

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.5741 of 2011

and

MP.Nos.1 and 2 of 2011

1.Jithu @ Jithendran
2.Ravi
3.Dayalan
4.N.Prabhakara Menon Petitioners/Accused 1-4

Vs

1.State of Tamil Nadu
represented by Inspector of Police,
B1 Town Central Police Station,
Udhagamandalam,
Nilgiris District.
2.S.Subramaniam Respondents/Complainant/Defacto
Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to expunge the remarks made against the petitioners herein in page 9, paragraph 6, lines 11 to 17 namely "Further as rightly contended by the learned APP, in this case, already charges are framed against petitioners/accused and they have also admitted the charges against them before Hon'ble Lok Adalath and so after such admission of charges, this petition filed by the petitioners/accused under section 239 of Cr.P.C to discharge them from this case is not at all maintainable" in the order dated 27.06.2007 made in Crl.MP No.2785 of 2007 in CC No.285 of 2004 on the file of the learned Judicial Magistrate, Udhagamandalam and also direct the learned Judicial Magistrate, Udhagamandalam to dispose of the case in CC No.285 of 2004 within a time frame fixed by this Hon'ble Court.

For Petitioners : Mr.T.Muruga Manikkam

For R1 : Mr.C.Emalias, APP

For R2 : Mr.J.Sivanandaraaj

ORDER

This Criminal Original Petition has been filed to expunge the remarks made against the petitioners in the order dated 27.06.2007 passed by the learned Judicial Magistrate, Udhagamandalam in CrI.MP No.2785 of 2007 in CC No.285 of 2004 and direct the learned Judicial Magistrate, Udhagamandalam to dispose of the case in CC No.285 of 2004 pending on his file, within a time frame fixed by this Court.

2. The facts leading to filing of this petition are as follows:

2.1 On the basis of the complaint lodged by the second respondent herein, a case in Crime No.4 of 2004 has been registered against them for the alleged offences punishable under Sections 447, 341, 323 and 506(ii) IPC. After completion of investigation, charge sheet was filed before the learned Judicial Magistrate, Udhagamandalam and the same was also taken on file as CC No.285 of 2004.

2.2 During the course of trial, the case was posted on 19.11.2005 to the Special Lok Adalath, wherein, the petitioners admitted their charges and paid fine of Rs.1,700/-, due to which, the case was directed to be posted before the regular court for imposing lenient sentence on them. While so, the learned Additional Public Prosecutor filed a memo informing alteration of the charges framed against the petitioners. Subsequently, the father of the second respondent filed a petition before the Lok Adalath seeking compensation. In view of the same, the Lok Adalath issued summons to the accused. Accordingly, the accused were present and after detailed enquiry, a sum of Rs.20,000/- was awarded as compensation to the second respondent, which was duly paid by the accused to the father of the second respondent, who, in turn, issued receipt for the same.

2.3 Pursuant to the payment of compensation, the petitioners filed a compounding petition in CC No.285 of 2004 before the learned Judicial Magistrate, Udhagamandalam. The learned Additional Public Prosecutor in order to verify the receipt of compensation by the second respondent, filed a petition under Section 311 Cr.P.C to summon the second

respondent. At that time, the second respondent appeared and filed an affidavit stating that the Lok Adalath forced his father to receive the compensation and his father was ready to deposit the compensation amount and he wanted to conduct the trial of the case with amended charge sheet.

2.4 Thereafter, the petitioners have come forward with a petition in CMP.No.2785 of 2007 to discharge them from the charges. The said petition was dismissed, by an order dated 27.06.2007. While doing so, the trial court has observed as follows:

"Further, as rightly contended by the learned Additional Public Prosecutor, in this case, already charges are framed against petitioners/accused and they have also admitted the charges against them before Hon'ble Lok Adalath and so, after such admission of charges, this petition filed by the petitioners/accused under section 239 Cr.P.C to discharge them from this case is not at all maintainable."

Aggrieved over the said observation, the petitioner is before this Court to expunge the same.

3. Learned counsel for the petitioners submitted that the petitioners have admitted their guilt before the Lok Adalath only for the purpose of arriving at a settlement and not for any other reason. Learned counsel further submitted that as the second respondent is now disputing the settlement arrived at, the petitioners are ready to face the trial in CC No.285 of 2004. However, the observation made by the learned Judicial Magistrate, Udhagamandalam, in his order passed in the discharge petition filed by the petitioners, should not hamper them from getting a free and fair trial. Therefore, the present petition came to be filed to expunge the same.

4. I have also heard the learned Additional Public Prosecutor for the first respondent and the learned counsel for the second respondent, who have no serious objection in expunging the observation so made by the learned Magistrate.

5. On a perusal of the documents filed by way of typed set of papers along with this petition, it could be seen that the petitioners are facing trial in CC No.285 of 2004 on the file of the learned Judicial Magistrate, Udhagamandalam. During the course of trial, the case was posted before the Lok Adalath, wherein, some sort of settlement has been arrived at between the parties. However, the second respondent subsequently appeared before the trial court and filed an affidavit stating that his father was forced to receive the compensation and the second respondent wanted to conduct the trial of the case with amended

charge sheet. In the mean while, on the basis of the settlement arrived at between the parties, the petitioners filed the discharge petition, which was dismissed by the learned Magistrate. While dismissing the said discharge petition, it was observed in the said order by the learned Magistrate that the petitioners have admitted their charges before the Lok Adalat. To expunge the said observation, the petitioner is before this Court. As rightly contended by the learned counsel for the petitioners, if the case is tried, in the light of the said observation, it would automatically affect the case of the petitioners. Therefore, the same is liable to be expunged.

6. At this juncture, it is appropriate to recollect the principles laid down by the Hon'ble Supreme Court in the decision reported in (2009) 2 SCC 198 (B.P.Moideen Sevamandir and another v. A.M.Kutty Hassan), which read as follows:

"17. When a case is to be heard and decided on merits by a court, the conduct of the party before the Lok Adalat or other ADR fora, howsoever stubborn or unreasonable, is totally irrelevant. A court should not permit any prejudice to creep into its judicial mind, on account of what it perceives as unreasonable conduct of a litigant before the Lok Adalat. Nor can its judgment be "affected" by the cantankerous conduct of a litigant. It cannot carry "ill will" against a litigant, because he did not settle his case. It is needless to remind the oath of office, which a Judge takes when assuming office. He is required to perform his duties without fear or favour, affection or ill will. Any settlement before the Lok Adalat should be voluntary. No party can be punished for failing to reach the settlement before the Lok Adalat. सत्यमेव जयते

18. Section 20(5) of the Legal Services Authorities Act, 1987 statutorily recognises the right of a party whose case is not settled before the Lok Adalat to have his case continued before the court and have a decision on merits.

19. Any admission made, any tentative agreement reached, or any concession made during the negotiation process before the Lok Adalat cannot be used either in favour of a party or against a party when the matter comes back to the court on failure of the settlement process. To deny hearing to a party on the ground that

his behaviour before the Lok Adalat was cantankerous or unreasonable would amount to denial of justice. When deciding a matter on merits of a case, if a court carries any prejudice against a party on account of his conduct before an ADR forum, it will violate the inviolable guarantee against prejudice or bias in decision-making process. Such conduct can neither be permitted nor be tolerated and requires to be strongly deprecated....."

7. Thus, considering the facts of the case and taking note of the circumstances under which, the petitioners have admitted their charges before the Lok Adalath and also in the light of the aforesaid principles of the Hon'ble Supreme Court, this Court is inclined to expunge the observation made in the order impugned herein.

8. Accordingly, this Criminal Original Petition is allowed and the observation made in para 6 of the order dated 27.06.2007 by the learned Judicial Magistrate, Udhagamandalam in CrI.MP.No.2785 of 2007 in CC No.285 of 2004 with regard to admission of the charges by the petitioners before the Lok Adalath, is expunged. Since the case is pending from the year 2004, the learned Judicial Magistrate, Udhagamandalam is directed to expedite the trial in CC No.285 of 2004 and dispose of the same on merits and in accordance with law, as expeditiously as possible. Consequently, connected Miscellaneous Petitions are closed.

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Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.Judicial Magistrate, Udhagamandalam.

2.Inspector of Police,
B1 Town Central Police Station,
Udhagamandalam,
Nilgiris District.

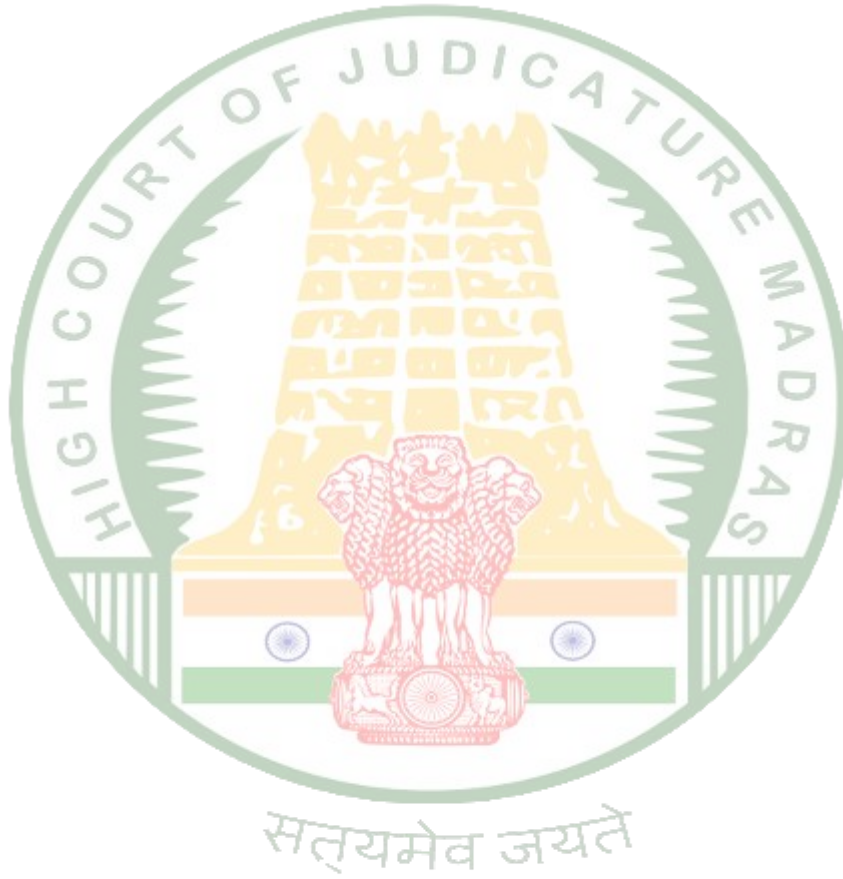
3.The Public Prosecutor, High Court, Madras.

C.C. to MR.J.SIVANANDARAJ, Advocate SR.NO.4323/17

C.C. to MR.T.MURUGAMANICKAM Advocate SR.NO.4376/17

CrI.O.P.No.5741 of 2011

SR (CO)
VS 16.03.2017



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