.P.C. and not maintainable in law. It was submitted that the Inspector of Police, in his letter dated 02.09.2009 had submitted that he is seeking time for re-investigating the case. It was submitted that in the earlier final report, the defacto complainant had not produced the so-called rental

agreement between him and A-1 through a document and therefore, the then Investigating Officer had examined independent witnesses, viz., Mrs.Marial, Thiru. Ajay Amar Mukerjee, Thiru.Surendiranath Baghee, Thiru.Ramesh and Thiru.Murugan and all of them have given their statement that no office existed in the name of "Classic Academy". It was submitted that in the R.C.O.P.No.1342/2007, on the file of the learned XIV Judge in the Court of Small Causes, a petition was filed by the defacto complainant to deposit the monthly rent for the said premises in favour of A1 claiming that he is the tenant, but the learned Judge by order dated 05.01.2008 dismissed the above petition holding that there is no materials on record to hold the defacto complainant is a tenant of the first accused. It was submitted that as the finding by the civil Court in this regard is final, this Court cannot go into the said facts as the same is barred under the principle of "Resjudicata". It was submitted that under Section 173(8), the Police Officer can only improve his stand or develop his stand taken under Section 173(2). Hence, it was prayed to discharge the accused.

4. The respondent in his counter has submitted that the case was earlier referred as a mistake of fact but subsequently as per the order of this Court further investigation was done and final report was submitted before this Court. The charge sheet was filed and the Investigation Officer had also recorded further statement of witnesses. It was submitted that there is no prima-facie error in the charge sheet. It was submitted that the defacto complainant has preferred appeal in R.C.A.No.107 of 2008, on 18.01.2008 against the findings of the Small Causes Court. However, that has got nothing to do with the present criminal case against the accused as it deals with penal provisions for offences committed by the guilty persons, who, without a proper authority committed trespass by illegally occupying the premises of the complainant, viz., Classic Academy on 16.05.2008. There are totally 3 civil cases and all of them are pending before the concerned Courts. It was submitted that there are various judgments on the basis of available materials. Hence, it was prayed to dismiss the petition.

5. The learned V Metropolitan Magistrate, Egmore, Chennai, on scrutiny of documentary evidence observed that the Police had filed charge sheet against the accused under Section 120(B), 448 and 506(ii) r/w 34 of IPC and that the accused are yet to be questioned and charge is yet to be explained to them. The learned Magistrate, on scrutiny of complaint filed by the defacto complainant observed that the defacto complainant had mentioned in his complaint that the first accused Vimala Rajendran had trespassed into the ground floor of the premises on 03.03.2008 and attacked and assaulted him and she had also taken away his gold chain and small Pendant (Balaji) and that she had also allegedly threatened the defacto complainant with dire consequences. On perusal of the complaint, it is seen that the defacto complainant took the premises of the first accused on rent for running two branches of Classic Academy, for a monthly rent of Rs.7,500/-. The defacto complainant had also paid a sum of Rs.1,00,000/- as refundable deposit and has also allegedly spent substantial amount for furniture and study materials. The learned Magistrate observed that subsequently dispute had arisen between the defacto complainant and first accused and the first accused had asked the defacto complainant to vacate the premises. The learned Magistrate observed that as the defacto complainant did not vacate, Rent Control Petitions were filed and the Control Petitions are pending and that the defacto complainant had filed the present complaint against the accused under these circumstances. The learned Magistrate observed that there are specific allegations both in the complaint as well as in the charge sheet that the accused had trespassed into

the premises occupied by the defacto complainant and threatened the defacto complainant with dire consequences. The learned Magistrate further observed that 19 persons have been listed as witnesses. The learned Magistrate observed that the occurrence had taken place allegedly on 16.05.2008 at 4 pm and that the statement of the defacto complainant and other witnesses were recorded under Section 161 of Cr.P.C. The learned Magistrate observed that the defacto complainant had specifically stated in his statement that both the accused, along with 5 male members and 6 women had trespassed into the premises and threatened the defacto complainant with dire consequences and that the first accused had allegedly threatened the defacto complainant to vacate the premises stating that she was going to let out the premises to A2. The learned Magistrate opined that there was criminal conspiracy before A1 and A2 for the purpose of vacating the defacto complainant from the premises. The learned Magistrate further observed that the defacto complainant appears to be a lawful occupier of the premises in the capacity of a tenant and opined that no landlord can be permitted to vacate the tenants by force or through unlawful means. The learned Magistrate observed that the issue of whether the allegations in the complaint are true or not can be decided only at the time of trial after having evidence in this regard. The learned Magistrate further observed that the Police had done investigation in this matter only as per the order of this Court and observed that if the petitioners/accused feels that the order of this Court was not proper, they should only prefer a revision against the order of this Court. The learned Magistrate, on observing that no revision has been filed by the petitioners against the order of this Court held that there is nothing wrong in conducting further investigation into the complaint given by the defacto complainant. The learned Magistrate, on holding that the materials produced clearly shows the commission of offence under Sections 120(B), 448, and 506(ii) r/w 34 IPC and on relying on judgment reported in 2009 Cri.LJ (NOC) 108: (2008) 3 AIR Jhar R 842, wherein, it was held that "..... a mere fact that the complaint relates to a commercial transaction or breach of contract for which accused remedy is available or has been availed is not by itself a ground to quash the criminal proceedings", held that there is no merit in the above application filed by the petitioners/accused and hence, dismissed the petition.

6. Aggrieved by the dismissal of their petition, the petitioners / accused have preferred the present revision.

7. The learned counsel for the revision petitioners has contended in his revision that the learned Magistrate after receiving the first final report filed with an observation of "mistake of facts", the case should not be re-opened and re-investigated under Section 173(8) of Cr.P.C. and as such, the present final report is contrary to the procedure established by law. It was contended that the learned Magistrate erred in concluding that "the defacto complainant appears to be the lawful occupier of the premises in the capacity of tenant" without noting the statement of Sub Inspector of Police, which is part of the records of final report, which establish that the entire version of the defacto complainant is totally false and made with malicious intention. It was contended that the learned Magistrate failed to consider that even at the time of filing final report the defacto complainant had not produced the so called rental agreement between him and the first petitioner through documentary evidence. It was contended that the learned Magistrate failed to consider that in both the final reports, independent witnesses viz., Mrs.Marial, Thiru. Ajay Amar Mukerjee, Thiru.Surendiranath Baghee, Thiru.Ramesh and Thiru.Murugan were examined and according to

the prosecution version as per the statement of the above witnesses, no office existed in the name of "Classic Academy". However, in the second and present final report, statements were produced by the respondent in the name of the same witnesses with different and confusing version, which will lead to a false prosecution based upon controversial statements produced by the respondent-police. It was also contended that the learned Magistrate failed to consider that in RCOP No.1342 of 2007, on the file of XIV Small Causes Court, Chennai, a petition was filed by the defacto complainant to deposit monthly rent, which was dismissed by the Court with observation that there is no material to prove the case of the defacto complainant. It was contended that the finding of the Rent Control Tribunal in this regard is final and the learned Magistrate cannot go into the said facts since the same is barred under the principles of "resjudicata". Hence, it was prayed to set-aside the impugned order dated 08.02.2012.

8. The highly competent Additional Public Prosecutor appearing for the respondent submits that initially a criminal case has been filed against the accused for an offence under Section 120 B, 448 and 506 (ii) IPC in Crime No.448 of 2008. Subsequently, the investigation officer had conducted comprehensive enquiry and had come to a conclusion that the said complaint is not a prima facie one. Hence, the said criminal case had been dropped as a mistake of facts.

9. On considering the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order of the trial Court, this Court does not find any discrepancy in the conclusions arrived at for dismissing the petition. Further, this Court is of the view that both parties are now filing Rent Control Proceedings before the Small Causes Court on the same dispute. Hence, the above revision is not maintainable.

10. In the result, the above revision is dismissed. Consequently, the order passed in C.M.P.No.5079 of 2010 in C.C.No.2470 of 2010, on the file of the learned V Metropolitan Magistrate, Egmore, Chennai, dated 08.02.2012 is confirmed.

03.07.2012

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Index : Yes / No.

Internet : Yes / No.

To

1.The Inspector of Police,
K4, Anna Nagar Police Station,
Chennai-600 040.

2.The V Metropolitan Magistrate,
Egmore, Chennai.

C.S.KARNAN, J

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03.07.2012