

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Original Petition Nos.22485, 22486 and 22488 of 2014
and M.P.Nos.1 and 2 of 2014

Dr.J. Joel
S/o.Jeyamoney
St. Thomas College of Arts & Science
No.140/6, St. Thomas Nagar
New Colony, AKR Road
Koyambedu, Chennai 600 107 ... Petitioner/Accused
in all Petitions

Vs.

1.Chakkaravarthy Daniel @ C Daniel
Alpha Gardens
No.211, Velacherry Main Road
Selaipur, Chennai 600 073 ... 1st Respondent in
Crl.O.P.22485 and 22488/2014

1.Sulochana C Daniel
W/o. Chakkaravarthy Daniel @ C Daniel
Alpha Gardens
No.211, Velacherry Main Road
Selaipur, Chennai 600 073 ... 1st Respondent in
Crl.O.P.22486 of 2014

2.The Deputy Superintendent of Police
Vigilance & Anti Corruption
Chennai City V, Chennai 600 035 ... 2nd Respondent in
(Cr.No.2/AC/2010 CCV) all the petitions

Criminal Original Petitions under Section 482, Cr.P.C., to
call for the records in respect of the private complaint in
C.C.Nos.6904, 6903 and 6902 of 2014 pending on the file of
Chief Metropolitan Magistrate, Egmore, Chennai.

For petitioners : Dr. G. Krishnamoorthy for
Mr. A. Thirumaran
For respondent : Mr. K.S. Ramakrishnan for R1
MR. P. Govindarajan,APP for R2

ORDER

Crl.O.P.Nos.22485 and 22486 of 2014 have been filed under Section 482, Cr.P.C., praying to call for records pertaining to Calendar Case Nos.6904 and 6903 of 2014, pending on the file of Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

(ii) Likewise, Crl.O.P.No.22488 of 2014 has been filed under Section 482, Cr.P.C., praying to call for records relating to Calendar Case No.6902 of 2014 pending on the file of Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

2. The first respondent in Crl.O.P.No.22485 of 2014 and first respondent in Crl.O.P.No.22486 of 2014, as petitioners have filed complaints under Section 200 of the Crl.P.C., wherein the present petitioner and second respondent have been shown as respondents. In both the petitions, it is averred that the first respondent by name, Joel, the present petitioner and the petitioners/first respondents herein, are having money dealings and after some time, despair has become emerged betwixt them and subsequently, the first respondents have given the following complaints against the petitioner and others.

(i) The first complaint has been filed before the Additional City Civil Court, Chennai (Human Rights Court), wherein certain witnesses have been examined and subsequently, the same has been withdrawn.

(ii) The second complaint has been given before the Chief Judicial Magistrate Court, Tuticorin, on 26-05-2008 and the same has also been withdrawn.

(iii) The third complaint has been given before the Chief Judicial Magistrate, Tirunelveli on 29-11-2008 and the same has been dismissed.

(iv) The fourth complaint has been given to the Central Crime Branch on 18-03-2009 and after investigation, the same has been closed.

(v) The fifth complaint, dated 30-03-2009 has been given before the Additional Director General of Police, CBCID, wherein it is stated that the respondent/accused therein have said to have committed offences under Sections 220, 330 and 506(ii), IPC.

(vi) The sixth complaint, dated 21-04-2007 has been given to the Commissioner of Police and the same has been taken on file in Crime No.2/AC/2010/CCV and the same has been dropped on 10-09-2011 and subsequently, a final report has been filed before the Principal Sessions Judge, Chennai.

(vii) The seventh complaint, dated 27-07-2011 has been given to 19 statutory authorities. Under the said circumstances, the first respondent in both the Crl.O.P.Nos.22485 and 22486 of 2014 have filed separate complaints under Section 200, Cr.P.C., alleging that the first respondent therein/present petitioner has committed an offence punishable under Section 211, Cr.P.C. and the same have been taken on file in C.C.Nos.6904 and 6903 of 2014.

3. During pendency of C.C.Nos.6904 of 2014 and 6903 of 2014, the present Criminal Original Petitions, have been filed for the relief sought therein.

4. The first respondent in Crl.O.P.No.22488 of 2014 as complainant has filed a complaint under Section 200, Cr.P.C., wherein the present petitioner and second respondent have been shown as respondents and the same has been taken on file in C.C.No.6902 of 2014. It is averred in the petition that the first respondent therein and the petitioner and his wife have had money dealings and after sometime, despair has arisen betwixt them and thereafter, the first respondent therein has filed so many frivolous and vexatious complaints/petitions, after knowing fully well about the facts with an intention of damaging the reputation of the complainant in the eyes of public and therefore, he has committed an offence punishable under Section 500, IPC.

5. During the pendency of the same, Crl.O.P.No.22488 of 2014 has been filed on the file of this Court for the relief sought therein.

6. It is an admitted fact that in C.C.Nos.6904 and 6903 of 2014, it is clearly mentioned that the first respondent therein /petitioner herein has committed an offence punishable under Section 211, IPC.

7. Section 211, IPC reads as follows:

"211. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;"

8. The learned counsel appearing for the petitioner in Crl.O.P.Nos.22485 and 22486 of 2014 has contended with great vehemence that in C.C.Nos.6904 and 6903 of 2014, the present petitioner has been arrayed as the first respondent and the specific case of the complainants is that the first respondent has committed an offence punishable under Section 211, IPC. But the complainants have not invoked Section 195, Cr.P.C. and they have simply filed both the complaints under Section 200, Cr.P.C., and the same is not permissible under law and therefore, the entire proceedings pertaining to Calendar Case Nos.6904 and 6903 of 2014 are liable to be quashed.

9. Per contra, the learned counsel appearing for the first respondents/ complainants has also equally contended that the present petitioner/first respondent therein have filed so many frivolous and vexatious complaints before competent forums/authorities and since the averments made in all his complaints are false, he committed an offence punishable under Section 211, IPC. Under the said circumstances, the first respondent in Crl.O.P.Nos.22485 and 22486 of 2014 have filed the concerned complaints under Section 200, Cr.P.C. and the same are perfectly correct and therefore, C.C.Nos.6904 and 6903 of 2014 need not be quashed.

10. For considering the rival submissions made on either side, the Court has to look into Section 195, Cr.P.C, which reads thus:

"(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or (ii) of any abetment of, or attempt to commit, such offence, or (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any

criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

11. Section 195, Cr.P.C., can be dissected as follows:

If any one of the offences made under Sections 172 to 188 (both inclusive), IPC (45 of 1860), the Court shall not take cognizance of the same except on a complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate as per Section 195(1)(a) of the said Section. Further, if any one of the offence is made

out, committed under Sections 193 to 196 (both inclusive) 199,200,205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court for taking cognizance, complaint in writing of that Court or by such Officer of the Court, as the Court may authorize in writing in this behalf or of some other Court to which that Court is subordinate is very much essential.

12. The vital difference between Section 195(1)(a) and 195(1)(b), Cr.P.C., is, if any one of the offences committed under Sections 117 to 188, IPC, complaint in writing must be given by a public servant or some other public servant to whom he is administratively subordinate. Likewise, if any one of the offences mentioned under Sections 193 to 196, 199, 200, 205 to 211 and 228, IPC is committed, a complaint in writing is very much essential from the concerned Court by such Officer of the Court as the Court may authorize in writing in this behalf or some other Court to which the concerned Court is subordinate.

13. To put it in a nutshell, for taking cognizance of the offences mentioned in Section 195(1)(a)(i) and 195(1)(b)(i), Cr.P.C., a written complaint is very much essential from competent authority. Otherwise, no Court is entitled to take cognizance.

14. With these legal backdrops, the Court has to analyse the present petitions.

15. As pointed out earlier, the specific case of the first respondent in CrI.O.P.Nos.22485 and 22486 of 2014 is that the present petitioner/first respondent therein has given false complaints against them and others, before competent Courts/authorities and thereby, he committed an offence punishable under Section 211, IPC.

16. It is an admitted fact that Section 211, IPC comes within the purview of Section 195(1)(b)(i), Cr.P.C. It has already been decided that for taking cognizance of offences mentioned in Section 195(i)(a)(i) and 195(1)(b)(i), Cr.P.C., a written complaint is very much essential from competent authority, otherwise no court is entitled to take cognizance. In the instant petitions, admittedly, the first respondent has not invoked Section 195, Cr.P.C.

17. For better appreciation, the Court has to look into the following decisions:

(i) In AIR 1966 SC 1775 (Durgacharan Naik Vs. State of Orissa) the Honourable Supreme Court has held that provisions of Section 195 cannot be evaded by changing the garb or label of an offence which is covered by the provisions of the Section.

(ii) In 2000 (1) SCC 278 (Ahlawat Vs. State of Haryana) in paragraph No.10, it is observed as follows:

"It was made clear in Supreme Court Bar Association case (supra) that under Article 142 of the Constitution this Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism, prescribed in another statute. This Court notices that "a complaint of professional misconduct is required to be tried by the Disciplinary Committee of the Bar Council, like the trial of a criminal case by a court of law and an advocate may be punished on the basis of evidence led before the Disciplinary Committee of the Bar Council after being afforded an opportunity of hearing. The enquiry is a detailed and elaborate one and is not of a summary nature and it is, therefore, not permissible for this Court to punish an advocate for 'professional misconduct' in exercise of the appellate jurisdiction by converting itself as the statutory body exercising 'original jurisdiction' under Article 142 of the Constitution of India".

18. Even from a mere reading of the decisions rendered by the Honourable Supreme Court, it is made clear that with regard to offences mentioned in Section 195, Cr.P.C., a complaint in writing is mandatory. But, as stated earlier no complaint in writing has been given by the first respondent in both the petitions. Since the first respondent in each petition, has not invoked Section 195, Cr.P.C., it is needless to say that the entire proceedings relating to C.C.Nos.6904 and 6903 of 2014 are liable to be quashed.

19. The learned counsel appearing for the first respondent has also drawn attention of the Court to the following decisions:

(i) In 1992 (3) Crimes 876 (Delhi High Court) (Daulat Ram Vs. Rajindra Motwani) it is held that the complaint filed by petitioner under Section 211, is hit by Section 195(1)(b), Cr.P.C.

(ii) In 2014 (1) MLJ (Cr1) 505 (SC) (Perumal Vs. Janaki) it is observed that no Court shall take cognizance of offence

under Sections 193 or 211 except in manner specified under Section 195, Cr.P.C.

20. From a cumulative reading of the decisions referred to earlier, even at the risk of jarring repetition, the Court would like to point out that for taking cognizance of any one of the offences mentioned under Sections 195(1)(a)(i) and 195(1)(b)(i), Cr.P.C., a written complaint by a competent Court/authority is very much essential. Since in both the Calendar Case Nos.6904 and 6903 of 2014, such complaints have not been made, the same are liable to be quashed.

21. Now, the Court has to look into the relief sought in Cr1.O.P.No.22488 of 2014, wherein it is alleged that the petitioner has given complaints against the first respondent and others only for bona fide reasons and there is no mala fide intention on his part either to defy the first respondent and others or tarnish their reputation. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

22. The learned counsel appearing for the petitioner has reiterated the averments mentioned in the petition.

23. The short point that comes up for consideration in the present petitions is as to whether for the reasons mentioned in the petition, proceeding in C.C.No.6902 of 2014 pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai is liable to be quashed.

24. In fact, on the side of the petitioner, certain exceptions available under Section 499, IPC are relied upon. The sum and substance of the contention put forth on the side of the petitioner is that only on the basis of bona fide reason, the petitioner has filed complaints before the competent Courts/authorities and therefore, he cannot be mulcted with liability under Section 500, IPC.

25. The learned counsel appearing for the first respondent has contended that the petitioner herein after knowing fully well that all allegations made by him are false and only with sinister motive, for the purpose of defaming the first respondent herein, filed several complaints before competent Courts/authorities and therefore, he has committed an offence punishable under Section 500, IPC.

26. The entire contention put forth on the side of the petitioner is based upon certain exceptions available under

Section 499,IPC. For considering the fact that the accused therein is entitled to get benefit of such exceptions, both oral and documentary evidence are very much essential.

27. In the instant case, it is an admitted fact that the petitioner herein has instituted so many legal proceedings against the first respondent herein and others, and most of the proceedings have ended in failure and therefore, for the purpose of deciding the exceptions relied upon on the side of the petitioner, the available materials are not sufficient.

28. The learned counsel appearing for the first respondent has relied upon the following decisions:

(a) 2006 (1) MLJ (Crl) 436(BulBul Roy Mishra Vs. City Public Prosecutor), wherein this Court has held that if any defamatory allegations are made and thereby caused damaged to reputation, a complaint under Section 500, IPC is maintainable.

(b) AIR 1991 SC 1514 (Sewakram V. R.K. Karanjiya), wherein the Honourable Supreme Court has observed that an application for production of report before examining the accused is not maintainable.

29. In the instant case, it has already been pointed out that the question as to whether the petitioner herein is entitled to get exceptions relied upon by him has to be decided, only on the basis of oral and documentary evidence, and therefore, viewing from any angle, the relief sought in the present criminal original petition cannot be granted.

In fine,

(i) Crl.O.P.Nos.22485 and 22486 of 2014 are allowed and the proceedings in C.C.No.6904 and 6903 of 2015, pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai are quashed.

(ii) The petition filed in Crl.O.P.No.22488 of 2014 is dismissed.

(iii) Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

glp

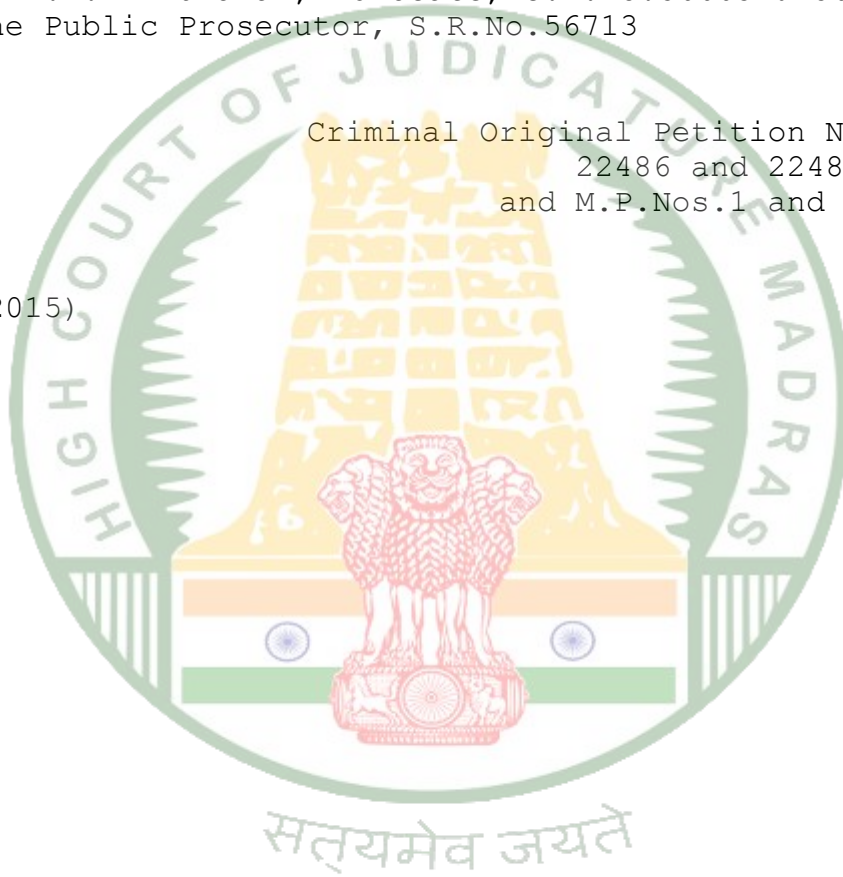
To

1. The Deputy Superintendent of Police
Vigilance & Anti Corruption
Chennai City V, Chennai 600 035
2. The Chief Metropolitan Magistrate,
Egmore, Chennai

+2cc's to Mr.A.Thirumaran, Advocate, S.R.No.56663 & 56665
+1cc to the Public Prosecutor, S.R.No.56713

Criminal Original Petition Nos.22485,
22486 and 22488 of 2015
and M.P.Nos.1 and 2 of 2015

SVI (CO)
CA(26/10/2015)



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