

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P.No.19440 of 2010

and

M.P.No.1 of 2010

1.Rasathi

2.Kannika

3.Sahul Hameed

...Petitioners/Accused No.1 to 3

Vs.

Anbalagan

...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the Criminal complaint in PRC.No.1 of 2009 on the file of the learned Chief Judicial Magistrate, Perambalur, quash the same by allowing this criminal original petition.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : No Appearance

ORDER

This criminal original petition is preferred by the Petitioners/Accused 1 to 3 against the criminal complaint in PRC.No.1 of 2009 on the file of the learned Chief Judicial Magistrate, Perambalur and quash the same.

2.Brief case of the petitioners/accused A1 to A3:

The case is that the respondent/complainant is the husband of the accused No.5 Sumathi and their marriage took place on 15.7.1991 at Vikramangalam and they lived together as husband and wife till the end of June 2006. The accused No.5 has filed a HMOP.No.61 of 2008 before the learned Sub Court, Ariyalur for divorce on the ground of cruelty and also given a criminal complaint against the respondent on 14.5.2008 and a case in Crime No.6 of 2008 has been registered under section 498 A, 294 (b) 506(i) IPC r/w sec.4 of Tamil Nadu Prohibition of Harassment of women Act. The said case was investigated and final report was filed before the Judicial Magistrate Ariyalur and taken on file in C.C.No.257 of 2008.

3.The respondent filed a private complaint dated 23.12.2008 before the learned Chief Judicial Magistrate, Ariyalur against the petitioners and six others alleging that the accused persons said to have committed the crime on 14.5.2008. As per the allegations in the complaint, on 14.5.2008 at about 8.30 am the respondent was taken to the All Women Police Station, Ariyalur and he was beaten severally by the petitioners/accused. The complaint in C.M.P.No.9 of 2009 was filed under section 156(3) Crl.P.C. seeking direction to the jurisdictional police to register a case against the accused persons. The learned Chief Judicial Magistrate, Perambalur had passed an order dated 5.1.2009 to investigate the complaint by the Deputy Superintendent of Police, Perambalur and report by 02.02.2009. The case was adjourned for two hearings. Finally the learned Chief Judicial Magistrate, Perambalur was passed an order directing the case to the Deputy Superintendent of Police for investigation under section 156(3) Crl.P.C. As per the report, the learned Chief Judicial Magistrate, Perambalur was pleased to pass an order dated 18.4.2009 by taking cognizance against the petitioners/accused persons for the following offences. Accused No.1 to 3 under section 214 IPC. Accused Nos.4 to 9 under sections 120(b), 147, 341, 356, 379, 380, 392, 395, 355, 356, 420, 448 of IPC. The learned Chief Judicial Magistrate issued summons to the petitioners/accused which was taken on file in PRC.No.1 of 2009. Aggrieved over the same the petitioner/accused filed this quash petition.

4.The learned counsel for the petitioners/accused submits that the learned Chief Judicial Magistrate, Perambalur having forwarded the complaint under section 156(3) Cr.P.C. therefore the order taking the complaint on file and issuing process is unsustainable in law.

5.The learned counsel for the petitioners/accused submits that the learned Chief Judicial Magistrate, Perambalur having forwarded the complaint under section 156(3) Cr.P.C. to the Deputy Superintendent of Police, Perambalur for investigation by an order dated 5.1.2009 ought not to have taken cognizance under section 202 of Cr.P.C. on 18.4.2009.

6.The learned counsel for the petitioners/accused submits that mere reading of the allegations in the complaint would show that no offence is made out against the petitioners under section 214 of IPC. The petitioners being the authorities empowered to investigate a complaint which discloses a cognizable offence, therefore, the accused of the said offence cannot give a counter complaint against the police for alleged offences under section 214 of IPC.

7.The learned counsel for the petitioners/accused submits that the above complaint was filed as a counter blast to the case in Cr.No.6 of 2008, which is pending trial in C.C.No.257 of 2008 on the file of the learned Judicial Magistrate, Ariyalur.

8.The learned counsel for the petitioners cited the following decisions in support of their contentions:

1) (2015) 12 SCC 231 D.T.Virupakshappa Vs. C.Subash

2) 2012 (6) SCC 228 General Officer commanding Rashtriya riles Vs. Central Bureau of investigation and another.

3) (2013) 10 SCC 705 Anil Kumar and others V M.K.Aiyappa and another

9.I heard Mr.R.Marudhachalamurthy, learned counsel for the petitioners and perused the entire materials available on record. No representation on behalf of the respondent.

10.In the case on hand, the respondent/complainant filed the private complaint against the case registered in Cr.No.6 of 2009 which is pending trial in C.C.No.257 of 2008 on the file of the learned Judicial Magistrate, Ariyalur.

11.The learned Chief Judicial Magistrate, Perambalur having forwarded the complaint under section 156(3) of Cr.P.C. to the Deputy Superintendent of Police, through his order dated 5.1.2009. But the order of the learned Chief Judicial Magistrate was not complied and a report was filed by the Investigating Officer. After that the Chief Judicial Magistrate taken the cognizance on the private complaint filed by the respondent/complainant.

12.The allegations leveled in the complaint against the petitioners/accused would show that no offences made out under section 214 of IPC. It is only a counter blast against the Cr.No.6 of 2008.

13.It is seen from the records, that the allegations in the complaint do not attract the ingredients of the offence alleged. Therefore the proceedings pending in PRC.No.1 of 2009 cannot be sustained in the eye of law. The question of sanction is very much necessary in the given case against the petitioners/accused and the learned Chief Judicial Magistrate could not have taken cognizance of the case without the previous sanction of the State Government.

14.In my view, the guidelines laid down in Om Prakash case squarely apply to the facts of the case herein. It is evident that the whole allegation is on the police excess in connection with the investigation of a criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the petitioners/accused. Therefore, the learned Chief Judicial Magistrate could not have taken cognizance of the case.

15.In the result:

a) This criminal original petition is allowed;

b) The complaint in PRC.No.1 of 2009, pending on the file of the learned Chief Judicial Magistrate, Perambalur, is quashed in respect of the petitioners/accused Nos.1 to 3. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

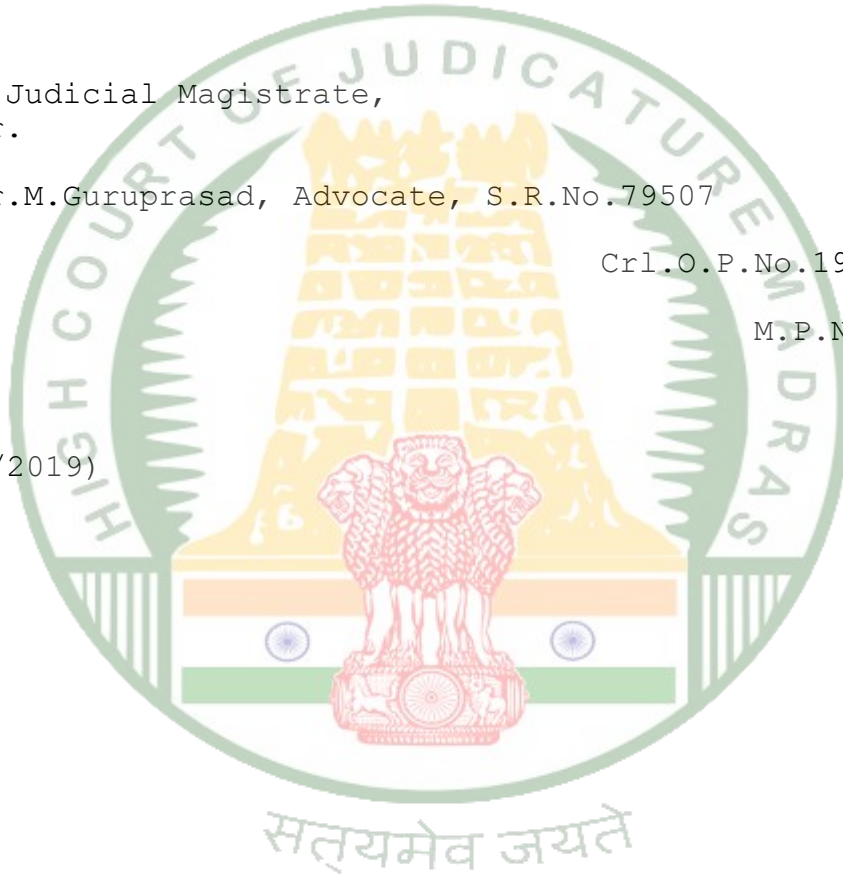
The Chief Judicial Magistrate,
Perambalur.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.79507

Crl.O.P.No.19440 of 2010
and
M.P.No.1 of 2010

PM(CO)

RRS (29/03/2019)



WEB COPY