

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE B. PUGALENDHI

CRL. O.P.No.23401 of 2009

1. Tharyan K. Koshi
2. Y. Kirbakara Daniel ... Petitioners/Accused

Vs

M. Thanikachalam ... Respondent/Complainant

Prayer : This Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in C.C.NO.94 of 2009 now pending trial on the file of the Judicial Magistrate No.V, Vellore-9 and quash the proceedings.

For Petitioners: Mr.Karthic, Senior Counsel for
Mr. T.S.Gopalan

For Respondent : No Appearance

O R D E R

The petitioners have filed this petition to call for the records in C.C. No.94 of 2009 now pending trial on the file of the Judicial Magistrate No.V, Vellore, which has been filed by the respondent herein as against the petitioners for the offences punishable under Sections 191, 192, 193, 199, 200 203 and 205 of IPC.

2. The brief facts of the case in nutshell is as follows:

2(i). The 1st petitioner along with the 2nd petitioner is running a Charitable organization for the abandoned, aged, orphaned, destitute women and children and the 1st petitioner is the Secretary and the 2nd petitioner is the Deputy Director in the said organization. The Respondent/complainant was working as a Maistry from 1995 in the said organization and on 23.09.2002, the respondent was transferred from Mason work to Dairy Farm. Since the respondent was not willing to take up the Dairy Farm work, he tendered his resignation on 01.11.2002 and the same was accepted on 02.11.2002.

2(ii). But, the respondent raised an Industrial Dispute before the Labour Court, Vellore in I.D.No.142 of 2003 stating that he never tendered his resignation letter as claimed by the petitioners before the Labour Court. In Industrial Disputes Proceedings, the 2nd petitioner filed a proof affidavit on behalf of the organization, namely, Mudhiyore, Balar Kudumba Grama Pannai and also gave his evidence in the year 2006. The petitioners were recalled on various occasions and cross-examined.

2(iii). The case of the respondent/complainant is that the petitioners/accused gave false evidence before the Labour Court, Vellore, and also produced a fabricated resignation letter and thereby committed the offences punishable under Sections 191,192,193,199,200 203 and 205 of I.P.C. The learned Judicial Magistrate No.V took cognizance on the complaint filed by the respondent and issued summons to the petitioners.

3.Heard Mr.Karthic, the learned Senior Counsel appearing for the petitioners and also perused the available records placed before this Court. There is no appearance on behalf of the respondent/complainant, though notice was served and his name was also printed.

4.The learned Senior Counsel appearing for the petitioners submits that the learned Judicial Magistrate has taken cognizance for the offence punishable under Sections 191,192,193,199,200 203 and 205 of I.P.C. when there is a bar under Section 195(ii)(b) Cr.PC. for taking cognizance. The case of the respondent is that the signature of the respondent was obtained in a blank paper and the same was misused as his resignation letter. It is not the case of the respondent that the petitioners have fabricated any document in the pending proceedings and therefore, the cognizance taken by the learned Magistrate for the offences punishable under Section 191,192,193,199,200 203 and 205 of I.P.C is an error apparent and therefore the same is liable to be quashed.

5.In support of his argument, the learned senior counsel for the petitioners relied on the following decisions of the Hon'ble Supreme Court as well as of this Court.

1. "Iqbal Singh Marwah and another Vs.Meenakshi Marwah and another" reported in (2005) 4 SCC 370.
2. "Kailash Mangal Vs. Ramesh Chand (Dead) through legal representative" reported in (2015) 15 SCC 729
3. "Amarsang Nathaji Vs. Hardik Harshadbhai Patel & Others" reported in (2018) 1 SCC 113
4. "Dr. S.K. Packiaraj Vs. T.V. Mathan Kumar reported in (2017) SCC online Mad 2815.

6. The learned counsel for the petitioners submits that the provision of Section 195(1)(b)(ii) prohibits the Court from taking cognizance for the offence punishable under Sections 193 to 196, 199, 200 to 211 of I.P.C. when the offence is alleged to have been committed in relation to any proceedings, the procedure for the complaint in cases under Section 195 Cr.P.C. is followed as per the provision under Section 340 Cr.P.C. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to that effect that it is expedient in the interests of justice that an enquiry should be made into any of the offences referred to in Section 195(1)(b)(ii) Cr.P.C. The provision prohibits from taking cognizance on an offence in certain specified situations except upon complaint by Court.

7. The purpose and object of the prohibition under Section 195(1)(b)(ii) is to prohibit the private person from wreaking vengeance to harass his opponent when prosecution has been instituted upon insufficient grounds. The provision of Section 195(1)(b)(ii) is as an exception to the general rule for taking cognizance of offence punishable under Section 193 I.P.C. unless written complaint made by Court concerned.

8. In the Sachida Nand Singh case, reported in (1998) 2 SCC 493, the Hon'ble Supreme Court held as follows:

" Where forgery of the document was committed before the document was produced in a Court. Then bar is contained in Section 195(1)(b)(ii) would not be applicable."

9. The above view of the Hon'ble Supreme Court was reiterated by a Constitution Bench of the Hon'ble Supreme Court in "Iqbal Singh Marwah Vs. Meenakshi Marwah reported in (2005) 4 SCC 370 wherein the Apex Court held as follows:

" In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision has been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court. i.e. during the time when the document was in custodia legis"

10. Further, the Industrial Dispute in I.D.No.142 of 2003 raised by the respondent against the petitioners before the Additional Labour Court, Vellore, was dismissed on 29.03.2010 considering the facts and circumstances of that case. The very

same allegations made by the respondent in this case were also made in the Industrial dispute and the same were found to be false by the Labour Court and the Labour Court gave a finding that the respondent/complainant has rendered his resignation and left the Job from the institution on his own volition.

11. In view of the decision rendered by the Labour Court and considering the decisions cited supra and the specific bar under Section 195(1)(b)(ii) of Cr.P.C., the complaint made by the respondent/complainant in C.C. No.94 of 2009 against the petitioners is liable to be rejected. Accordingly, the Criminal complaint pending against the petitioners in C.C. No.94 of 2009 before the Judicial Magistrate-V, Vellore is hereby quashed.

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

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

lbm

To:

- 1.Judicial Magistrate No.V, Vellore-9.
- 2.The Chief Judicial Magistrate, Vellore.
- 3.The Judge, Labour Court, Vellore.

Copy to: The Section Officer,
Criminal Section, High Court, Madras.

CRL. O.P.No.23401 of 2009

VGI(CO)
CSR: 07.02.2020