

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.09.2015

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Cr1.OP No.17205 of 2009 and

M.P.No.1 of 2009

1.Kanagamani @ Pappathi
2.N.Ramasamy Gounder
3.N.Vellappa Gounder
4.P.Ayyasamy
5.K.Ramasamy

..Petitioners

Vs

1.The State of Tamil Nadu,
Rep. By its Inspector of Police,
B4, Police Station,
Coimbatore,
Crime No.573/2005.

2.R.Ramasamy

..Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in C.C.No.323 of 2008, on the file of the learned Judicial Magistrate No.3, Coimbatore and to quash the same.

For Petitioner :Mr.S.Subbiah

For R.1 :Mr.D.Sivaramkumar,
Government Advocate (crl.side)

For R.2 :No Appearance

ORDER

The petitioners are the accused in C.C.No.323/2008 on the file of the learned Judicial Magistrate No.3, Coimbatore for alleged offence under Sections 120-B, 193 and 205 I.P.C. Seeking to quash the same, the petitioners are before this Court with this petition.

2.I have heard the learned counsel for the petitioners and the learned Government Advocate (crl.side) appearing for the first respondent and also perused the records carefully. There is no representation for the second respondent.

3.The facts of the case would be as follows:-

The first petitioner is the wife and the second petitioner is the father-in-law of the second respondent and the other petitioners are the relatives of the first petitioner. It is alleged that there was no love loss between the first petitioner and the second respondent and there was some matrimonial dispute. It is further stated that the first petitioner herein filed a private complaint before the learned Judicial Magistrate No.7, Coimbatore on 08.09.2000 alleging that the second respondent herein had committed an offence of bigamy. The trial went on in the said case wherein, the petitioners 1,3 & 4 have deposed as witnesses on the side of the complainant. Ultimately, the complaint came to be dismissed for default. That was not restored by approaching the higher forum.

4.Subsequently, the second respondent filed a private complaint before the learned Judicial Magistrate No.3, Coimbatore alleging that the petitioners herein had committed an offence punishable under Sections 120(B), 192, 193, 193, 195, 203 & 205 I.P.C & 196 Cr.P.C. The learned Judicial Magistrate had followed a strange procedure in simply referring the complaint to the first respondent herein under Section 156(3) Cr.P.C., for registration of a case and for investigation.

5.In pursuance of the said reference made, the first respondent registered a case in Crime No.573/2005 for offence under Sections 120(B), 193 & 205 I.P.C. On completing investigation, again strangely, the first respondent filed a final report before the learned Judicial Magistrate No.3, Coimbatore alleging that the petitioners have committed offences under Sections 120(B), 193 & 205 I.P.C. The learned Judicial Magistrate took cognizance of these offences on the said private complaint and issued summons to the petitioners. At that juncture, the petitioners have come up with this Criminal Original Petition seeking to quash the said proceedings in C.C.No.323 of 2008, on the file of the learned Judicial Magistrate No.3, Coimbatore.

6.In my considered view, the whole procedure adopted by the trial Court in referring the complaint to the Police for registration of the case and the procedure followed by the first respondent in filing final report against the petitioners herein before the jurisdictional Magistrate and the cognizance taken by the said Magistrate are all wholly without jurisdiction and illegal. In this regard, I may refer to Section 195 Cr.P.C., which mandates that no court shall take cognizance of an offence punishable under sections 193 to 196, 199, 200, 205 to 211 except on the complaint in writing of the public servant concerned or of some other public servant to whom he is

administratively subordinate.

7.Thus, it is crystal clear that the jurisdiction for the Magistrate to take cognizance on a private complaint under Section 190 Cr.P.C., stands excluded by Section 195(1) Cr.P.C. Hence, the Magistrate had no jurisdiction at all to take cognizance either on the private complaint or on the police report for offence under Sections 193 & 205 I.P.C.

8.So far as the offence under Section 120(B) I.P.C., is concerned, the conspiracy according to the police report was to commit for offence under Sections 193 and 205 I.P.C. Thus, the order of the learned Judicial Magistrate taking cognizance of the offence under Sections 120(B), 193 & 205 I.P.C., is wholly without jurisdiction and illegal. In such view of the matter, I am inclined to quash the entire case in C.C.No.323/2008 on the file of the learned Judicial Magistrate No.3, Coimbatore.

9.In the result, the Criminal Original Petition is allowed and the case in C.C.No.323/2008 on the file of the learned Judicial Magistrate No.3, Coimbatore is hereby quashed. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jbm

To

1.The Judicial Magistrate No.3,
Coimbatore.

2.The Inspector of Police,
B4, Police Station,
Coimbatore,

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.S.Subbiah Advocate sr.52858

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