

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE B. PUGALENDHI

CRL. O.P.No.830 of 2011
and
M.P. No. 1 and 2 of 2011

1. Ashara Kark
2. Pooncholai ... Petitioners

Vs

Saravanan Respondent

Prayer : This Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records relating to the private complaint filed by the respondent herein in C.C. No.146 of 2010 now pending on the file of the learned Judicial Magistrate-I, Tirupattur, Vellore District and quash the complaint as against the petitioners/accused 1 & 2 therein.

For Petitioners : Mr.Subramanian

For Respondent : No appearance

O R D E R

The respondent/complainant filed a private complaint as against these petitioners and 8 others for the offences punishable under Section 448, 427, 379, 506(i) I.P.C. r/w. 109 I.P.C. in C.M.P. No.5445 of 2010 on 11.12.2008. The learned Judicial Magistrate, -I, Tirupattur, Vellore District took cognizance on the complaint in C.C. No.146 of 2010 and ordered to issue summons to the petitioners. As against the same, the petitioners/accused nos.1 & 2 have preferred the Criminal Original Petition to quash the complaint made against them.

2. The 1st petitioner was the Additional Superintendent of Police of Tirupattur Division at Vellore District and the 2nd petitioner was serving as Inspector of Police in Tirupattur Town Police Station during the relevant point of time.

3. The case of the complaint is that the respondent/complainant is human rights activists and made a complaint as against the arrack sellers in the year 2007. But, the police failed to take action against them and therefore, he took the issue through the Media and gave an interview to a Weekly Magazine. The same was published as against the accused 1 & 2 / petitioners herein on 10.05.2007. After that, the police arrested arrack sellers and banned the selling of arrack in Sivaraaj Pettai.

4. According to the complaint, the 2nd petitioner along with D.S.P. Vaniyambadi, one Mr. Sureshkumar instigated the accused 3 to 8 and others to intimidate the respondent/complainant. Accordingly, the accused 3 to 8 trespassed into the respondent's house and damaged his house on 15.05.2007. For this incident, the respondent/complainant lodged a complaint before the Police station and sought for police protection to his life.

5. Even thereafter, at the instigation of the 2nd petitioner, the accused 3 to 8 assaulted the witnesses one Nisha and her husband Sivakumar and taken away a sum of Rs.3,045/- from their almirah. They also instigated them to withdraw the complaint lodged by the respondent/complainant herein.

6. Since the respondent/complainant did not withdraw the complaint, the 2nd petitioner foisted false case against the respondent/complainant as if he outraged the modesty of a women by name Selvi. As the respondent/complainant raised voice against the anti-social elements and illicit arrack sellers, the accused along with other rowdy elements attempted to attack the respondent/complainant and foisted a false case against the respondent/complainant. Hence, the respondent/complainant has filed the private complaint in C.M.P. No.5445 of 2010 on the file of the Judicial Magistrate-I, Tirupattur.

7. The learned Judicial Magistrate took cognizance of the offence in C.C. No.146 of 2010 as against the petitioners herein and other accused and aggrieved over the same, the petitioners have filed this petition to quash the proceedings pending against them.

8. The learned counsel appearing for the petitioners submits that there is no specific allegations as against the petitioners whereas the Judicial Magistrate has taken cognizance against the petitioners who were serving as higher police officials in the police department. Further, it has been submitted by the learned counsel for the petitioners that the respondent/complainant is a history sheeter and rowdy having 9 criminal cases against him out of all those criminal

cases, he got acquitted in seven cases and two cases were still pending against him. As this complaint is filed by way of private complaint, the learned Judicial Magistrate has taken cognizance without complying the requirements as contemplated under Section 197 Cr.P.C.

9. Heard Mr. Subramanian, the learned counsel for the petitioner and perused the available records placed before this Court. Though service was effected on the respondent on 14.03.2011 and name of the respondent is also printed in the cause list, there is no representation for the respondent.

10. The respondent/complainant has filed the above private complaint as against these petitioners and eight others for the offences punishable under Sections 448, 427, 379, 506(i) IPC r/w 109 IPC. When the 1st petitioner was working as Additional Superintendent of Police at Tirupattur Division, in Vellore District, at the relevant point of time the 2nd petitioner was also as Inspector of Police, at Tiruppur Town Police Station, Vellore District.

11. The allegation in the complaint as against the petitioners is that the accused nos. 3 to 8 have attacked the respondent/complainant at the instigation of the petitioners/accused 1 & 2. Except this allegation, there is no other averment as against the petitioners. Moreover, the incident have been taken place on 15.05.2007 and for the same incident, the respondent/complainant has already lodged a complaint as against the accused no.3 to 8 before the Tirupattur Town Police Station and the same was registered as against the accused Nos.3 to 8 in Crime No.314 of 2007.

12. Whereas, this private complaint has been filed after 19 months on 11.12.2008 wherein the petitioners are also arrayed as accused 1 & 2 stating that at their instigation, the accused nos.3 to 8 have committed the aforesaid offences.

13. Admittedly, the petitioners were working as police officers in the Tirupattur Division, where the respondent/complainant was facing several Criminal cases against him. That criminal cases were also registered even before the incident which took place in the year 2007. Further, the respondent/complainant was branded as a rowdy in the rowdy list in Tirupattur Town Police station in H.S. No.622 of 2000.

14. A protection is provided under Section 197 Cr.P.C. to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting in discharge of their office duty, no Court shall take cognizance of the offence against the public servants except

with the previous sanction.

15. The allegation against the petitioners is that for having lodged a complaint as against the illicit arrack sellers in the year 2007, he was assaulted by the accused nos.3 to 8 at the instance of the petitioners and also foisted with a false case. But, in his earlier complaint registered in Crime No.320 of 2007 before the police station, there was no allegation against the petitioners that they have instigated. After 19 months, the respondent/complainant has filed the above private complaint as against the petitioners as if they have instigated and the learned Magistrate has also taken cognizance as against the petitioners in a mechanical manner without following the procedure under Section 197 Cr.P.C.

17. In the result, the Criminal Original petition is allowed and the complaint against the petitioners in C.C. No.146 of 2010 on the file of the Judicial Magistrate-I, Tiruppatur is hereby quashed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lbm

To:
The Judicial Magistrate-I,
Tirupattur.

CRL. O.P.No.830 of 2011
and
M.P. No. 1 and 2 of 2011

RSV(CO)
CB(19/02/2020)

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