

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON: 16-06-2017
DELIVERED ON 20-12-2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P Nos.13554 and 13725 of 2011
and
M.P.Nos.1 and 1 of 2011

CrI.O.P.No.13554 of 2011

1.K.P.Ramasamy
2.K.K.C.Balu Gounder @ Balasubramaniam
3.Somu @ Somasundaram
4.Kadai Balu @ Balasubramaniam
.. Petitioners/Accused 11 to 14.

vs.

D.Sri Vidhya ... Respondent/Complainant

Prayer: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.107 of 2011, on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai, and to quash the same.

CrI.O.P.No.13725 of 2011

1.T.P.Ramasamy
2.R.Saravanan
3.R.Easwaran
4.Rotti Mani @ K.C.Subramani
5.K.Govindhan
6.Kolrasu @ Govindasamy
7.A.Gowthaman
8.K.Rangasamy
9.Vasanthakumar @ Velliyampalayam Kumar
10.P.Deivasigamani .. Petitioners/Accused 1 to 6

vs.

D.Sri Vidhya .. Respondent/Complainant

Prayer: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.107 of 2011, on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai, and to quash the same.

(in both the Crl.O.Ps)

For Petitioners : Mr.S.Kaithamalai Kumaran

For Respondents : Mr.P.Kannan Kumar

COMMON ORDER

The accused in both the Criminal Original Petitions are arrayed as accused No.1 to 14 in private complaint in C.C.No.107 of 2011 on the file of the learned District Munsif Court-cum-Judicial Magistrate, Perundurai, under Sections 147, 323, 354, 355, 447, 506(i) of I.P.C. read with Section 3(i) of Tamilnadu Public Property Damage Act. All the accused had preferred petitions under Section 482 of Cr.P.C. to quash all further proceedings in C.C.No.107 of 2011.

2.The main averments of the petitioners are that the respondent Smt.Sri Vidhya residing in S.No.506/3-5, Kanchikoil Road, Sanangadu, Thiruvengkadampalayam, Perundurai Taluk along with her husband T.P.Kumaravel, son Akil Adhithya, Mother-in-law Rukmani and Junior father-in-law Kaliappan. Her husband was having money transaction with A1 and A1 has purchased the house fraudulently from T.P.Kumaravel through a power of attorney obtained from him at the time T.P.Kumaravel borrowed money from the A1. It is also noted from the averments that a Civil Suit in O.S.No.10 of 2010 is pending before the learned Principal District Judge, Erode.

3.Further, it is noted from the averments that already an FIR was lodged by the respondent in Crime No.580 of 2010 for the offences under Section 147, 323, 354, 355 and 506(ii) of I.P.C. against the accused 1 to 10 herein. A counter case is also lodged by the A1 herein in Cr.No.584 of 2010 against the respondent and her family members. The police authorities had filed a referred charge sheet on both the complaints before the lower Court. The 1st petitioner herein after approaching for re-investigation in Crl.O.P.No.25179 of 2010 which was dismissed by this Court and later a protest petition before the trial Court. On the part of the respondent herein, she had filed a private complaint in C.C.No.107 of 2011 on the file of the learned Judicial Magistrate, Perundurai containing allegations made in the Crime No.580 of 2010. The Court below had taken cognizance of the case and issued summons to all the petitioners herein. Against same, the present Criminal Original Petitions are filed.

4.The learned counsel appearing for the petitioners in both the petitions have univocally contended that once the F.I.R. under Section 156(3) of Cr.P.C. is lodged and referred charge

sheet had been filed by the police under Section 173(2) of Cr.P.C., it is for the aggrieved parties if any to approach the concerned Court by way of filing the Protest petition. In support of their claim, they have referred a judgment of this Hon'ble Court in the case of A.Krishna Rao v. L.S.Kumar reported in 1998 (1) CTC 329.

5.The learned counsel for the respondent contended that the petitioners are influential persons and they have misused the power of attorney given at the time of obtaining loan and further it is the respondent who gave the complaint in Crime No.580 of 2010 and in order to counter blast the said complaint in C.C.No.584 of 2010 was lodged and the police had erroneously filed referred charge sheet only to support the petitioners. Also a suit is instituted and the same is pending.

6.In the instant case, admittedly both the 1st respondent in the private complaint and the respondent had given complaint against each other and both the complaints culminate in referred charge sheet filed by the police concerned. It seems the Magistrate concerned has accepted the referred charge sheet and passed orders on the same which has reached finality. In such circumstances, a second complaint with the same allegations by way of private complaint is not maintainable unless the order of the Magistrate is set aside. It has been held in the above decision that taking cognizance in the second complaint makes the same is not maintainable. Further as the judgments in the case of Murugesan V. Kothandam reported in 1969 L.W. CrI. 268 and in the case of Ramasubbu v. State reported in 1987 L.W. CrI. 79, wherein it is categorically observed as below:

"that when the police has filed a report under Section 173 Cr.P.C., the Magistrate got the option under Section 173(3), Cr.P.C. either to agree or to disagree and to give further direction to the Police. When once the Magistrate has recorded his findings as mistake of fact in the RCS which is a judicial order, thereafter he cannot entertain the second complaint and if entertained the same is not maintainable."

7.This Court takes note of the larger Bench of the Hon'ble Apex Court has carved out exceptional circumstances. This was also observed in the un-reported judgment of this Court in Dr.Parthasarathy v. Rukmani and another dated 22.12.2015. I do not find any exceptional circumstances which require this Court interference and law is settled well prescribing the procedures mandated as per the Code of Criminal Procedure.

8. In view of what is stated herein above, finding much force in the contention raised by both the learned counsel for the petitioners, this Court is of the opinion that the Magistrate erred in taking cognizance of the private complaint and issued summons to the petitioner. Therefore, both the Criminal Original Petitions are allowed and the proceedings in C.C.No.107 of 2011, on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai, stands quashed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

vs

To

The District Munsif-cum-Judicial Magistrate,
Perundurai.

+1cc to Mr.P.Kannan Kumar, Advocate SR.No.91831

+1cc to Mr.A.K.Kumarasamy, Advocate SR.No.90935

CrI.O.P Nos.13554 and 13725 of 2011
and
M.P.Nos.1 and 1 of 2011

GJII (CO)
GN(17/02/2018)

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