

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.22093 of 2017

and

Crl.M.P. No.12986 of 2017

1.Arun Kumar

2.Swaminathan Petitioners/Accused

Vs

State of Tamil Nadu

Rep. By Sub-Inspector of Police,
C-1, Sriperumbudhur Police Station,
Kancheepuram.

Respondent/Complainant

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the FIR in Crime No.776 of 2017 dated 14.09.2017 pending on the file of the Respondent Police and quash the same.

For Petitioners: Mr.V.Karthic
Senior Counsel for
Mr.P. Giridharan

For Respondent : Mr.C.Iyyapparaj,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.776 of 2017 dated 14.09.2017 pending on the file of the Respondent Police.

2. Heard, the learned Counsel for the petitioners as well as the learned Additional Public Prosecutor appearing for the respondent.

3. Based on the averments in the complaint, an offence under Section 287 of IPC came to be registered as against the petitioner herein. The main ground raised by the learned Senior Counsel for the petitioners is that since, Section 287 is a non-cognizable offence, the Investigating Officer is not entitled to

investigate into the same without prior order of the Magistrate. Section 155 Cr.P.C reads as follows:

"155. Information as to non-cognizable cases and investigation of such cases

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable"

4. What is contemplated under Section 155 Cr.P.C is that when it is brought to the notice of the Investigating Officer about the commission of cognizable offence, such officer is obliged to enter the substance of the complaint in the concerned Register and refer the informant to the Magistrate. Further, before commencing the investigation, the Investigation Officer is required to obtain necessary orders from the Magistrate for the purpose of commencing the investigation.

5. The permission referred under Section 155 Cr.P.C is mandatory in nature in the absence of such permission, the entire investigation would be vitiated. The above proposition has been reiterated in an order of the Hon'ble Supreme Court in 1994 (4) Crimes 121 (SC). The relevant portion in paragraph No.3 of the Judgement reads as follows:

"3. We need not go into the question whether in the facts of the instant case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate into the offence in question nor the Chief Judicial Magistrate to take cognizance upon the report submitted on completion of such investigation. On the own showing of the police, the offence under Section 31

of the Act is non-cognizable and therefore the police could not have registered a case for such an offence under Section 154 Cr.P.C. Of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155 (2) Cr.P.C. But, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question or taking cognizance could have arisen. While on this point, it may be mentioned that in view of the proviso to Section 2(d) Cr.P.C., which defines 'Complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'Complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that relates to a case where the police initiates investigation into a cognizable offence-unlike the present one-but ultimately finds that only a non-cognizable offence has been made out."

6. The learned Additional Public Prosecutor, on instructions affirms that no orders of the learned Magistrate was obtained in the instant case. In view of the specific provision of the Court of law which mandates prior permission for the purpose of commencing the investigation, the investigation carried out otherwise is opposed to law. Hence, the proceedings in Cr. No. 776 of 2017 on the file of the respondent police is quashed.

7. In the result, this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

rkp/gv

To

1. The Sub-Inspector of Police,
C-1, Sriperumbudhur Police Station,
Kancheepuram.

2. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.P. Giridharan, Advocate sr 76475.

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SP(09/11/2017)



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