

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.No.2139 of 2015
and
M.P.Nos.1 and 2 of 2015

Vijayan Rajes

...Petitioner

vs.

1. The Inspector of Police,
Yercaud Police Station,
Yercaud.

2. K.Mohan

...Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to quash the witness summon to the petitioner in Cr.No.125 of 2010, issued by the Judicial Magistrate No.5, Salem, on 15.12.2014.

For Petitioner : Mr.S.Kalyanaraman

For Respondent-1 : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

It is submitted by the learned counsel appearing for petitioner that the respondent-Police registered a case in Crime No.125 of 2010, against the petitioner. Hence, the petitioner obtained anticipatory bail from this Court, by taking out a Petition in Crl.O.P.No.18707 of 2010. The learned counsel further submitted that the respondent-Police, after conducting enquiry, submitted a final report referring the case as 'mistake of fact'. Thereafter, the de facto complainant filed Crl.O.P.No.11008 of 2013, before this Court, and this Court by order, dated 08.10.2013, directed the learned Judicial Magistrate No.V, Salem, to take further action on the final report filed by the Inspector of Police, by taking into account the Protest Petition filed by the de facto complainant and pass orders. Pursuant to the said order, 08.10.2013, the learned Magistrate issued summon to the petitioner to appear for enquiry and this Petition is filed to quash the said summon.

2. The contention of the learned counsel appearing for the petitioner is that the learned Judicial Magistrate has no jurisdiction to issue such summons during the pendency of investigation, and it is also seen from the summon that the final report was not filed on the basis of the order passed by this Court in Crl.O.P.No.11008 of 2013. The learned counsel, therefore, submitted that the summon issued by the learned Judicial Magistrate is liable to be quashed.

3. It is submitted by the learned Additional Public Prosecutor that he may be given time to enquire into the purpose for which the summon was issued.

4. According to me, anticipatory bail was granted by this Court in favour of the petitioner in Crl.O.P.No.18707 of 2010. Further, this Court in Crl.O.P.No.11008 of 2013, directed the Judicial Magistrate No.V, Salem, to take further action on the final report filed by the Inspector of Police, by taking into consideration the Protest Petition filed by the de facto complainant and pass orders in accordance with law. Thereafter, the learned Magistrate has issued summon to the petitioner, who has been arrayed as accused in Crime No.125 of 2010. The one and only contention of the learned counsel for the petitioner is that the petitioner, being an accused, cannot be summoned to appear before the learned Magistrate to give evidence and during the pendency of investigation, the learned Magistrate has no jurisdiction to issue such summon.

5. According to me, the learned Magistrate may not be justified in issuing summons to the petitioner, treating the petitioner as witness. However, the petitioner has been arrayed as accused in the aforesaid Crime Number and that crime was investigated and closed as 'mistake of fact. Thereafter, the de facto complainant filed Protest Petition and this Court by order, dated 08.10.2013, passed in Crl.O.P.No.11008 of 2013, directed the Judicial Magistrate No.V, Salem, to take further action on the report filed by the Inspector of Police and pass orders by taking into consideration the Protest Petition and thereafter, in connection with the said order, dated 08.10.2013, the learned Magistrate might have issued such summon to the petitioner, and no prejudice would be caused to the petitioner by appearing before the Judicial Magistrate for enquiry. Since the petitioner is apprehending harassment, this Court makes it clear that the learned Magistrate shall not harass the petitioner in connection with a case in Cr.No.125 of 2010, as the petitioner has already obtained anticipatory bail. The learned Judicial Magistrate No.5, Salem, is directed to conduct enquiry and pass orders and the petitioner is also directed to appear before the Judicial Magistrate, and give statement regarding the Protest Petition filed by the de facto complainant.

6. With the above observation, the Criminal Original Petition is disposed of. Consequently, connected M.Ps. are closed.

Sd /-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

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To

1 The Judicial Magistrate No.V,
Salem

2 The Chief Judicial Magistrate,
Salem

3. The Public Prosecutor,
High Court, Madras.

4. The Inspector of Police,
Yercaud Police Station,
Yercaud.

+1 C.C. To Mr.S.Kalyanaraman, Advocate, (SR.No.5066) .

Cr1.O.P.No.2139 of 2015

KK(CO)
SD 20/02/2015

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