

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.8979 of 2015 and
M.P.Nos.1 & 2 of 2015

1.S.Gnanasekaran
2.Chandrasekaran
3.V.Ashok Kumar

.. Petitioners

Vs

Sundarajan

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the order dated 28.10.2012 in C.C.No.125 of 2012 on the file of the learned Judicial Magistrate No.3, Salem as confirmed in the order dated 10.03.2015 in CRP 67 of 2012 on the file of the learned III Additional Sessions Judge, Salem, set aside the same.

For Petitioner :Mr.S.Kalyanaraman

ORDER

The petitioner is an accused before the trial Court in C.C.No.125 of 2012 on the private complaint lodged by one M.Sundararajan.

2. For the sake of convenience, the petitioners would be referred to as the accused and the respondent would be referred to as complainant.

3.On the complaint lodged by M.Sundararajan, the trial Court recorded sworn statement of the complainant and took cognizance for the offence under Sections 120(B), 219, 220 and 469 I.P.C., against all the three accused and issued process to them, aggrieved by which all the three accused approached the Sessions Court by invoking its revisional jurisdiction in C.R.P.67 of 2012.

4.The learned III Additional District and Sessions Judge, dismissed C.R.P.No.67 of 2012 by order dated 10.03.2015 and confirmed the order of cognizance passed by the trial Court. Aggrieved by the order of the Sessions Court dated 10.03.2015, this petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C.

5.It is trite law that when this Court and the Sessions Court have concurrent jurisdiction to entertain revision petitions and when a party chose to file revision before the Sessions Court, he is precluded from approaching this Court again. Therefore, in my considered opinion, this petition is liable to be dismissed, but, where the illegality is so manifest, the power under Section 482 Cr.P.C., can be invoked in rare cases.

6.Mr.S.Kalyanaraman, learned counsel for the petitioner submitted that, on the face of the record, there is illegality inasmuch as he pointed out to this Court that the trial Court has taken cognizance for offence under Sections 209 and 211 I.P.C., for which a complaint can be lodged only by an officer of the Court as laid down in Section 195 (1) (b) Cr.P.C.

7.Section 195(1) (b) Cr.P.C., reads as follows:-

"(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."

Thus, it is crystal clear that taking cognizance for offence under Sections 209 and 211 I.P.C., by the learned Judicial Magistrate based on the complaint of M.Sundararajan is illegal. Therefore, this Court sets aside the cognizance taken by the learned Judicial Magistrate with reference to Sections 290 and 211 I.P.C., alone. To that extent, this Criminal Original Petition is allowed.

8.The learned counsel for the petitioners would further submit that there are other points which are in favour of the petitioners to quash the entire proceedings. This Court would not sit as second revisional authority over the order of the revisional authority.

9.All the points which are proposed to be argued before this Court in respect of other points are left open for the petitioners to agitate the same before the trial Court.

10.With the above observations, this Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

jbm

s/d-
Assistant Registrar(V)

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate No.3,
Salem.

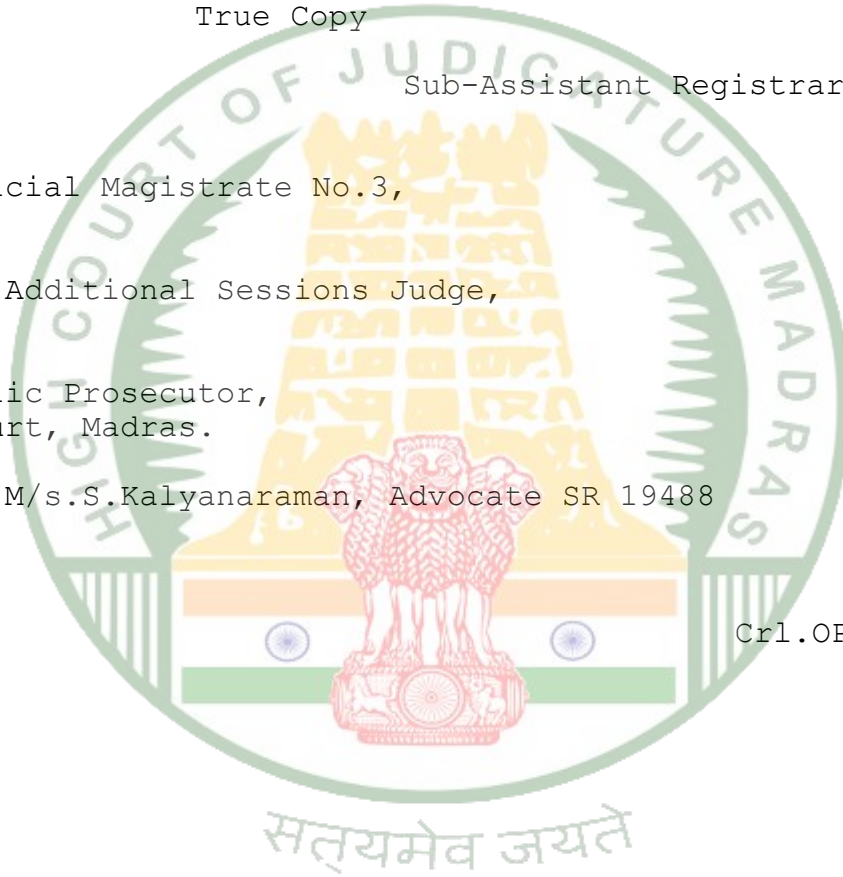
2.The III Additional Sessions Judge,
Salem.

3.The Public Prosecutor,
High Court, Madras.

+ 1 cc to M/s.S.Kalyanaraman, Advocate SR 19488

mp(co)
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