

1IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.21604 of 2015
and M.P.Nos.1 to 3 of 2015
Reserved on 11.12.2015

1. Desan

2. Lokesh Kumar

3. Rajendiran ... Petitioners

Vs

Ranganathan ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records in C.C.No.115 of 2015 on the file of the learned Judicial Magistrate No.I, Chengalpattu, Kanchipuram District and quash the same in so far as the petitioners are concerned.

For Petitioner : Mr.K.Balu
Mr.A.Tamil Rajan

For Respondents : Mr.G.Mutharasu

सत्यमेव जयते
O R D E R

The present criminal original petition has been filed praying to call for the records in C.C.No.115 of 2015 on the file of the learned Judicial Magistrate No.I, Chengalpattu, Kanchipuram District and quash the same in so far as the petitioners are concerned.

2. The respondent herein, has preferred a private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate No.1, Chengalpattu, against the petitioners herein, for the offences punishable under Sections 294(b), 427 and 506(i) IPC, alleging that on 22.07.2011 at about 6.00 p.m., the petitioners had assembled at the house of the respondent, with an intention

to cause damage to the compound wall belonging to the respondent and while they were starting to demolish the wall, the respondent's daughter Tamizhselvi resisted the same, for which, all the petitioners abused her and the respondent in a filthy language and put them to shame among the neighbours and threatened them with dire consequences and caused demolition to the compound wall up to 25 feet and caused loss to the tune of Rs.1,00,000/-. The respondent lodged a complaint against the petitioners before the Chengalpattu Town Police, however there was no action since the petitioner No.1 was a retired Sub Inspector of police. Thereafter, the respondent approached the Superintendent of Police and on his direction, the police registered the case against the petitioners in Crime No.488 of 2011 for the offences under Sections 294(b), 427 and 506(i) IPC, but subsequently closed by referring it as a 'mistake of fact'. The police also served RCs notice on the respondent. Aggrieved by the same, the respondent also filed a protest petition, which also came to be dismissed. Hence, the respondent preferred the private complaint before the learned Judicial Magistrate, which was taken on file vide C.C.No.115 of 2015. Aggrieved by the same, the petitioners came forward with the present petition.

3. The learned counsel appearing for the petitioners would submit that the respondent already lodged a complaint with same set of allegations in the year 2011, which was registered by the police and closed it as a mistake of fact and the protest petition filed thereof, also came to be dismissed on the ground that the dispute is purely civil matter. Therefore, the learned counsel would submit that the entire allegations levelled against the petitioners in the complaint by the respondent would not constitute any offence and the dispute is purely civil in nature, the respondent added criminal flavour and filed the complaint, which is liable to be quashed.

4. The learned counsel appearing for the respondent would submit that though the respondent lodged the complaint on earlier occasion, there was no proper action taken against the petitioners since the first petitioner is a retired Sub Inspector of Police and closed the same by referring it as a mistake of fact and since the protest petition was also dismissed, the respondent was constrained to lodge the private complaint against the petitioner and the learned Magistrate, having considered the allegations made in the complaint, has taken cognizance of the offence against the petitioners and at this stage, it is not appropriate to quash the proceedings. Hence, the learned counsel sought for dismissal of the petition.

5. Heard the learned counsel on either side and perused the entire materials available on record.

6. On a perusal of the complaint lodged by the respondent, it reveals that the respondent has made specific allegations against the petitioners, stating that they had assembled at the house of the respondent, with an intention to cause damage to the compound wall belonging to the respondent and while they were starting to demolish the wall, the respondent's daughter Tamizhselvi resisted the same, for which, all of the petitioners abused her and the respondent in a filthy language and put them to shame among the neighbours and threatened them with dire consequences and also caused demolition to the compound wall upto 25 feet and caused loss to the tune of Rs.1,00,000/-. It is to be noted that though the respondent lodged the complaint before the concerned police, after registering same, it was closed as mistake of fact and subsequent protest petition was also dismissed on the ground that the dispute is of civil nature. Now as a lost resort, the respondent has filed the private complaint with the above allegations and it is not in dispute that the learned Magistrate has taken cognizance of the same after coming to the conclusion that the ingredients of the offence were prima facie made out. Mere closure of earlier complaint as a mistake of fact and dismissal of protest petition, in my opinion, cannot be a ground to quash the proceedings. It is settled law that the powers possessed by the High Court under Section 482 of the Code are wide and the very plenitude, require a great caution in its exercise. Power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases. In "Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others" reported in (1976) 3 SCC 736, the Hon'ble Supreme Court has enunciated the circumstances under which the process against the accused can be quashed or set aside, which read as under :

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like".

7. Keeping in mind the above, when the case on hand is analyzed, I am of the opinion that the present case would not fall within any of the above factors so as to invoke inherent jurisdiction of this Court to quash the proceedings.

Accordingly, the present Criminal Original Petition is dismissed. Consequently, connected MPs are closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

suk

To

1. The Judicial Magistrate No.1
Chengalpattu

2. do thro the Chief Judicial Magistrate
Chengalpattu

1 cc to Mr.K. Balu, Advocate, Sr. 2792

1 cc to Mr.A. Tamilrajan, Advocate, Sr. 2771

Cr1.O.P.No.21604 of 2015

सत्यमेव जयते

KSJ (CO)

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