

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2018

CORAM:
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. Nos.12521 of 2017 and 20594 of 2018
and
Crl.M.P.No.8159 of 2017
in
Crl.O.P. No.12521 of 2017

Crl.O.P. No.12521 of 2017

1.S.Chellapa
2.B.Parthasarathy ... Petitioners

Vs.

N.Balasubramanian ... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records in C.C. No.402 of 2017 on the file of the learned Metropolitan Magistrate No.V, Egmore (Alikulam), peruse and to quash the proceedings thereon.

For Petitioners : Mr.R.Sreerangan

For Respondent : Mr.N.Balasubramanian
Party-in-Person

Crl.O.P. No.20594 of 2018

N.Balasubramanian ... Petitioner

Vs.

1.Krishnan Raj Kumar

2.Sheela

3.Pari @ Parthiban

4.Parthasarthy (Rtd.),
Sub-Inspector,
K.2, Police Station,
Ayanavaram, Chennai-23.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the learned 5th Metropolitan Magistrate, Egmore, Allikulam Complex, Chennai-3 to conclude the case in Crime No.601 of 2011 within the stipulated period on the of K.2, Police Station, Ayanavaram, Chennai-600 023.

For Petitioner : Mr.N.Balasubramanian
Party-in-Person

For Respondents : No appearance

C O M M O N O R D E R

Crl.O.P. No.12521 of 2017 has been filed challenging the proceedings in C.C. No.402 of 2017, pending on the file of the learned Metropolitan Magistrate No.V, Egmore (Allikulam), Chennai.

2.The petitioners are working as a police before different police stations and they have also retired from service on 31.07.2015. A complaint was filed on 08.05.2015 by the respondent, who is the practising Advocate, before the learned Metropolitan Magistrate No.V, Egmore (Allikulam), Chennai, for an offence under Section 120B, 167, 191, 192, 193, 197, 198 and 464 of I.P.C., and the learned Metropolitan Magistrate No.V, Egmore (Allikulam), Chennai, took cognizance of the complaint for the offence under 120B, 193, 463 and 505(i) of I.P.C.

3.Minimum facts that are required for the purpose of disposing this Criminal Original Petition is as follows:-

3.(i)The respondent was a tenant in a premises under one Tmt.ByosBanu. On 12.09.2010, an incident took place, wherein the respondent caused head injury to another tenant i.e., Rajkumar and therefore a complaint came to be filed against the respondent. Thereafter, on compromise between the parties, the complaint was dropped. Despite the complaint being closed, the respondent filed Crl.O.P. No.22948 of 2010 before this Court for a direction to the Police to register an First Information Report based on the complaint given by him against the above said persons. Pursuant to the direction issued by this Court, an FIR came to be registered in Crime No.601 of 2011 for an offence under Sections 341, 448, 323, 324 and 506(ii) I.P.C.

3.(ii) The police after investigation filed a closure report and RCS notice was also affixed in the door of the premises. By then, the respondent had vacated the premises. Thereafter, the respondent filed Crl.O.P. No.21695 of 2013 before this Court for a direction to the respondent police to file a final report in Crime No.601 of 2011 and this Court directed the respondent

police to file a final report within a period of three weeks. At the time when the order was passed, this Court was not apprised of the facts. The police had already concluded investigation and filed a closure report. The respondent thereafter filed Contempt Petition No.946 of 2014 before this Court on the ground that the police have not complied with the order passed in Crl.O.P. No.21695 of 2013.

3.(iii) This Court by an order dated 23.06.2014, recorded the fact that a referred charge sheet has already been filed in the year 2011 itself and directed the respondent police herein to furnish a copy of the referred sheet to the respondent herein and gave liberty to the respondent herein to proceed further in accordance with law.

3.(iv) The respondent thereafter filed a protest petition before the concerned Court and the Court gave a direction to the police to conduct further investigation in Crime No.601 of 2011. After investigation, a further report was filed by referring the case as mistake of fact. While things stood thus, the respondent proceeded to file the present complaint before the learned Metropolitan Magistrate No.V, Egmore. The sum and substance of the complaint filed by the respondent is the false evidence and false statement that were alleged to be made by the present petitioners before this Court, during the pendency of the Contempt Petition. The further allegation that has been made in the complaint is that the petitioners have used fabricated documents and produced the same along with the referred charge sheet and made the Court to believe that those documents are genuine. Therefore, the crux of the complaint is the false documents that were produced before the Court and the false statement that was made before the Court.

3.(v) This Complaint has now become the subject matter of challenge in this Criminal Original Petition mainly on the ground that the Court below ought not to have been taken cognizance of the complaint, in view of the fact that the allegations made in the complaint falls within the scope of Section 195 (1) (b) of Cr.P.C.

4.The learned counsel for the petitioner would submit that the moment the allegation made in the complaint falls within the ambit of Section 195 (1) (b) of Cr.P.C., the procedure under Section 340 of Cr.P.C has to be followed and independent complaint can never be maintained in a case of this nature.

5.The respondent appearing in person would submit that the petitioners have committed various omissions and commissions and gone to the extent of producing fake documents before the Court and making false statements before the Court in the contempt proceedings and therefore, the complaint entertained by the

Court below is legal and there is no ground to interfere with the complaint pending before Court below.

6.This Court has carefully considered the submissions made on either side.

7.From the facts narrated above and the allegations that have been made by the respondent in the complaint, it is clear that the case squarely falls within the ambit of Section 195 (1) (b) of Cr.P.C. The said provision is extracted hereunder:-

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence -

(1) No Court shall take cognizance-

(a) (i)

(ii)

(iii)

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate."

8.It will be useful to extract the provision of Section 340 Cr.P.C. which reads as under:-

"340. Procedure in cases mentioned in section 195.

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class

having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195."

9. From the above, it is clear that the procedure that had been adopted by the respondent is clearly unsustainable in law. The complaint that has been given by the respondent should not have been entertained by the Court below. The proper petition should have been filed in concerned Court before which, the fabricated documents and false statement was made to enable that the Court to give a complaint in writing through its officer and thereafter, the procedure as contemplated under Section 340 of Cr.P.C., ought to have been followed.

10. Useful reference can be made to the judgment of the Hon'ble Supreme Court reported in 2012 (1) CTC 184 wherein, the Hon'ble Supreme Court had held that where an offence is said to have been committed in a Court proceedings, separate proceedings can not be initiated in view of the bar under Section 195 of Cr.P.C. The Division Bench of this Court also had an occasion to consider the entire scope of Sections 195 and 340 of Cr.P.C and had rendered a judgment reported in 2013 (2) CTC 765.

11. This Court in the judgment reported in 2017 (8) MLJ 606 has given the procedure as to how the proceedings should be initiated under Section 340 of Cr.P.C. Admittedly, in this case none of these procedures have been followed by the respondent and the Court below has mechanically taken cognizance of the

compliant, without any jurisdiction.

12.In view of the above, this Court has to necessarily interfere with the complaint that has been filed by the respondent before the Court below.

13.In the result, the proceedings in C.C. No.402 of 2017 on the file of the learned Metropolitan Magistrate No.V, Egmore is hereby quashed. Liberty is granted to the respondent to follow the proper procedure under Sections 195 (1) and 340 of Cr.P.C., if he wants to proceed further in this Case.

14.In view of the orders passed in CrI.O.P. No.12521 of 2017, no further orders need to be passed in CrI.O.P. No.20594 of 2018 except directing the learned Metropolitan Magistrate No.V., Egmore, to take a final decision on the referred charge sheet filed by the Sub-Inspector of Police, K.2 Police Station, Ayanavaram, Chennai-23 in Crime No.601 of 2011.

15.In the result, both the Criminal Original Petitions are allowed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ia/stm

To

1.The Metropolitan Magistrate No.V,
Egmore, Allikulam Complex,
Chennai-3.

2.The Sub Inspector of Police,
K2 Police Station,
Ayanavaram, Chennai - 23.

+4ccs to M/s.R.Sreerangan, Advocate, S.R.No.77757 and 77758
+1cc to Mr.N.Balasubramanian, Advocate, S.R.No.77819

CrI.O.P.Nos.12521 of 2017
and
20594 of 2018

RGN(CO)

rrs 11/12/2018