

IN THE COURT OF HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 01..08..2017

Order Pronounced on : 07..09..2017

CORAM

THE HON'BLE MR.JUSTICE **K.KALYANASUNDARAM**

Crl.O.P. No.23833 of 2010

and

MP No.1 of 2010

1.Ajitha
2.Rameeja
3.Ayeesha
4.Sathakathullah
5.Muthachi
6.Yasin
7.Ansari
8.Ammaponnu
9.Poujiya

: Petitioners/Accused

-VS-

M.Mohammed Ekkaiya

: Respondent

Prayer: Petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the private complaint in S.T.C.No.429 of 2009 on the file of the Judicial Magistrate No.II, Mayiladuthurai and quash the same as far as the petitioners are concerned.

For Petitioners

: Mr.D.Veerasekaran

For Respondents

: Mrs.S.Saratha Chandran
For M/s.K.Vijayan Associates

ORDER

This petition is filed to quash the proceedings in STC No.429 of 2009 pending on the file of the Judicial Magistrate No.II, Mayiladuthurai.

2.The petitioners are the accused in a private complaint for the offences under Sections 147, 148, 120B, 384, 506 (ii) and 292 (A) and (E) of IPC filed before the Judicial Magistrate No.2, Mayiladuthurai, in STC No.429 of 2009.

3.The respondent filed the private complaint in the year 2009 alleging that on 21.06.2003 at 7.00 p.m, when he was in his house, the accused Nos.1, 9 and 11 have threatened him and demanded Rs.10,00,000/- stating that they have taken nude photographs of the complainant and his wife by fixing a remote camera.

4.Heard Mr.D.Veerasekaran, learned counsel for the petitioners and Mrs.S.Seetha Chandran, learned counsel for the respondent and perused the materials available on record.

5.It is seen that the Inspector of Police, CBCID, pursuant to the directions issued by this Court in CrI.O.P.No.23701 of 2003, dated

29.07.2003, registered a case in Crime No.1 of 2003 against three accused on 21.08.2003. After the registration of the case, the police have obtained statements from witnesses including a statement from Dr. Sheik Dawood. The witnesses have given statements before the CBCID stating that the complaint is a psychiatric patient, he was under medication and he used to walk throughout night saying that somebody is taking photographs.

6. Based on the statements, the police have closed the case as "Mistake of Facts" and filed a closure report before the Judicial Magistrate No.2, Mayiladuthurai, on 27.10.2003 and after a lapse of six years, the private complaint was filed on 16.03.2009.

7. It is not in dispute that originally, the complaint was given only against three persons, but in the private complaint 16 persons have been arrayed as accused and among them, seven are ladies aged between 28 to 60 years.

8. In the judgment reported in **(1998)5 SCC 749 (Pepsi Foods Ltd., vs. Special Judicial Magistrate and others)**, the Hon'ble Apex Court, held as follows:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complainant to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

9. In the instant case, the learned Judicial Magistrate has taken cognizance on the complaint of the respondent without proper appreciation of the averments made in the complaint and issued summons to the accused.

10. In the light of the judgment of the Hon'ble Apex Court and the facts of this case, this Court is of the considered opinion that the complaint is an abuse of process of law and it is liable to be quashed.

11. In the result, the Criminal Original Petition is allowed and the complaint in STC No.429 of 2009, on the file of the Judicial Magistrate, No.2, Mayiladuthurai, is hereby quashed. Consequently connected Miscellaneous Petition is closed.

07.09.2017

Speaking Order / Non-Speaking Order

Index : Yes / No.

Internet: Yes/No.

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K.KALYANASUNDARAM, J

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To

The Judicial Magistrate No.II,
Mayiladuthurai.



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