

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :02.03.2017

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.25035 of 2010
and
M.P.Nos.1 and 2 of 2010

1.P.Muthuvelraj

2. Govindaraj ... Petitioners

Vs.

Jeyaraj ... Respondent

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records and quash the proceedings as against the petitioners in C.C.No.231 of 2009 pending on the file of the Judicial Magistrate-II, Poonamallee.

For Petitioner : Mr.V.Vaithiyalingam

For Respondent : No Appearance

O R D E R

Invoking the provisions of Section 482 of Cr.P.C., this petition is filed by the petitioners to quash the criminal proceedings of the case in C.C.No.231 of 2009, pending on the file of the learned Judicial Magistrate-II, Poonamallee.

2. Heard Mr.V.Vaithiyalingam, the learned counsel for the petitioner. Despite service of notice on the respondent, he has not chosen to appear either in person or through his counsel. Therefore, he is called absent, when the matter was taken up for hearing on 01.03.2017. This matter stands posted today for orders. Even today also, there is no representation on behalf of the respondent. Hence there is no other go for this Court excepting to pronounce the order on merits in the absence of the respondent.

3. According to Mr.V.Vaithiyalingam, the learned counsel for the petitioner, the private complaint in C.C.No.231 of 2009 is nothing but a counter blast to the case in C.C.No.231 of 2009 on the file of the learned Judicial Magistrate-II, Poonamallee. It is manifested from the records that the 2nd petitioner herein, Mr.Govindaraj had lodged a complaint before the Tiruverkadu Police Station on 24.08.2006 as against the respondent herein and two others alleging that on 23.08.2006, the respondent and two others had trespassed into the campus of P.M.R. Technological Institutions and caused damage to the cement pillars and iron fence put up by the College administration as per the survey made by the surveyor concerned. The 2nd petitioner Govindaraj, is the Manager of P.M.R.Educational Trust & Software Technology.

4. Based on his complaint, a case in Crime No.1366 of 2006 was registered by the Inspector of Police, attached to Tiruverkadu Police Station on 24.11.2006 as against the respondent and 2 others under Sections 447, 427 and 506(ii) of I.P.C. After completion of the investigation, a charge sheet was also laid and the same was taken on the file of the learned Judicial Magistrate-II, Poonamallee in C.C.No.1366 of 2006. This case was tried and ended in acquittal on the ground that the charges levelled against the accused therein had not been proved beyond all reasonable doubts.

5. As the prosecuting agency had failed to produce adequate acceptable medical evidence to substantiate the charges. However, the respondent herein who is the third accused in the above said case in C.C.No.178 of 2007 has come forward with a private complaint in C.C.No.231 of 2009 as against Govindaraj, who is the defacto complainant in the case in C.C.No.178 of 2007 as well as against one P.Murthy, who is the Managing Trustee of P.M.R.Educational Trust & Software Technology.

6. Mr.V.Vaithiyalingam, learned counsel for the petitioner has adverted to that the learned Judicial Magistrate-II, Poonamallee ought not to have taken cognizance of the offences under Section 500 of I.P.C., as against the petitioners; because the respondent had come forward with the private complaint in C.C.No.231 of 2009 as against the petitioner only to wreck-vengeance and since the private complaint filed by the respondent seemed to be vague and vexatious and therefore, he has urged this Court to quash the private complaint in C.C.No.231 of 2009 with exemplary cost as against the respondent.

7. He would further submit that the petitioners being the Managing Trustee and Manager of P.M.R.Educational Trust and

Software Technology have nothing to do with the allegations made in the private complaint personally, excepting the fact that it ratify the action taken by the staff to safe guard the Institute.

8. He has also submitted that the allegations levelled in the complaint made by the respondent would not constitute the offence of defamation.

9. He would further submit that no ingredients under Section 498 of I.P.C., as against the petitioners, could be made out and he has also submitted that the learned Judicial Magistrate-II, Poonamallee had wrongly taken cognizance of the offence under Section 500 of I.P.C., as against the petitioners. He would also submit that on a bare perusal of the complaint filed by the respondent, it could be understood that since the 2nd petitioner Govindaraj had lodged a complaint and subsequently, the respondent and other two persons were tried for the offences in C.C.No.178 of 2006. The respondent had, with an oblique motive of harassing the petitioners, come forward with the private complaint. He has also argued that no adequate grounds were available to proceed against the petitioners under the private complaint filed by the respondent.

10. He would further submit that no prima facie case was made out under Section 499 of I.P.C., and that the allegations contained in the private complaint were referable to the allegations made by the 2nd respondent in the complaint preferred by him before D5 Tiruverkadu Police Station, under Sections 447, 427, and 506(ii) of I.P.C. and those allegations made in the complaint would definitely come under the amplitude of the Exception 8 to S.499 of Penal Code.

11. This Court has considered the submission made by the learned counsel for the petitioner, and perused the grounds of petition along with related materials which are placed before this Court. It has to be noted that though the case in C.C.No.231 of 2009 was ended in acquittal, the Inspector of Police who took up the investigation of that case after thorough investigation had satisfied that the allegation made in that complaint were genuine.

12. The mere acquittal of the respondent and other two persons would not support and insist the respondent to come forward with the above complaint as against the complainant in that case. The averments of the complaint seems to be devoid of any merits and the learned Judicial Magistrate instead of taking cognizance of the offence under Section 500 of I.P.C., ought to

have rejected the complaint at the threshold in limine. It is significant to note here that the respondent shall not be allowed to misuse the judicial process and if it is allowed it amounts to abuse of process of Court as well as law and therefore, the private complaint in C.C.No.231 of 2009 filed by the respondent is a fit case to be quashed.

13. Keeping in view of the above facts, this Criminal Original Petition is allowed and the criminal proceedings in C.C.No.231 of 2009 as against the petitioners pending on the file of the learned Judicial Magistrate-II, Poonamallee are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Judicial Magistrate-II,
Poonamallee.

+lcc to M/s.V.Vaithiyalingam, Advocate, S.R.No.13967

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and

M.P.Nos.1 and 2 of 2010

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