



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2018

CORAM

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

CrI.O.P. (MD) No.2863 of 2013

and

M.P. (MD) .No.1 of 2013

1.P.Arunachalam
2.S.Leela
3.S.Parvathi
4.P.Mariammal
5.Vasanth
6.P.Sornam
7.P.Subbiah
8.P.Perumal
9.Sorimuthu
10.S.Murugan

. Petitioners / Accused Nos.1 to 10

-Vs-

1.The State rep. by
The Inspector of Police,
Palayamkottai Police Station,
Palayamkottai,
Tirunelveli District.
(Crime No.997 of 2010)

.. 1st Respondent/Complainant

2.S.Devasundary

.. 2nd Respondent / Defacto Complainant

Prayer : This Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the Private Complaint in C.C.No.212 of 2012 pending before the learned Judicial Magistrate No.I, Tirunelveli District, dated 14.02.2012 and quash the same as illegal.

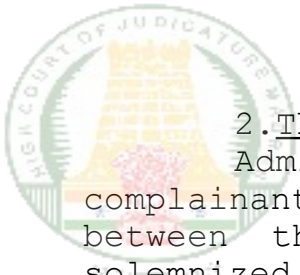
For Petitioners : Mr.T.Lajapathi Roy

For RR1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Criminal side)

For RR2 : No appearance

O R D E R

The petitioners herein are the accused Nos.1 to 10 in C.C.No.212 of 2012, pending on the file of the learned Judicial Magistrate No.I, Tirunelveli. They filed this petition under Section 482 of Cr.P.C., to quash the Private Complaint in C.C.No.212 of 2012, pending on the file of the learned Judicial Magistrate No.I, Tirunelveli District, dated 14.02.2012.



2. The facts of the case are as follows:

Admittedly, the second respondent, who is the defacto complainant is the wife of the first petitioner herein. The marriage between the first petitioner and the defacto complainant was solemnized in the year 1996 in Guruvayur Temple. Thereafter, due to some mis-understanding, the said marriage was dissolved on 06.02.2007 in the Family Court at Ernakulam. Before that on 21.12.2006, the first petitioner and the defacto complainant entered into an agreement with regard to the dispute pending between them, in which Clause-6, they arrived the terms as follows:

"6. that all the rights and liabilities between the parties are hereby settled and both parties hereby agree that they shall not proceed with any litigation against the other party and both parties hereby agree to withdraw all the cases now pending before various Courts".

3. In the above circumstances, the first respondent police, after completing the investigation closed the complaint, dated 18.07.2010, which was lodged by the defacto complainant, as "mistake of fact" on 19.08.2010. After closing the said FIR, the second respondent herein without filing any protest petition, straight away lodged a complaint before the learned Judicial Magistrate No.I, Tirunelveli for the same set of allegations.

4. I have heard the learned counsel appearing for the petitioners, the learned Government Advocate (Criminal side) appearing for the first respondent and perused the records. Today, in order to substantiate the case of the second respondent, nobody was appeared.

5. Considering the facts and circumstances of the case, now it is necessary to extract the relevant portion of the judgment of this Court, in the case of A.Krishna Rao vs. L.S.Kumar, reported in 1998 (1) CTC 329, wherein in paragraph No.3, it has been held as follows:

"3.

In the instant case, the police have already referred the case as mistake of fact and notice has been served on the complainant through Court and he did not raise any objection. When this matter was argued, it was not pointed out on the side of the respondent / complainant that he raised any objection or the learned Magistrate has not accepted the report of the police. If the learned Magistrate has not accepted the report, he would have given further directing in the matter and the very reasons that the Magistrate has received the second complaint, would go to show that he has not given any further direction in the R.C.S., which means that he has accepted the same and passed an order accordingly, When once such an order was passed by the



learned Magistrate, it was not open to him to entertain one mere complaint regarding the same occurrence."

So, this Court is of the view that lodging of the complaint directly before the learned Magistrate without mentioning the earlier proceedings is legally not sustainable in law. Furthermore, on going through the allegation levelled against the petitioners herein are all appears as vague one. Further, for the same allegation, the respondent police made investigation and find out that the allegations are not substantiate factually.

6. In the above circumstances, this Court came to the conclusion that the complaint lodged by the second respondent is nothing but abuse of process of law. Thereby, the prayer sought for by the petitioners in this petition is justifiable. Accordingly, this Criminal Original Petition is allowed and the Private Complaint in C.C.No.212 of 2012 pending before the learned Judicial Magistrate No.I, Tirunelveli District is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.I,
Tirunelveli District.
- 2.The Inspector of Police,
Palayamkottai Police Station,
Palayamkottai,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.T.Lajapathi Roy, Advocate SR.No. 47694

Crl.O.P.(MD)No.2863 of 2013
09.02.2018

PJL

JM/SKN RSK/SAR 4/15.03.2018/3P/5C