

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2018

PRONOUNCED ON : 10.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.17203 OF 2009

1.Kandasamy,
S/o.Siddhan.

2.Mrs.Kamala,
W/o.Kandasamy. Petitioners/Accused

Vs.

H.Savithiri,
W/o.Haridoss. Respondent/Complainant

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.258 of 2002 dated 26.03.2002 on the file of the Judicial Magistrate Court, Alandur and quash the same.

For Petitioners : Mr.S.Y.Masood

For Respondent : No appearance
[Notice served - Name printed]

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.258 of 2002 dated 26.03.2002 on the file of the Judicial Magistrate Court, Alandur and quash the same.

2.The petitioners, who are the accused in a private complaint filed by the respondent for the offences under Sections 420, 477, 477(A), 409, 408, 406 r/w 120(B) of the Indian Penal Code have filed the above quash petition to quash the proceedings against them in C.C.No.258 of 2002, which is pending trial on the file of the Judicial Magistrate Court, Alandur.

3.The contention of the learned counsel for the petitioners is that the Magistrate had failed to see that the very same

complainant had filed a complaint for the same offences, which was taken on file in C.C.No.71 of 2002, thereafter, the Magistrate passed an order under Section 156 (3) of the Code of Criminal Procedure directing the Police to enquire into the matter. Based on which, the Inspector of Police, C2-Palavanthangal Police Station registered the First Information Report in Crime No.439 of 2001 for the offences under Sections 420, 477, 477 (A), 409, 408, 406 r/w 120 (B) of the Indian Penal Code against the petitioners and took up the investigation and enquired the respondent and her husband and other witnesses. Thereafter, on completion of investigation, the Inspector of Police, Palavanthangal Police Station had filed a Final report stating that the offence is Civil in nature. Based on the Final report the learned Magistrate closed the FIR as "Action dropped" and refer case notice was served to the respondent.

4.The learned counsel for the petitioners further contended that the trial Court failed to consider that the above private complaint was filed on 26.03.2002, on which date the previous complaint in C.C.No.71 of 2002 was pending in the same Court and the learned Magistrate has closed the FIR as "Action dropped" on 27.03.2002.

5.Further, the learned counsel for the petitioner contended that the refer notice was served to the respondent on 20.03.2002. The respondent had not filed any Protest Petition and has not challenged the order dated 27.03.2002, for action dropped. On the other hand respondent had preferred the above case, which is the second complaint for the same offences, which is not sustainable.

6.Further, there are Civil Suits filed by the respondent, which were held in favour of the petitioners. The respondent cannot now filed a private complaint. In support of the same the typed set was filed by the petitioners enlist the agreement, complaint in C.C.No.71 of 2002, final report, Civil suit Judgment.

7.Notice was ordered to the respondent, though, notice was received by the respondent, the respondent has not appeared and hence, the name of the respondent has been printed in the cause list.

8.In the meanwhile, the reports were sought from the Trial Court, in response to the same the learned Judicial Magistrate, Alandur vide D.No.603/2017, dated 04.03.2017 and D.No.2486 / 2017, dated 07.08.2017 had forwarded the reports. From that reports, it is seen that the petitioner herein had earlier filed a Crl.O.P.No.4241 of 2006 and the same came to be dismissed by this Court vide Order dated 27.04.2007.

9. On perusal of the above order copy, it is seen that the grounds raised by the petitioners in this case are the same, which have been earlier raised in Crl.O.P.No.4241 of 2006 and the petitioners herein had failed to inform the same before this Court and it is not the case of the petitioners that the fresh new facts and circumstances had given a cause of action for the petitioners to file the second quash petition. The petitioners having received an order of dismissal in Crl.O.P.No.4241 of 2006 by order dated 27.04.2007 on the same grounds and the second quash petition in Crl.O.P.No.17203 of 2009 is not maintainable. The petitioners had not chosen to file any appeal against the order. The petitioners ought to have challenged the said order before the Hon'ble Apex Court of India and not by filing second Criminal Original Petition on the same facts and ground.

10. In view of the above, the Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Alandur.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Y.Masood, Advocate, S.R.No.55524

Crl.O.P.No.17203 of 2009

CN(CO)
CS/31/08/18

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