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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2017

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

Crl.O.P.(MD) No.879 of 2017
in
Crl.M.P.(MD).Nos.767 & 768 of 2017

1.S.J.Saravanan Babu
2.S.S.Jayadevan : Petitioners / Respondents

-vs-

Mahesh Kumar : Respondent /Petitioner

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the records relating to the C.C.No.195/2016, based upon the private complaint lodged by the respondent on the file of the learned Judicial Magistrate No.IV, Madurai and quash the same.

For Petitioner : Mr.R.Ramachandran
For Respondent : Mr.T.Lajapathi Roy

O R D E R

This petition is filed to quash the private complaint in C.C.No.195 of 2016, on the file of the learned Judicial Magistrate No.IV, Madurai.

2.The petitioner states that he married the daughter of respondent on 11.09.2011. It appears that there is a dispute between the petitioner and his wife and despite the couple have a child several complaints, proceedings and petitions were filed. This Criminal Original Petition is filed to quash the charge sheet filed in the criminal case filed by the father in law, the respondent herein against the son in law and the father of son in law.

3.It is admitted that the first petitioner filed a petition for Restitution of Conjugal rights in H.M.O.P.No.657 of 2014 and that due to non appearance of his wife, the first petitioner obtained an exparte decree. It was alleged that the wife of the first petitioner registered a complaint in Crime No.18/2014 on 20.05.2014 and charge sheet was also filed in C.C.No.631 of 2014. It is further stated that the first petitioner and his parents were constrained to file an application for Anticipatory Bail before the learned Principal District Sessions Judge, Madurai. On account of the criminal case that was lodged by the first petitioner's wife even without challenging the said order, she moved the Court for cancelling the Anticipatory Bail to the petitioner before the Lower

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Court. The first petitioner's wife again independently filed a Divorce Petition in H.M.O.P.No.248 of 2016, before the Family Court, Madurai.

4.When the case is pending, the petitioner further states that the respondent with a malafide intention, tried to tarnish the image of the petitioner and to harass him. Then a private complaint was lodged against the petitioners before the Judicial Magistrate Court, Madurai in C.C.No.195 of 2016 by fabricating a false case. This private complaint is by the father in law of first petitioner for offences under Sections 294(b), 500 and 506(i) of I.P.C.

5.It is further stated that due to false and frivolous complaint lodged against them, the petitioners are not able to concentrate on their work and they are not able to live peacefully. Since the private complaint lodged by the respondent on the file of the learned Judicial Magistrate No.IV, Madurai is not sustainable and that the same is an abuse of process of law. The present Criminal Original Petition is filed.

6.The learned counsel for the petitioner further submitted that the complaint which was filed more than three years after the date of committing the offence is not sustainable. On the date of presentation of the complaint, it is stated by the learned counsel for the petitioner that three years has already elapsed and that further proceedings are liable to be quashed.

7.It is to be noted that the C.C.No.195 of 2016 is for offences under Sections 294(b), 500, 506(i) of IPC. The complaint of the respondent refers to certain incidents. It is to be noted that all the incidents of defamation is after 2014. The complaint disclose cognizable offence. After the complaint is preferred, the petitioner has filed this petition waiting for a period of more than one and a half years just to drag the proceedings. The petitioner has filed petition raising additional grounds by stating that no cognizance of an offence can be taken after a period of three years from the date of commission of offence. Section 468 of Code of Criminal Procedure, 1973, is extracted as follows;-

(1) Except as otherwise provided elsewhere in this Code, no court, shall take cognizance of an offence of the category specified in sub Section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) Six months, if the offence is punishable with fine only;

(b) One year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

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[(3) For the purposes of this Section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

8.The private complaint is on the basis of certain incidents and defamatory averments found in the statements of petitioners in 2014. Hence, cause of action arose only in 2014 and the private complaint is lodged in 2016 within three years. Pointing out that in the sworn statement, the respondent has admitted that the first incident happened in February 2013, the learned counsel for the petitioner stated that the complaint is barred by limitation as the private complaint is preferred after three years. This submission has no merits. The complaint refers to several instances all after 2014. Limitation is a question of fact and this cannot be decided in a quash petition. Hence the only ground argued by the learned counsel for the petitioner has no merits.

9.Having regard to the settled position of law, this Court is not in a position to consider the arguments submitted by the learned counsel for the petitioner on limitation and hence this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CRL.SIDE)

/True Copy/

Sub Assistant Registrar

To

1.The learned Judicial Magistrate No.IV, Madurai.

2.-do-Thro' The Chief Judicial Magistrate,
Madurai.

+1cc to Mr.R.RAMACHANDRAN Advocate in SR. No. 79238
+1cc to Mr.T.LAJAPATHI ROY Advocate in SR. No. 79087

TSG/DAS
JS/SKN.RSK/SAR.1/9.10.2017/3P-5C

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