

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.5031 of 2015

and M.P.No.1 of 2015

C.Asaithambi
Sub-Inspector of Police,
Tharamangalam Police Station,
Now at Nangavalli Police Station. ... Petitioner/Accused

Vs.

K.Rasamuthu ... Respondent/Complainant

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in C.C.No.239 of 2014 on the file of the District Munsif cum Judicial Magistrate, Omalur and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.S.Doraisamy

ORDER

The petitioner who is an accused in C.C.No.239 of 2014 on the file of the learned District Munsif cum Judicial Magistrate, Omalur has come forward with this petition to quash the proceedings against him for the offence punishable under Sections 167, 471, 465 and 468 IPC.

2.Learned counsel for the petitioner submitted that the respondent/complainant has filed a private complaint as if the petitioner herein on 30.01.2014 arrested the respondent Rasamuthu and others while they were alleged to be standing near Mariamman Temple and they were taken to the Police Station and case has been registered under Section 107 IPC in Crime No.47 of 2014. In the same incident, another FIR on the same day for the same crime number in the same FIR report serial number has been registered. But the averment in paragraph No.2 has been slightly changed. Immediately, the respondent/complainant filed

a writ petition in W.P.No.29559 of 2014 against the police praying for a direction, to direct the respondents to remove the name of the respondent/complainant as a History Sheet Rowdy. In paragraph No.4 of the order passed by this Court in W.P.No.29559 of 2014, registration of the case in Crime No.47 of 2014 has been discussed and on that basis, his name has been directed to be removed from the list of History Sheet Rowdy. It is further submitted that the petitioner on receiving the transfer order has handed over the charge and there is no enmity between both the parties and therefore, there is no necessity for registering false case against the respondent. One FIR has been registered against the respondent/complainant and another FIR has not been registered against him. But disciplinary proceedings has been initiated against the petitioner who is an accused in the private complaint. Further, in the report it was specifically mentioned that there is no evidence to show that complaint has been registered by the petitioner and so, the disciplinary proceedings has been dropped. In such circumstances, the proceedings against the private complaint has to be quashed. The second limb of argument is that since the petitioner is a public servant sanction under Section 197 of Cr.P.C. is necessary for prosecution. But no sanction has been obtained for prosecuting the petitioner. Hence, on that ground also, he pray for quashing the private complaint. To substantiate his argument, he has also relied upon the decision reported in 2016 (2) SCC 143 (N.K.Ganguly vs. Central Bureau of Investigation, New Delhi).

3.Resisting the same, the learned counsel for the respondent would submit that in respect of sanction is concerned, the petitioner registered a complaint in the same crime number but not in an official capacity and so, no sanction is necessary under Section 197 of Cr.P.C. is required. He further submitted that there is no necessity for the respondent to fabricate the FIR and file a complaint and that can be proved by way of trial. Hence, he prayed for dismissal of the petition.

4.Considered the rival submissions made by both sides and perused the typed set of papers.

5.A private complaint has been filed by one of the accused in Crime No.47 of 2014 for the offence under Section 107 of Cr.P.C. But it is admitted by the petitioner herein that one FIR has been registered by him and in page No.5 also another FIR has been registered on the same day for the same offence but the recitals has been some what different. It is pertinent to note that disciplinary proceedings has been initiated against the petitioner on the basis of the complaint, in which it was held that there is no evidence to conclude that error has been done by the petitioner herein. It is well settled dictum of the Apex Court that in disciplinary proceedings guilt has been proved by

preponderance of probabilities not beyond all reasonable doubt. But guilt of C.C.No.239 of 2014 has been proved beyond all reasonable doubt, whereas in the disciplinary proceedings the disciplinary authority has held that there is no evidence to show that FIR has been registered by the petitioner herein. In such circumstances, once in the disciplinary proceedings itself, it was held that there is no evidence to show that the second FIR has been registered by the petitioner, the private complaint itself fails.

6. In respect of sanction is concerned, it is true that as per Section 197 of Cr.P.C., sanction is mandatory. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the petitioner reported in 2016 (2) SCC 143 (N.K.Ganguly vs. Central Bureau of Investigation, New Delhi), wherein it was held that at the time of taking cognizance of the offence, sanction of the Appointing Authority is mandatory. But here private complaint has been taken on file as C.C.No.239 of 2014, but admittedly no sanction has been obtained. Per contra, the learned counsel for the respondent/complainant submitted that FIR has been registered not on an official capacity. But, on perusal of the same shows that it has been registered only as if the Sub Inspector of Police was alleged to have registered the complaint. In such circumstances, the argument advanced by the learned counsel for the respondent that document has been created as an individual capacity does not merit acceptance. Without obtaining sanction from the Appointing Authority private complaint has been preferred. Hence, I am of the view that the Trial Court has committed a mistake while taking cognizance of the offence, the learned Magistrate had to see as to whether sanction has been obtained from the Appointing Authority. In such circumstances, I am of the view that it is a fit case for quashing the private complaint against the petitioner herein and it is hereby quashed. Consequently, the Criminal Original Petition deserves to be allowed.

In the result, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.
cse

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The District Munsif cum Judicial Magistrate,
Omalur .

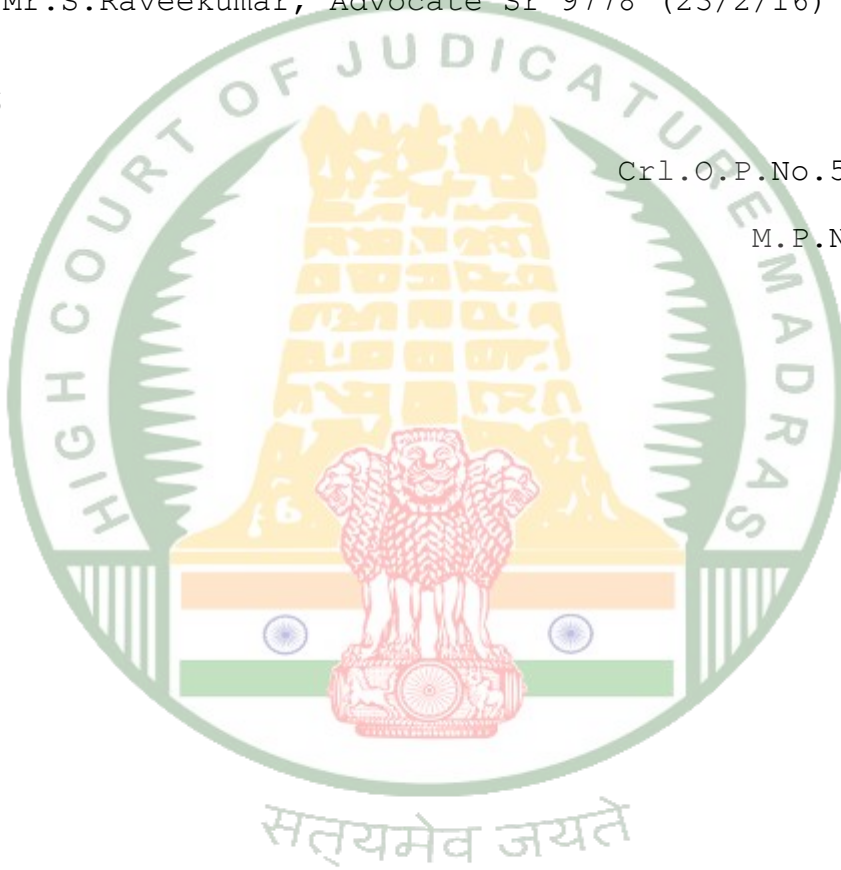
2.The Public Prosecutor, High Court, Chennai.

+ 1 cc to Mr.S.Doraisamy, Advocate Sr 9739

+ 1 cc to Mr.S.Raveekumar, Advocate Sr 9778 (23/2/16)

KR/22/2/16

Crl.O.P.No.5031 of 2015
and
M.P.No.1 of 2015



WEB COPY