

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1211 of 2014

&

M.P.No.1 of 2014

1.P.Palanisamy
2.S.Shanmuganathan
3.Mr.Rajavelu

.. Petitioners/PW1 to 3

vs.

State Rep. By the
Station House Officer
Neravy Police Station
Karaikal

.. Respondent/Complainant

Criminal Revision filed under sections 397 and 401 Cr.P.C. to set aside the findings and directions regarding adducing false evidence and withdrawal of complaint against the petitioners in Para 14 of the judgment of the learned Judicial Magistrate II, Karaikal dated 31.07.2014 in STR.No.682 of 2009 and Suo Motu complaint in C.C.No.138 of 2014 on the file of the Judicial Magistrate II, Karaikal.

For Petitioner : Mr.G.K.Ilanthiraiyan
for Sai Bharath and Ilan

For Respondent : Mr.M.R.Thangavelu
Additional Public Prosecutor (Pondy)

सत्यमेव जयते
O R D E R

This revision challenges the proceedings in "suo motu" complaint of the learned Judicial Magistrate II, Karaikal in C.C.No.138 of 2014. The learned Judicial Magistrate II, Karaikal tried the case in S.T.R.No.682 of 2009 for offences under Sections 294(b), 353 and 506(i) IPC.

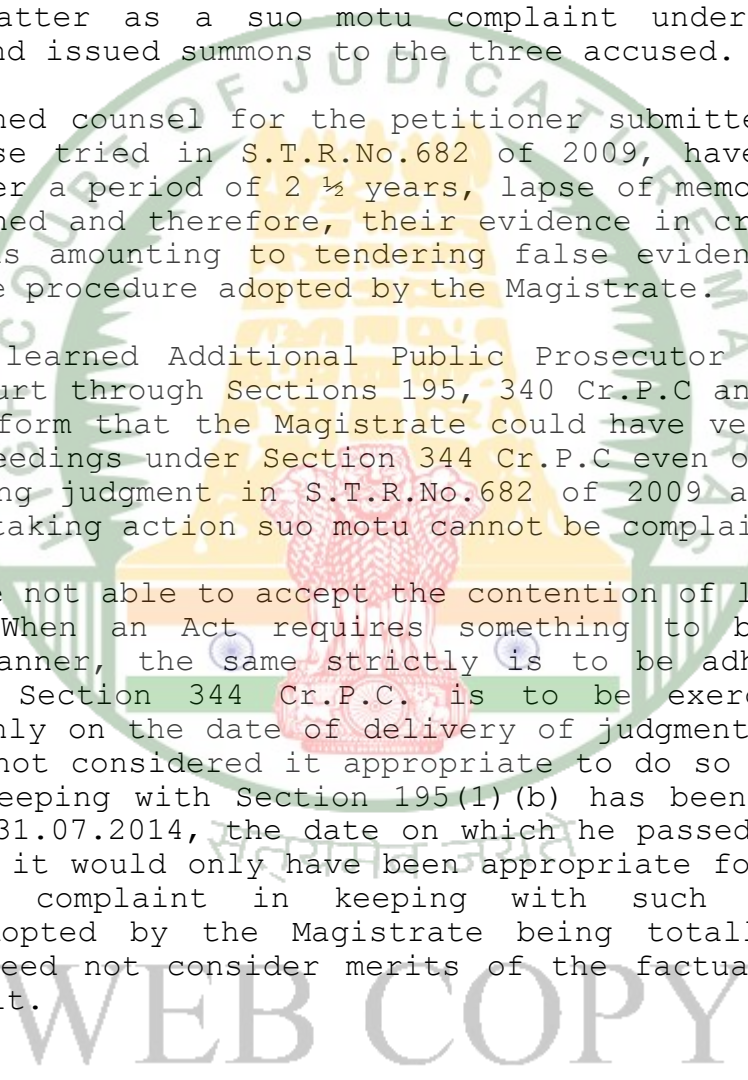
2. The prosecution case was that on 27.03.2009 at about 17.30 hours, at the office of the Road Transport Department, Madagady, Neravy, the accused has scolded the complainant, a Motor Vehicle Inspector, using filthy language and used criminal force by throwing a chair while he was engaged in the discharge of the official duty. The accused so conducted himself, with

intent to deter him from performing his functions and also threatened him with dire consequences owing to an argument that arose. Convicting the accused under judgment dated 31.07.2014, the Magistrate informed that Pws 1 to 3 having spoken in support of the prosecution case in the course of chief examination, had, in their cross-examination, deposed to the detriment of the prosecution case. Hence, they had committed offence under Section 191 I.P.C. punishable under Section 195 Cr.P.C. Though the Magistrate initially rightly informed that he would be forwarding a separate complaint to the Chief Judicial Magistrate, Karaikal towards action for perjury against Pws 1 to 3 and to be tried by another Magistrate, he subsequently had taken the matter as a suo motu complaint under order dated 02.08.2014 and issued summons to the three accused.

3. Learned counsel for the petitioner submitted that Pws 1 to 3, in case tried in S.T.R.No.682 of 2009, have been cross-examined after a period of 2 ½ years, lapse of memory could have been occasioned and therefore, their evidence in cross could not be treated as amounting to tendering false evidence. He also questions the procedure adopted by the Magistrate.

4. The learned Additional Public Prosecutor (Pondicherry) took this Court through Sections 195, 340 Cr.P.C and Section 344 Cr.P.C to inform that the Magistrate could have very well taken summary proceedings under Section 344 Cr.P.C even on the date of his delivering judgment in S.T.R.No.682 of 2009 and therefore, by analogy, taking action suo motu cannot be complained against.

5. We are not able to accept the contention of learned Public Prosecutor. When an Act requires something to be done in a particular manner, the same strictly is to be adhered to. The power under Section 344 Cr.P.C. is to be exercised by the Magistrate only on the date of delivery of judgment in the case. When he has not considered it appropriate to do so and intent to proceed in keeping with Section 195(1)(b) has been indicated by him even on 31.07.2014, the date on which he passed the judgment in the case, it would only have been appropriate for him to have preferred a complaint in keeping with such Section. The procedure adopted by the Magistrate being totally erroneous, this Court need not consider merits of the factual submissions made before it.



6. Accordingly, the Criminal Revision Case is allowed and the proceedings in C.C.No.138 of 2014 on the file of the Judicial Magistrate II, Karaikal are quashed. Consequently, connected Miscellaneous Petition stands closed.

gpa

s/d-

Assistant Registrar (CS-III)

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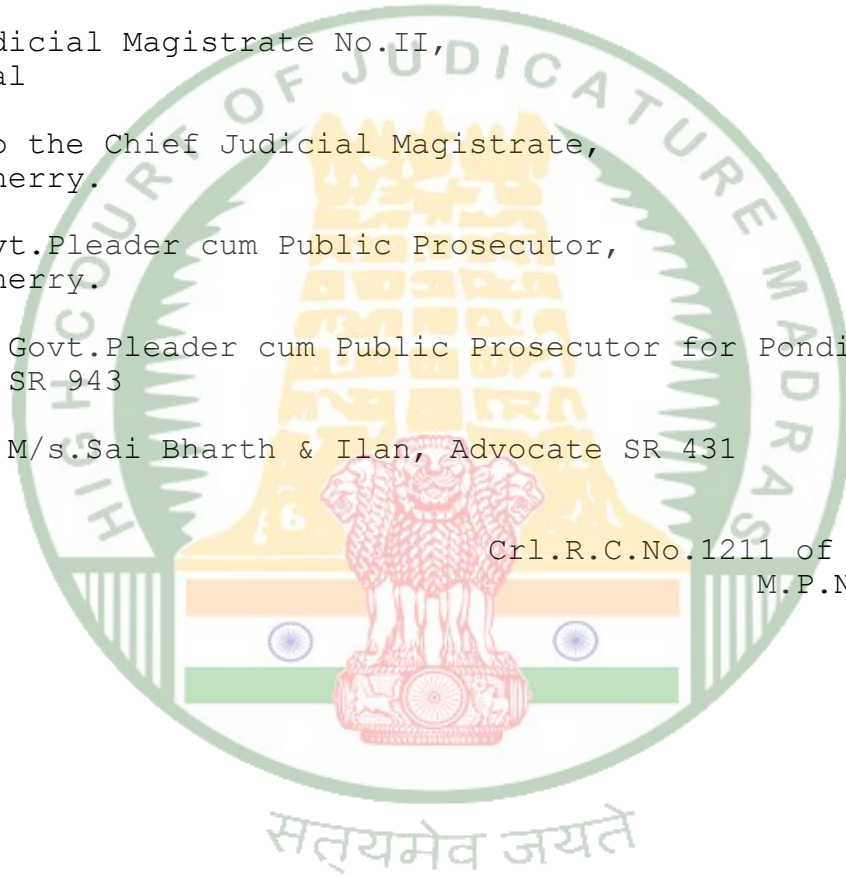
Sub-Assistant Registrar

To

1. The Judicial Magistrate No.II,
Karaikal
2. Do thro the Chief Judicial Magistrate,
Pondicherry.
3. The Govt.Pleader cum Public Prosecutor,
Pondicherry.
- + 1 cc to Govt.Pleader cum Public Prosecutor for Pondicherry
SR 943
- + 1 cc to M/s.Sai Bharth & Ilan, Advocate SR 431

bvr(co)
prk22/2

Cr1.R.C.No.1211 of 2014 &
M.P.No.1 of 2014



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