



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.10.2018
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD).No.14113 of 2015

WEB COPY

M.Prakash ... Petitioner/Complainant
Vs.

1.C.Velayudham
2.R.Ramamoorthy
3.K.Indumathi
4.M.Kathiresan
5.M.Kalimuthu
6.M.Rasaiah
7.S.Vellammal
8.A.Amaravathi
9.K.Ramalakshmi
10.B.Guruvammal
11.M.R.Krishnan
12.M.Rakkappan
13.V.Gurusamy
14.J.S.Kathiresan
15.K.Ramar
16.Ayyanar
17.K.Muniyandi
18.N.Karpagam
19.V.Santhi
20.V.Seethalakshmi

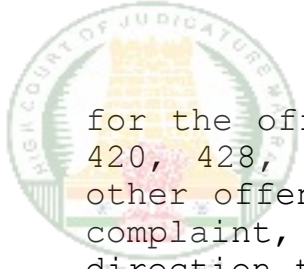
... Respondents/Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the Court of the Judicial Magistrate, Rajapalayam, in Crl.M.P.No.1221 of 2013 on 31.07.2013.

For Petitioner	: Mr.G.Marimuthu
For R2 - R12 & R14 to R18	: No appearance
For R13	: Mr.N.Dilip Kumar
For R19 & R20	: Mr.A.Haja Mohideen
R1	: Died

ORDER

This petition is filed challenging the order passed by the learned Judicial Magistrate, Rajapalayam in Crl.M.P.No.1221 of 2013 dated 31.07.2013 thereby dismissing the private complaint filed by the petitioner herein.



for the offences under Sections 147, 149 and 294(b), 341, 465, 471, 420, 428, 506(ii) IPC and Section 3(v) of SC/ST and also for some other offences against the respondents herein. After receipt of the complaint, the learned Magistrate closed the petition with a direction to the petitioner to approach an appropriate forum to seek his civil remedy.

3. The learned counsel for the petitioner would submit that the learned Magistrate ought not to have passed the impugned order, when a private complaint was filed under Section 156(3) Cr.P.C r/w Section 200 Cr.P.C. The learned Magistrate ought to have forwarded the same to the jurisdictional police for investigation or examine the complainant and supportive evidence and take cognizance for the offences as per the allegations. But the learned Magistrate without taking any enquiry under Section 200 Cr.P.C, simply closed the petition. It is nothing but violation of the procedure stipulated under Section 200 Cr.P.C to 204 Cr.P.C. Therefore, he prayed for setting aside the order passed by the learned Magistrate.

4. Per contra, the learned counsel for the respondents 13, 19 and 20 would submit that the petitioner filed the complaint under both provisions and it is not at all permitted under law. The complaint should have been filed either under Section 156(3) Cr.P.C or 200 Cr.P.C. But the petitioner filed the private complaint under Sections 156(3) r/w 200 Cr.P.C. Therefore the learned Magistrate has rightly closed the same and it does not warrant interference by this Court.

5. Heard both sides.

6. The petitioner filed the private complaint as against the respondents under Section 156(3) Cr.P.C r/w 200 Cr.P.C for various allegations. After receipt of the same, the learned Magistrate simply perused the records and passed the order and directed the petitioner to approach appropriate forum to seek his civil remedy without conducting any enquiry under Section 200 Cr.P.C. It is relevant to extract the provisions under Section 200 Cr.P.C.

Examination of complainant: - A Magistrate taking cognizance of the offence on complaint shall examine upon Oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate.

7. Admittedly, the learned Magistrate did not examine the defacto complainant or any other supportive witnesses. It is clear violation of procedure laid down under Section 200 Cr.P.C. Though the Hon'ble Supreme Court of India and this Court held in number of cases that the Magistrate shall follow the guidelines and procedures laid down under Section 200 Cr.P.C, the learned Magistrate without following the guidelines mechanically closed the petition. The same warrants interference by this Court.



8. In view of the above discussion, the order passed by the learned Judicial Magistrate, Rajapalayam in CrI.M.P.NO.1221 of 2013 is set aside and the learned Magistrate is directed to follow the procedure laid down under Section 200 Cr.P.C and pass orders on merits and in accordance with law.

9. In the result, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Judicial Magistrate,
Rajapalayam.

+1CC to Mr.N.Dilip Kumar, Advocate, SR.No.91829
+1CC to Mr.A.Haja Mohideen, Advocate, SR.No.91959

CrI.O.P. (MD) .No.14113 of 2015
24.10.2018

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