



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.09.2018
CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WEB COPY

Cr1.O.P. (MD) .No.11055 of 2011
and
M.P (MD) .Nos.1 & 2 of 2011

1.K.Gopalsamy
2.G.Jaykumar
3.N.Gengaiya
4.G.Nallasamy
5.S.Perumalsamy

..Petitioners/Proposed Accused

Vs.

K.Sivakumar

...Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the impugned proceeding in Cr.M.P.No.3458 of 2011 on the file of the Judicial Magistrate No.II, Virudhunagar and quash the same.

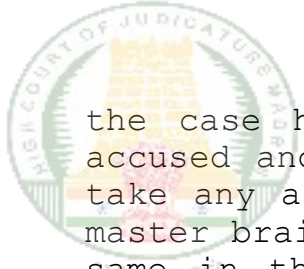
For Petitioners : Mr.K.Gokul

For Respondent : Mr.C.Jeganathan
for M/s. Veera Associates

ORDER

This Criminal Original Petition has been filed to call for the records relating to the impugned proceeding in Cr.M.P.No.3458 of 2011 on the file of the Judicial Magistrate No.II, Virudhunagar and quash the same.

2.The petitioners are arraigned as Accused Nos. 1 to 5. The respondent averred in his complaint that the first and second petitioners are father and son, respectively. Likewise, the third and fourth petitioners are father and son. The first petitioner is the owner of the Ambassador Car bearing Registration No.TN-67-R-1999. The first and second petitioners are running a recreating club by name and style of Surya Recreation Club, Sithurajapuram under Tamil Nadu liquor (License and Permit) . While being so, the driver of the first petitioner for the purpose of vending Indian Made Foreign Liquor defeating the Provisions of law under which the State of Tamil Nadu has got the monopoly of selling liquor through retail outlets. and found possession of illegal liquor bottles. Therefore,



the case has been registered as against the driver of the first accused and proceeded only as against him. But, the police did not take any action as against the present accused, since they are the master brain of the said offence to have illicit liquor and sold the same in their recreating club. Hence, the respondent /complainant filed a private complaint under Section 200 Cr.P.C. for the offences punishable under Sections 4(1)(a)(a)(a) r/w Section 14 A of Tamil Nadu Prohibition Act.

3.The learned counsel appearing for the petitioners would submit that they filed this petition to quash the summon issued by the learned Judicial Magistrate No.II, Virudhunagar on the following grounds:

3.1. The Inspector of Police, Amathur Police Station has registered a case in Crime No.53 of 2011 as against one Purushothaman, who is the driver of the car. The petitioners herein have nothing to do with the said offence. Further, the respondent has already filed W.P.No.2378 of 2011 before this Court, challenging the illegal running of the Recreation Club without any license and the same is also dismissed.

3.2.The learned Magistrate No.II, Virudhunagar without following the procedure laid down under Code of Criminal Procedure, 1973, immediately after the receipt of complaint from the respondent, issued summon to the petitioners to appear on 25.07.2011. It is a violation of procedure laid down under Sections 201 and 202 Cr.P.C. The learned Judicial Magistrate without even conducting any enquiry, mainly without recording the sworn statement of the defacto complainant and supporting witnesses and also without even taking cognizance in the complaint, straight away issued summon to the petitioners. Therefore, it is a violation of procedure laid down under Code of Criminal Procedure, 1973.

4.The learned counsel appearing for the respondent would submit that there is a material as against the petitioners to connect the offences. Therefore, he sought for dismissal of this petition.

5.It is seen from the documents filed by the petitioners, the impugned summon dated 25.07.2011 issued by the learned Judicial Magistrate No.II, Virudhunagar without recording the sworn statement of the complainant/respondent, the provisions of 200, 201 to 204 Cr.P.C reads as follows :

"200.Examination of complainant: A Magistrate taking cognizance of an 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,

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provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses.



(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

201. Procedure by Magistrate not competent to take cognizance of the case -If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall,-

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court;

202. Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint -If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any), under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the



complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process -

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

6. Without recording the sworn statement from the complainant and also without examining any witness to support the case of the defacto complainant, the learned Magistrate has straight away issued summon to the petitioners herein. It is also seen that the learned Magistrate has not followed the procedure laid down under Sections 200 to 204 Cr.P.C. The learned Magistrate without even taking cognizance for the offences punishable under Sections 4(1)(a)(a)(a) r/w Section 14 A of Tamil Nadu Prohibition Act, straight away issued summon, which is the violation of the procedure laid down under the Code of Criminal Procedure.

7. Considering the above facts and circumstances, this Criminal Original Petition is allowed and the summon issued as against the petitioners dated 25.07.2011 in Cr.M.P.3458 of 2011 on the file of the learned Judicial Magistrate No.II. Virudhunagar stands quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/



To

The Judicial Magistrate No.II
Virudhunagar.

+1CC to Mr.K.Gokul, Advocate, SR.No. 83562

+1CC to M/s. Veera Associates, Advocate, SR.No.83637

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and

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MSA

ES/SKN/RSK/SAR 4/11.10.2018/5P/4C