

Madras High Court

Karthick vs The Commissioner Of Police on 8 July, 2013

In the High Court of Judicature at Madras
Dated 08.07.2013
Coram
The Honourable Mr.Justice R.SUBBIAH
Criminal Original Petition No.14889 of 2013

Karthick

..Petitioner

..VS..

1. The Commissioner of Police,
Chennai.
2. The Inspector of Police,
E-4, Abiramapuram Police Station,
Chennai-600 028.

..Respondents

Criminal Original Petition filed under section 482 of Criminal Procedure Code, to direct the 2

For Petitioner : Mr.J.Saravanel

For Respondents : Mr.C.Emalias, A.P.P.,

ORDER

The present petition has been filed seeking for a direction to the 2nd respondent to register a case on the petitioner's complaint dated 04.02.2013, investigate the same and file a final report in accordance with law.

2. Case of the petitioner, in brief, is as follows:

Petitioner is the husband of one Narayanee @ Krithika. A case in HMOP No.383 of 2007 is pending between the petitioner and his wife before the Family Court at Chennai. In the said petition, apart from other miscellaneous petitions, I.A.Nos.486, 1649 and 2429 of 2010 and 2035 of 2011 are pending; of which, I.A.Nos.486 and 1649 of 2010 have been filed by the wife on behalf of the minor child Keerthana to enhance the maintenance and to pay the educational expenses respectively. I.A.No.2429 of 2010 has been filed by the wife to strike off the defence and I.A.No.2035 of 2011 has been filed by the petitioner to revise the order of maintenance. During the said enquiry in the said I.As., on 09.04.2004, 23 documents were filed by the wife Krithika through her power agent

Viswanathan and the same were marked as Exs.P-1 to P-23. Among which, Ex.P-16 is a document, which is claimed by the said Krithika to be a document issued by the Regional Passport Officer, Delhi, Ministry of External Affairs, Government of India.

3. It is the further case of the petitioner that the said document is a non-existent and a forged document. The petitioner was informed by the Ministry of External Affairs by a letter dated 10.06.2012 that it seems to be a fabricated/forged document. The petitioner made a complaint dated 04.02.2013 to the 1st respondent seeking to initiate appropriate criminal proceedings for forgery and perjury against Krithika and her power of attorney Viswanathan for having fabricated a document and producing the same before the Family Court as evidence, and the same was forwarded to the 2nd respondent for taking action; but the 2nd respondent did not take any action. Hence, the present petition has been filed to register a case on his complaint.

4. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

5. It is the case of the petitioner that in a case pending between him and his wife in HMOP No.383 of 2007 before the Family Court, Chennai, his wife marked a document purported to be issued by the Regional Passport Officer, Ministry of External Affairs, Government of India and the same was marked as Ex.P-16. It is the case of the petitioner that the said document is a forged one and, hence, the petitioner had sent an application on 16.04.2012 to the Ministry of External Affairs under RTI Act to verify, whether Ex.P-16 is a genuine document or or not? But the Regional Passport Officer sent a reply dated 10.06.2012 that the document seems to be a fabricated/forged document. That apart, the petitioner had received a reply dated 05.07.2012 from the Regional Passport Officer in response to the RTI Application dated 26.04.2012. The questions raised by the petitioner in his letter dated 26.04.2012 with regard to Ex.P-13 and the answers given by the Regional Passport Officer by his letter dated 10.06.2012 are as follows:

Sl.No.

Questions raised by the petitioner Reply given by the Department

1. Whether this document is issued by you ?

No.

2. If it is issued by you, on what basis you have issued (as my passport comes under regional passport office at Chennai) and also on what basis you have mentioned various contents of the document?

Not issued by this office.

3. Whether you have issued any other document(s) relating to me to Narayanee ?

No. No record is available

6. After getting these answers from the Regional Passport Officer, the petitioner has lodged a complaint with the 1st respondent police to initiate action against his wife and power agent for their involvement in producing a false document before the court, which is punishable under the provisions of Indian Penal Code. The said complaint which was given to the 1st respondent was forwarded to the 2nd respondent and the 2nd respondent, after recording the statement of power agent, has raised a doubt with regard to the jurisdiction of police investigating the offence. Therefore, they have not taken any further action in the matter. On 06.05.2013, the petitioner sent an application under the RTI Act to know about the status of the complaint. But the Inspector of Police, the 2nd respondent sent a reply dated 17.05.2013 to the queries raised by the petitioner. The questions raised by the petitioner and the answers given by the 2nd respondent are as follows:

Sl.No.

Questions raised by the petitioner Reply given by the 2nd respondent

1. Whether FIR has been filed on the said accused - if it is so, in what sections and the present stage of the proceedings on the FIR.

No case registered against the petition dated 04.02.2013 preferred by the petitioner Thiru S.Karthick.

2. If the FIR is not filed the specific reason for the same?

The forgery documents said in the complaint was filed by the counter petitioner in the family court is lies within the compound of the High Court the Court only decide necessary action on this if it is deem fit.

3. Copies of the petition filed by me dated 04.02.2013 ?

Enclosed.

4. Copy of the statement if received from the accused person ?

Enclosed.

By giving the above recorded answers, the 2nd respondent expressed doubts about the jurisdiction of the police to investigate the offence since already the document was marked in the Court. Aggrieved over the same, the present petition has been filed.

7. It is the main submission of the learned counsel for the petitioner that the 2nd respondent is having jurisdiction to entertain the complaint and investigate the same since the document was created outside the court and thereafter, filed and marked in the court proceedings.

8. Per contra, it is the submission of the learned Additional Public Prosecutor that under section 195(1)(b)(ii) Cr.P.C. will operate as a bar for the police to entertain the complaint since the document was already marked in the court proceedings. The only option available to the petitioner is to invoke section 340 of Cr.P.C. before the concerned court.

9. In view of the arguments advanced by both sides, the core question that has to be considered is, whether the police authorities can register a case for creating a forged document, which was allegedly marked in the course of evidence before the Court ?

10. The judgment relied on by the learned counsel for the petitioner reported in (2005) 4 SCC 370 (Iqbal Singh Marwah and another .vs. Meenakshi Marwah and another) is giving a fitting answer for this issue. The factual aspects of the cited case would show that in a probate proceedings, the petition was contested by the respondents on the ground that the Will was forged. Hence, the respondents moved an application before the court concerned requesting the court to file a criminal complaint against the appellants. A reply to the said application was filed on 27.07.1994; but the said application was not disposed of. Hence, the respondents filed a criminal complaint before the court of Chief Metropolitan Magistrate, New Delhi for prosecution under sections 192, 193, 463, 464, 465, 467, 469, 471, 499 and 500 IPC on the appellants and their mother on the ground that the Will produced by the appellants was a forged and fictitious document. The learned Metropolitan Magistrate held that the question whether the Will was a genuine document or a forged one, was an issue before the District Judge in the probate proceedings where the Will had been filed, Sections 195(1)(b)(i) and (ii) Cr.P.C. operate as a bar for taking cognizance of the offences under sections 192, 193, 463, 464, 471, 475 and 476 IPC. The complaint was accordingly dismissed by order dated 02.05.1998. Subsequently, the respondents in that case filed a criminal revision against the order of learned Metropolitan Magistrate before the Sessions Court, who relying upon the case of Sachida Nand Singh .vs. State of Bihar reported in (1998) 2 SCC 493, held that the bar contained in section 195(1)(b)(ii) would not apply where forgery of a document was committed even before the production of the said document in the Court. The revision petition was accordingly allowed and the matter was remanded to the Court of Metropolitan Magistrate for proceeding in accordance with law. The appellants challenged the order passed by the learned Sessions Judge by filing a petition under section 482 Cr.P.C. before the Delhi High Court, but the same was dismissed. Aggrieved over the same, the appellants preferred S.L.P. before the Hon'ble Supreme Court, wherein it has been observed as under:

"25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.

26. Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

"The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong".

.....

33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis."

11. Therefore, a reading of the said paragraphs would clearly show that section 195(1)(b)(ii) Cr.P.C. will not operate as a bar to entertain the complaint by the police where forgery of the document was committed even before the said document was produced in the Court. In the instant case, it is the specific allegation of the complainant that the document was fabricated outside the Court and marked during the course of proceedings. Therefore, in my considered opinion, the respondents are having jurisdiction to entertain the complaint.

In view of the above reasons, the second respondent is directed to consider the complaint and if the allegations contained in the complaint disclose the commission of any cognizable offence, the second respondent is directed to register the case, investigate the same and proceed further in accordance with law. Criminal Original petition is disposed of accordingly.

Index: Yes.

08.07.2013

Internet: Yes.

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To

1. The Commissioner of Police,
Chennai.
2. The Inspector of Police,
E-4, Abiramapuram Police Station,
Chennai-600 028.
3. The Public Prosecutor,
High Court, Madras.

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Pre-delivery Order in
Crl.O.P.No.14889 of 2013

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