

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2015

Coram

THE HONOURABLE MR JUSTICE R.S.RAMANATHAN

Cr1.O.P.No.15200 of 2009

and

M.P.Nos.1 and 2 of 2009

V.Priya

...Petitioner/2nd Accused

/vs/

1.B.Chandrasekar

2.M.Venkatesan

...Respondents/Complainant

Prayer:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records in C.C.No.129 of 2009 on the file of the Judicial Magistrate at Ambattur, Chennai and quash the entire proceedings.

For Petitioner : Mr.A.Laxmi Raj Rathnam
For Respondents : Mr.S.Ramajayam for R1

ORDER

The second accused in C.C.No.129 of 2009 on the file of the learned Magistrate, Ambattur, Chennai is the petitioner. The first respondent/complainant filed the above complaint against the petitioner and the second respondent stating that the petitioner and the second respondent have committed offences under Sections 418, 419, 420, 421, 423, 424, 453 r/w 190 IPC. Taking cognizance of the case for all the offences stated in the complaint and the issuance of process are challenged in this petition.

2.It is submitted by the learned counsel for the petitioner that the reading of the complaint would reveal that no allegation has been made against the petitioner, who has been arrayed as second accused, to the effect that the second respondent/first accused has committed various offences in the complaint. He further submitted that as per the complaint, the first respondent/complainant stated that he and the second respondent/first accused were good friends and they started a partnership firm namely, V.S.Garments and the second respondent/first accused, in connivance, with the petitioner purchased machineries in his name without the knowledge of the first

respondent/complainant, though the consideration was paid by the first respondent/complainant. Further, in the first week of January 2009, the second respondent/first accused did not allow the complainant inside the firm and threatened the complainant stating that he would lodge a complaint against the complainant stating to the effect that he harassed his wife and touched her, if the complainant entered into the firm office and except the said allegation, no allegations were made against the petitioner/second accused for having committed the offences as stated above. He therefore submitted that there was no allegation of cheating committed by the petitioner/second accused and no material has been placed against the petitioner for having committed the offence under Section 453 IPC. He further submitted that even according to the complainant, the second respondent/first accused and the complainant were partners and therefore submitted that in the absence of any allegation against the petitioner/second accused, the learned Magistrate ought not take cognizance of the offence.

3.The learned counsel appearing for the first respondent submitted that necessary allegations are made in paragraph No.3 of the petition and it has been necessarily stated that the second respondent/first accused threatened the complainant that he would lodge a case against the complainant stating that he harassed his wife and touched her and in paragraph No.1 he has subsequently stated that money was entrusted with the second respondent/first accused and the second respondent/first accused misused the trust on him and purchased the machineries in his name instead of the name of the partnership firm and therefore, necessary allegations are made against the petitioner for having committed the offences under Sections 418, 419, 420, 421, 423, 424, 453IPC

4.I am unable to accept the contention of the learned counsel appearing for the first respondent. As rightly submitted by the learned counsel for the petitioner, in the complaint, allegations are made only against the second respondent/first accused that the complainant gave money to the first accused and they started a partnership firm and instead of buying machineries in the name of the partnership firm, the second respondent/first accused purchased the machinery in his own name and no allegations of any entrustment of any property with the petitioner was made in the complaint and it is only stated that the second respondent/first accused threatened the complainant. Therefore, no allegations of entrustment or trespass were made against the petitioner and without considering the same, the learned Magistrate took cognizance of case against the petitioner, who was arrayed as second accused. Hence, cognizance of the case as against the petitioner is to be quashed. Accordingly, the same is quashed and the criminal original petition is allowed and the proceedings in C.C.No.129 of 2009 on the file of the learned Judicial Magistrate, Ambattur, Chennai is quashed in so far as the

petitioner is concerned. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

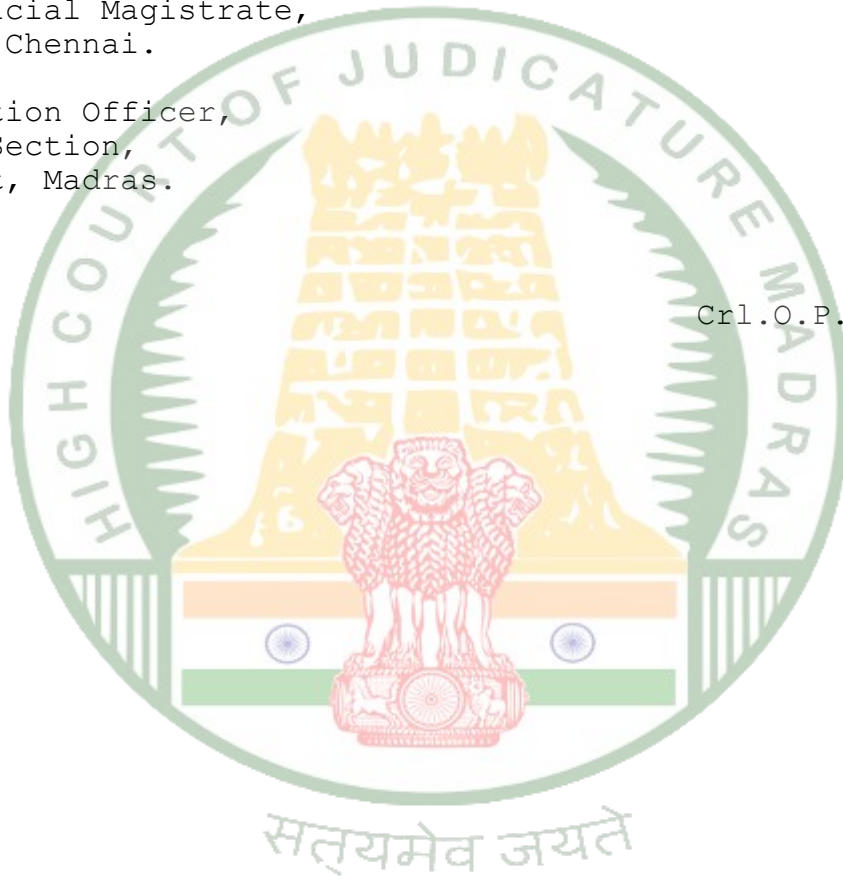
To

1.The Judicial Magistrate,
Ambattur, Chennai.

2.The Section Officer,
Criminal Section,
High Court, Madras.

Ctk(co)
krd 19/6

Crl.O.P.No.15200 of 2009



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