

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.O.P No.16906 of 2010
and M.P.No.1 of 2010

Elumalai ... Petitioner/Accused

Vs.

Ramalingam ... Respondent/Complainant

Prayer : - Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order, dated 21.04.2010 in C.M.P.No.1662 of 2010 in C.C.No.482 of 2004 on the file of the Judicial Magistrate No.III, Salem.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.B.Vasudevan

ORDER

This Criminal Original Petition has been filed to set aside the order, dated 21.04.2010 in C.M.P.No.1662 of 2010 in C.C.No.482 of 2004 on the file of the Judicial Magistrate No.III, Salem.

2. It is averred in the petition that the respondent / complainant filed C.M.P.No.1662 of 2010 under Section 311 Cr.P.C, to recall P.W.1 for further examination in Chief after dismissal of similar application filed by him in C.M.P.No.5477 of 2009.

3. While hearing the argument of both sides, it is found from the records that the learned Judicial Magistrate took the case on file for the offence under Section 193 IPC on the private complaint filed by the respondent without following the procedure enunciated under the Code of Criminal Procedure. Therefore, this Court called for the entire records in C.C.No.482 of 2004 on the file of the Judicial Magistrate No.III, Salem and the entire records has been received by this Court.

4. After receipt of the records, this Court heard the arguments of both sides.

5. The learned counsel appearing for the petitioner contends that offence under Section 193 IPC shall not be taken cognizance by the Court except on the complaint given by the Court concerned and therefore, the entire C.C.No.482 of 2004 is liable to be quashed.

6. The learned counsel appearing for the respondent per contra contends that the petitioner / accused committed offence of adducing false evidence before the Court and the learned Judicial Magistrate took the case on file after satisfying that prima facie case is made out from the complaint and sworn statement recorded by it.

7. This Court perused the entire records in C.C.No.482 of 2004 of the Judicial Magistrate Court. The private complaint was lodged by the respondent and after recording sworn statement, the learned Judicial Magistrate took cognizance of the offence under Section 193 IPC.

8. The offence under Section 193 IPC is with regard to false evidence given in a judicial proceedings. As per Section 195 (1) (b) (i), no court shall take cognizance of any offence punishable under any of the following Sections of the Indian Penal Code, namely sections 193 to 196, 199, 200, 205 to 211 and 228, when such offence is alleged to have been committed in or in relation to any proceedings in any Court, except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf or some other Court to which that such Court is subordinate.

9. In this case, the respondent gave the complaint alleging that the petitioner gave false evidence before the Judicial Magistrate in the proceedings filed by him seeking direction to the authority concerned to register his Date of Birth. It is further alleged that he falsely stated his place of birth and about the death of his mother. It is contended on the side of the respondent that his real mother passed away and he was brought up by his adopted mother and the private complaint has been filed only to harass the respondent as the petitioner lost in the Civil Suit against the respondent. Let this Court need not dwell upon the contents of the allegation in the complaint.

10. It is to be seen whether the procedure followed by the Court below is correct and is there any abuse of process so as to invoke the inherent jurisdiction under Section 482 Cr.P.C.

11. Since the offence is in relation to a Court, the sanction of the Court should be obtained first and therefore, Section 195 Cr.P.C mandates the complaint from the Court in writing. While the legislation mandated the sanction of the Court under Section 195 of the Code of Criminal Procedure to deal with the offence under Section 193 IPC and other certain offences affecting public justice also provided the procedure to deal with those offences under Section 344 and 340 Cr.P.C.

12. As per Section 344 Cr.P.C, if the Judicial Magistrate or Sessions Court is of the opinion at the time of delivery of any Judgment or final order of any judicial proceeding, that any witness had knowingly or wilfully given false evidence or has fabricated false evidence, the Court may take cognizance of the offence and summarily try after affording reasonable opportunity of showing cause why he should not be punished. If any application is filed before the Court bringing to its notice about the false evidence, the Court is to follow the procedure laid down under Section 340 Cr.P.C.

13. As per Section 340 Cr.P.C, the Court is required to consider the application, must conduct preliminary enquiry and can order for filing the complaint. The Court cannot straightaway proceed to issue notice to the person against whom such an application has been made. The preliminary enquiry provided under Section 340 Cr.P.C is to safeguard against frivolous or vexatious prosecution. The learned Judicial Magistrate in this case has not followed the procedure laid down under Section 340 Cr.P.C.

14. As per the Code of Criminal Procedure, the Judge / Judicial Magistrate has to follow the following procedure in dealing with offence under Section 193 IPC. The Judicial Magistrate, if is satisfied that false evidence has been wilfully given in a proceedings he can record the same in the Judgment or the final order of the proceedings and summarily proceed after affording opportunity to the person concerned (witness) under Section 344 Cr.P.C or instead of resorting to summary procedure make a complaint in writing to the jurisdictional Judicial Magistrate or CJM as the case may be, if any application is filed bringing to the notice of the Judicial Magistrate about the false evidence, he should conduct preliminary enquiry under Section 340 Cr.P.C and record a finding by exercising judicial discretion after scrutinizing with care and caution and decide whether the complaint should be filed. If the Judicial Magistrate decides to file a complaint, then the Court or the authorised officer of the Court should file the complaint in writing under Section 195 Cr.P.C to the jurisdictional Court or to the CJM as the case may be.

15. The learned Judicial Magistrate took cognizance of the offence under Section 193 IPC on the complaint given by the respondent without following the mandatory provisions of law particularly as provided under Section 195 of the Code of Criminal Procedure, 1973. No purpose would be served in conducting the trial in C.C.No.482 of 2004 and it is nothing but an abuse of process of law. Though Crl.O.P has been filed to quash the order of the Judicial Magistrate in 311 Cr.P.C petition, this Court is of the view that it is a fit case to quash the entire proceedings in C.C.No.482 of 2004. Therefore, the proceedings in C.C.No.482 of 2004 is liable to be quashed.

In fine, this Criminal Original Petition is allowed and the proceedings in C.C.No.482 of 2004 on the file of the learned Judicial Magistrate No.III, Salem are quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.III
Salem.
2. -Do- Thro The Chief Judicial Magistrate,
Salem.
3. The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.K.Selvaraj, Advocate SR.71366

Crl.O.P No.16906 of 2010

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srg 19/01/2017