

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.04.2018

DELIVERED ON: 04.06.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.9419 of 2011

1. Paramasivam
2. Vaiyapuri Pillai ... Petitioners

//vs//

1. Gurusamy
2. A.Raja ... Respondents

Prayer

Criminal Original Petition filed under Section 397 and 401 of Cr.P.C. to call for the entire records in connection with the order dated 21.12.2010 passed in unnumbered C.C.No. of 2010 on the file of the Judicial Magistrate No.II, Attur and to quash the said order.

For Petitioners : M/s P.Jagadeesan
S.Sundarraaj

For 1st Respondent : Mr.Rajasekaran

For 2nd Respondent : Mr.Vasudevan

ORDER

Heard Mr.P.Jagadeesan, learned counsel appearing for the petitioners and Mr.Rajasekaran, learned counsel appearing for the 1st respondent and Mr.Vasudevan, learned counsel appearing for the 2nd respondent.

2. The petitioners/ complainants filed a private complaint under Section 200 of Code of Criminal Procedure against the respondents before the Judicial Magistrate No.II, Attur for the alleged offences punishable under Sections 416, 468, 463, 469 and 120B of Indian Penal Code.

3. The learned Judicial Magistrate No.II, Attur returned the private complaint on the ground that a perusal of the entire complaint prima facie shows that it is civil dispute

and also that the petitioners have not made out any criminal case as against the respondents. Aggrieved against the order of return passed by the Judicial Magistrate No.II, Attur dated 21.12.2010, the present petition is filed.

4. At the out set, it may be observed that the learned Judicial Magistrate No.II, Attur has not examined the complainants, which means that he has not taken cognizance of the offences. In-fact, after perusing the complaint, he has returned the complaint stating that the matter pertains to a civil dispute. Mr. P.Jagadeesn, learned counsel appearing for the petitioners would contend that when the complainants have specifically mentioned in the complaint that 36 bogus documents have been created in favour of 36 fictitious persons by the respondents, the observation of the learned Judicial Magistrate No.II, Attur that the matter is of civil nature cannot be sustained.

5. A perusal of the complaint shows that the complainants had already lodged a complaint dated 26.04.2010 with the District Registrar, Namakkal and the same was allegedly referred to the Tahsildar, Namakkal for verification. According to the complainants, based on the report of the Tahsildar, Namakkal, the District Registrar, Namakkal had directed the Sub Registrar, Namakkal not to encumber the properties further, covered under the General Power of Attorney, sale deeds etc., mentioned in the complaint. It is the contention of the petitioners that they also lodged a complaint dated 07.04.2010 with the Superintendent of Police with regard to the offences committed by the respondents and that no action was taken by the police till date. Under such circumstances, the complainants have approached the learned Judicial Magistrate No.II, Attur seeking justice.

6. The learned Judicial Magistrate No.II, Attur without going through the averments of the complaint properly and without examining the witnesses had come to a conclusion that the case is purely civil in nature. In such circumstances, the learned Judicial Magistrate No.II is directed to deal with the complaint as contemplated under the Code of Criminal Procedure either by ordering investigation under section 156(3) of Code of Criminal Procedure or by taking cognizance under Section 200 Code of Criminal Procedure by examining the witnesses produced by the complainants or to proceed under Section 202 of Code of Criminal Procedure. The settled law is that Section 156(3) of Code of Criminal Procedure can be invoked by the learned Judicial Magistrate at a pre-cognizance stage, whereas powers under Section 202 of the Code of Criminal Procedure are to be invoked after cognizance is taken on a complaint, but before issuance of process to the accused. If

the Magistrate orders investigation under Section 156(3) of Code of Criminal Procedure, he is not required to examine the complainant since he is not taking cognizance of any offences therein for the purpose of enabling the police to start investigation. The power to direct an investigation to the police authorities is available with the Magistrate both under Sections 156(3) and 202 of Code of Criminal Procedure. But the only difference is the stage at which the said powers may be invoked. The learned Judicial Magistrate keeping in view of the above settled provision of law is directed to proceed further on the complaint filed by the petitioners herein uninfluenced by any of the observations made by this court in the present petition.

7. With the above observations, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Judicial Magistrate No.II,
Attur.
2. The Chief Judicial Magistrate,
Salem
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.P.Jagadeesan, Advocate, S.R.No.34757

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