



Crl.O.P.(MD)No.2991 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.2991 of 2020
and
Crl.M.P.(MD)Nos.1574 & 1575 of 2020

Ramzan Begum

... Petitioner

Vs.

M.Shahul Hameed

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the impugned proceedings pertaining under Sections 200 Cr.P.C., in C.C.No.209 of 2019 on the file of the learned Judicial Magistrate No.I, Madurai and quash the same as illegal as against the petitioner.

For Petitioner : Mr.S.M.A.Jinnah

For Respondent : No Appearance



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ORDER

This Criminal Original Petition has been filed to quash the impugned proceedings pertaining under Sections 200 Cr.P.C., in C.C.No. 209 of 2019 on the file of the learned Judicial Magistrate No.I, Madurai.

2.According to the petitioner, the respondent had given private complaint before the learned Judicial Magistrate No.I, Madurai. Based on the said complaint, the learned Magistrate has taken on file in C.C. No.209 of 2019 for the offences under Sections 380, 120(B) IPC. As per the complaint, on 27.04.2017, the respondent availed loan by pledging his jewels and thereafter, he received money from Vilasam Chit Fund and thereafter, redeemed the jewels and kept the jewels in his house. On 27.06.2017, while he opened his wardrobe, he came to know that the gold ornaments were misplaced. Totally 23 sovereigns of gold jewels were missing and the respondent searched the wardrobe and all over his house, but the gold ornaments were not found. Thereafter, on 28.06.2017, at about 10.00 am., he made an emergency call 100 and the police enquired and thereafter, he lodged a complaint on 02.07.2017 and



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the police issued CSR.No.200 of 2017. Thereafter, on 20.11.2017 the respondent made a representation to the Commissioner of Polic, Madurai City and thereafter, he approached this Court through CrI.O.P.(MD)No. 6887 of 2018 to register FIR based on his complaint dated 28.06.2017 and on 27.04.2018, this Court disposed the said petition. After registering case, the matter was enquired by the police and the same was closed as no such occurrence was happened. Thereafter, by suppressing the above said facts, the respondent has filed the present private complaint before the learned Judicial Magistrate No.I, Madurai, as if the police informed him that the petitioner only has stolen the jewels. In fact, already two times the police enquired the matter and closed the said case as mistake of fact. The petitioner herein no way connected with the above said crime and thereby, the complaint in C.C.No.209 of 2019 pending on the file of the learned Judicial Magistrate No.I, Madurai is liable to be quashed.

3.After receipt of the notice, the respondent did not appear either through Advocate or in-person. The name of the respondent was also printed in the cause list.



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4.The learned counsel appearing for the petitioner would contend that the respondent had given a false complaint before the learned Judicial Magistrate No.I, Madurai and based on the false complaint, the learned Magistrate has taken cognizance in C.C.No.209 of 2019. Already, the same defacto complainant had given complaint before the police and the same was closed as mistake of fact. Thereafter, the respondent filed CrI.O.P.(MD)No.6887 of 2018 and the same was disposed by this Court by observing that the matter was enquired y the Police and closed as mistake of fact. Thereafter, by suppressing all these facts, the present private complaint has been filed by the respondent alleging that the police only informed that the petitioner herein only has stolen the jewels. In fact, no such occurrence was happened and the police was also elaborately enquired the case and closed as mistake of fact. Therefore, the proceedings in C.C.No.209 of 2019 pending on the file of the learned Judicial Magistrate No.I, Madurai is liable to be quashed.

5.This Court heard the petitioner and perused the materials available in the records.



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6. On perusal of records shows that the respondent herein has filed private complaint before the learned Magistrate alleging that on 27.06.2017, when he opened his wardrobe, he came to know that his jewels weighing 23 sovereigns were missing and therefore, he gave a complaint before the police and the police have closed the said complaint as mistake of fact. Thereafter, the respondent filed the present private complainant stating that the petitioner along with others conspired together and committed theft of the respondent's jewels. The petitioner produced the first complaint lodged by the respondent. On careful reading of the said complaint shows that the said complaint was lodged by the respondent without mentioning any name of the accused. For the said complaint, the police also issued CSR.No.200 of 2017. Thereafter, the respondent approached this Court for taking action as against the representation of the respondent, through Crl.O.P.(MD)No.6887 of 2018 and the same was also closed by this Court by observing that enquiry was conducted by the police and the same was closed.



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7.On perusal of closure report of the police reveals that the police enquired all the witnesses and they are stated about the existence of the so called theft jewels. Thereafter, the police closed the complaint by observing as follows:-

“மனுதாரர் சந்தேகிப்பதாக சொல்லிய நபர்கள் அனைவரையும் விசாரித்ததிலும் ஏரியாவில் உள்ளவர்களை தனிப்பட்டமுறையில் விசாரித்ததிலும் மனுதாரரின் மனைவியை அந்த ஏரியாவில் வசிக்கும் யாரும் ஒருமுறை கூட நகைகள் போட்டு பார்த்ததில்லையென்றும் வெளியே போகும்போது தனது மச்சான் மனைவியிடம் கவரின் நகையை வாங்கி போட்டு போவார் என்றும் அவர் நல்ல நாளில் கூட நகை போட்டு பார்த்ததில்லை என்றும் தெரிவித்தனர். ஆவர் தனது தங்கைக்கோ அல்லது உறவினருக்கோ கணவருக்கு தெரியாமல் எடுத்து கொடுத்திருக்கலாம் அல்லது தனது வியாபாரம் சம்பந்தமாக மனைவிக்கு தெரியாமல் புகார்தாரரே நகைகள் எடுத்து விட்டு பொய்யாக புகாரை கொடுத்திருக்கலாம் என தெரிய வருகிறது. மேலும் வீட்டில் வைத்திருந்த நகை எப்பொழுது காணாமல் போனது என்பதே தெரியவில்லை வேறு அந்நிய நபர்கள் வீட்டிற்குள் வந்து திருடியிருக்க வாய்ப்பில்லை. புகார்தாரரின் வீடானது எப்பொழுதும் ஜனநேரிசல் உள்ள பகுதி மேலும் புகார்தாரர் தனது நகை அடகு வைத்ததற்கோ மீட்டதற்கோ எந்த ஆவணங்களையும் விசாரணையில் சமர்ப்பிக்கவில்லை. மேலும் யாராவது வெளிநபர் திருட வந்திருந்தால் பணத்தையும் மற்ற நகைகளையும் விட்டு விட்டு குறிப்பிட்ட நகையை மட்டும் திருடிச்சேல்ல வாய்ப்பில்லை. மேலும் விசாரணையில் மனுதாரர் பார்வையில் குறிப்பிட்ட புகார்மனுவை தான் எழுதவில்லை என்றும் தனது வக்கீல் எழுதியிருந்ததில் படித்து பார்க்காமல் கையெழுத்து போட்டு விட்டதாகவும், ஆகவே பார்வையில் கண்ட மனுவின் மேல்



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நடவடிக்கை தேவையில்லை என்று விசாரணையில் மனு
சமர்ப்பித்துள்ளபடியாலும் புகார்தாரர் குறிப்பிடும் சம்பவமானது
முற்றிலும் பொய்யானது என தெரியவருகிறது. எனவே மனு மீதான
விசாரணையை நிறுத்தம் செய்து விசாரணையில் சாட்சிகள்
சமர்ப்பித்துள்ள மனுக்களை இத்துடன் இணைத்து மீள
சமர்ப்பிக்கிறேன். முனவை கோர்வை செய்ய வேண்டுகிறேன்.”

Therefore, from the above said observation, it is clear that already police have enquired the matter and closed the case as mistake of fact. Thereafter, the same complainant, who is the respondent herein, filed the private complaint alleging that the police only informed that this petitioner along with others conspired to steal the jewels.

8.Further, this Court perused the trial Court records and it shows that statement was recorded by the learned Magistrate while taking cognizance of this case, at that time, the complainant, specifically stated that they gave complaint as against one Ramzan Banu and she also admitted the theft and thereafter, she did not return the jewels. Another witness, namely, Rizwana Banu, in her statement before the learned Magistrate stated that they lodged complaint as against one Amanulla and one Ramzan Begam. Even as per statement of the complainant, he given complaint as against his brother's wife and as per statement of the



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another witness, complaint was given as against one Amanulla and one Ramzan Begam. But the said complaint does not contain any name of the accused. Therefore, the respondent herein filed the private complaint by suppressing the facts. Already the police have conducted thorough enquiry and closed the case as mistake of fact and then this petition was filed with contra allegations of the police enquiry report. Hence, this complaint is clear abuse of process of Court.

9.In view of the above discussions, the cognizance taken by the learned Magistrate in C.C.No.209 of 2019 is liable to be quashed and accordingly, the private complaint in in C.C.No.209 of 2019 pending on the file of the learned Judicial Magistrate No.I, Madurai is quashed as against the petitioner herein and this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

03.08.2023

NCC : Yes / No
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To

The Judicial Magistrate No.I,
Madurai



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P. DHANABAL,J.

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