

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.Nos.368 and 369 of 2015
and M.P.Nos.1 and 1 of 2015

1. Late V.Thangalakshmi
rep., by Legal representatives,
2. S.Veerabagu
3. V.Madhumitha
(LRS of Late V.Thangalakshmi)

.. Petitioners

Vs

1. V.Subramanian
2. Tarachand Bagmar
3. B.Anupkumar
4. The Commissioner of Police,
Vepery, Chennai-7.

... Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order, dated 15.07.2014 in Crl.M.P.Nos.12291 and 12292 of 2007 in Crl.M.P.No.11844 of 2003, on the file of the learned Principal Sessions Judge, Chennai.

For Petitioners : Mr.K.P.Chandrasekaran

For Respondents : Mr.P.Govindarajan,
Additional Public Prosecutor

ORDER

The present Criminal Revision Case is filed against the order, dated 15.07.2014 in Crl.M.P.Nos.12291 and 12292 of 2007 in Crl.M.P.No.11844 of 2003, on the file of the learned Principal Sessions Judge, Chennai. As the pleadings in both the revision cases, are one and the same, they are disposed of by a common order.

2. Material on record discloses that way back in 1993, on a private complaint, lodged by one Mrs.V.Thangalakshmi, before the learned XVI Metropolitan Magistrate, Chennai, on 31.10.1993 and referred to the Police, under Section 156(3) Cr.P.C., a case in Crime No.1281 of 1993, has been registered, on the file of the Central Crime Branch. Mr.V.Subramanian, 1st respondent herein, was

the then Sub-Inspector of Police, who registered the case. Upon investigation, he had closed the case, as civil in nature. However, before filing of the closure report to the concerned Court, the 1st respondent herein was transferred.

3. Material on record further discloses that on 15.05.1995, respondents 2 and 3, alleged to have committed cheating, relating to a lorry, moved an Anticipatory Bail application in CrI.M.P.No.2904 of 1995, before the Principal Sessions Judge, Chennai and the Inspector of Police, Central Crime Branch, Chennai, was the respondent in the said petition, filed under Section 438 Cr.P.C. When the matter came up for hearing, on behalf of the respondent therein, submission has been advanced that no case was pending. Taking note of the same, vide order, dated 16.05.1995, in CrI.M.P.No.2904 of 1995, the learned Principal Sessions Judge, Chennai, has granted anticipatory bail to the respondents 2 and 3 herein.

4. Material on record further discloses that Mrs.V.Thangalakshmi, had filed a petition for Contempt in CrI.M.P.No.700 of 1997 and that the same was dismissed. After many years from the date of granting anticipatory bail, she had filed a petition in CrI.M.P.No.11844 of 2003, under Section 190 r/w. 340 Cr.P.C., to prefer a complaint, against the 1st respondent herein, alleging commission of offences, under Sections 166, 167, 191, 192 and 193 (explanation 3), 199, 201 (Part-3) and 217 IPC., and respondents 2 and 3, for commission of offences, under Sections 175, 177, 193 (Illustration) and Section 209 IPC., before the learned Principal Sessions Judge, Chennai.

5. The main allegation in the complaint filed under Section 195 r/w. 340 Cr.P.C., is that when Crime No.1281 of 1993, was pending, on the file of the Central Crime Branch, Chennai, the then Sub-Inspector of Police, Mr.V.Subramanian, who had registered the case, had given false instructions to the Court, stating that no case was pending. However, the 1st respondent had taken a plea that he was already transferred from Crime Branch to J-3, Guindy Police Station on 13.06.1995 and that he had not given any instruction to the City Public Prosecutor, in the anticipatory bail petition.

6. Pending disposal of CrI.M.P.No.11844 of 2003, filed under Section 195 r/w. 304 Cr.P.C., the complainant, Mr.V.Thangalakshmi, died. Her legal representatives, Mr.S.Veerababu and Ms.V.Madhumitha, have been impleaded as petitioners, vide order, dated 24.03.2004 and they have filed two petitions in CrI.M.P.Nos.12291 and 12292 of 2007, in CrI.M.P.No.11844 of 2003, for impleading the Commissioner of Police, Chennai as the 4th respondent in CrI.M.P.No.11844 of 2003 and for issuance of non-bailable warrants, against respondents 2 and 3, respectively.

7. Mr.V.Subramanian, the then Sub-Inspector of Police, the 1st respondent herein, has filed a counter affidavit, stating that there is no need to implead the Commissioner of Police, as party respondent, in the above proceedings. Respondents 2 and 3 herein have also filed a counter affidavit, contending inter alia that CrI.M.P.No.11844 of 2003 has been filed, only to harass them.

8. The reason assigned in CrI.M.P.No.12291 of 2007, to implead the Commissioner of Police, as one of the respondents in CrI.M.P.No.11844 of 2003, is that, only he is impleaded as a respondent in the private complaint, it would come to light, as to whether, the then Sub-Inspector of Police, was actually transferred to J-3 Guindy Police Station on 13.06.1995 and to ascertain, who had instructed the City Public Prosecutor, in the Anticipatory Bail Petition, moved by the respondents 2 and 3, that no case was pending. The reason assigned for issuance of non-bailable warrants, is that they were not present in the Court, when the case, filed under Section 340 Cr.P.C., was taken up.

9. Insofar as the impleading petition is concerned, the Court below, by placing reliance on a decision in Pritish v. State of Maharashtra & Ors., reported in 2002 (1) LW (CrI.) 347, held that the Commissioner of Police is not a necessary party to the proceedings, under Section 340 Cr.P.C. The Court below further observed that on the basis of the materials available on record, the Court can always form an opinion, as to whether, any case is made out, under Section 340 Cr.P.C. So saying, the Court below has dismissed CrI.M.P.No.12291 of 2007, filed for impleading.

10. In Pritish v. State of Maharashtra & Ors., reported in 2002 (1) LW (CrI.) 347, the Supreme Court held as follows:

"Be it noted that the court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. In M.S. Sheriff and anr. vs. State of Madras and ors. (AIR 1954 SC 397) a Constitution Bench of this Court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into."

11. Insofar as the prayer sought for, in Crl.M.P.No.12292 of 2007, is concerned, ie., issuance of non-bailable warrants to the respondents 2 and 3, by observing that both the respondents were represented by a learned counsel and that they have also filed a counter to Crl.M.P.No.11844 of 2003, the Court below held that presence of the respondents 2 and 3, is not necessary, for proceeding with the petition, filed under Section 340 Cr.P.C. Thus, the Court below, has dismissed both Crl.M.P.Nos.12291 and 12292 of 2007.

12. Though the petitioners have assailed the correctness of the orders in the present revision petitions, reiterating the very same grounds, this Court is of the view that there is no material irregularity in the orders, dismissing both the petitions. Indisputably, proceedings initiated under Section 197 r/w. 340 Cr.P.C., is criminal in nature. Even in civil proceedings, presence of a party, for adjudication of any dispute, is required, only if he is a proper and necessary party.

13. Private complaint has been filed against three persons, viz., Mr.V.Subramanian, then Sub-Inspector of Police, Tarachand Bagmar and B.Anupkumar, respondents 1 to 3 herein. In the complaint filed under Section 195 r/w. 340 Cr.P.C., filed before the Principal Sessions Judge, Chennai, respondents 2 and 3 herein, have been arrayed as accused. Commissioner of Police, at no stretch of imagination, can be impleaded in a private complaint, as a respondent. If at all, the petitioners/legal representatives of the deceased, V.Thangalakshmi, wanted to ascertain, as to whether, Mr.V.Subramanian, then Sub-Inspector of Police, was actually transferred on 13.06.1995 from Crime Branch to J-3, Guindy Police Station and wanted to know that who had instructed the City Public Prosecutor in the Anticipatory Bail Petition, moved by respondents 2 and 3, stating that no case is pending, on the file of the Central Crime Branch, Egmore, the petitioners can always take out an application for production of documents, from the competent authority. But they cannot seek for impleadment of the Commissioner of Police, as one of the parties to a private complaint. The prayer sought for in Crl.M.P.No.12291 of 2007, is not at all maintainable.

14. Insofar as the issuance of non-bailable warrants, is concerned, as rightly observed by the Court below that, when the parties are represented by a learned counsel, who had filed a counter affidavit, opposing the proceedings, initiated under Section 195 r/w. 340 Cr.P.C., presence of the parties, is not required. As rightly contended by respondents 2 and 3 in the counter affidavit, the intention of the petitioners does not appear to be bona fide.

15. CrI.M.P.No.11844 of 2003 is stated to be pending for nearly 11 years. There are no merits in the present criminal revision cases. While dismissing the same, the learned Principal Sessions Judge, Chennai, is directed to dispose of CrI.M.P.No.11844 of 2003, as expeditiously as possible, but not later than three months. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

skm

To

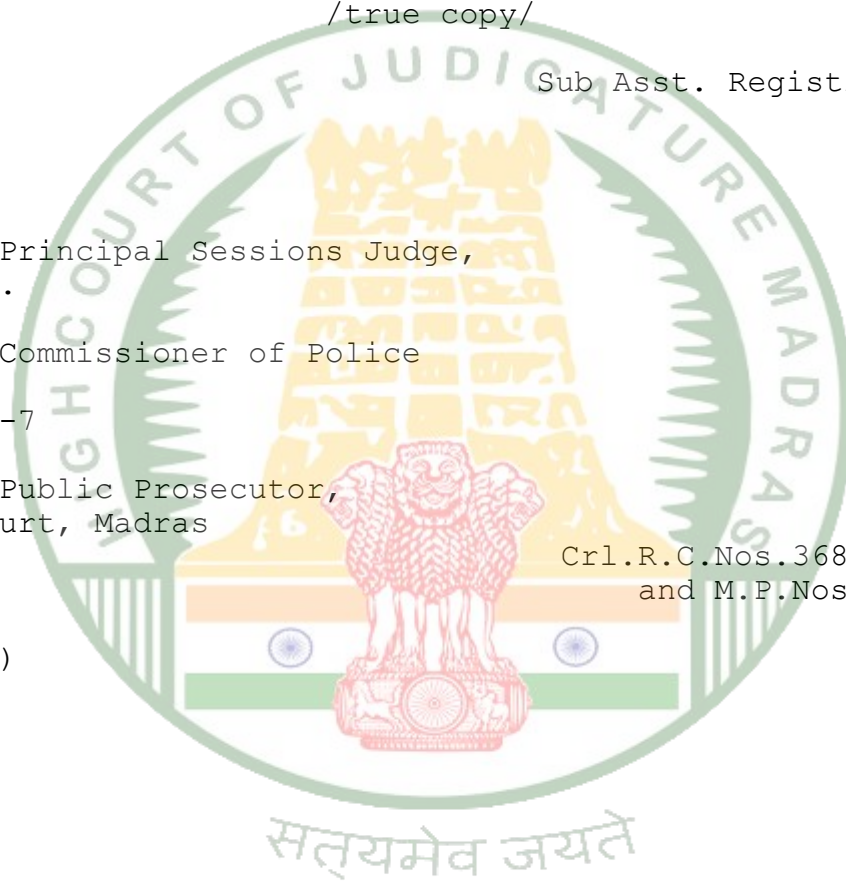
1. The Principal Sessions Judge,
Chennai.

2. The Commissioner of Police
Vepery
Chennai-7

3. The Public Prosecutor,
High Court, Madras

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KGK (CO)



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