

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2018
Pronounced on : 22.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.14895 of 2011 & 23920 of 2010 and
M.P.Nos.1 of 2011 & 1 of 2010

1.V.Pandi
2.D.Doss
3.M.Sivakumaran
4.P.Ramaswamy

.... Petitioners in
Crl.O.P.No.14895 of 2011/Accused

5.S.Parthasarathy

.... Petitioner in
Crl.O.P.No.23920 of 2010/Accused 5

Vs.

S.Duraiswamy,
General Secretary,
Kovai Periyar District Dravida
Panchalai Tohzilalar Munnetra Sangam
Registered No.2658, at
No.69, Tatabad 3rd Street,
Coimbatore-641 012.

.... Respondent in both Crl.O.P's/
Complainant

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.465 of 2010 pending on the file of the Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioners: Mr.R.S.Shanmuga Sundaram,
Senior Counsel
for L.Baskaran in both Crl.OP's

For Respondent : Mr.C.K.Chandrasekar
in Crl.O.P.No.23920 of 2010

No appearance [Not ready in Notice]
in Crl.O.P.No.14895 of 2011

* * * * *

COMMON ORDER

The petitioners in Crl.OP.No.14895 of 2011 are the accused Nos.1 to 4 and the petitioner in Crl.OP.No.23920 of 2010 is the 5th accused in C.C.No.465 of 2010 on the file of the Judicial Magistrate Court No.II, Coimbatore, on a private complaint by the respondent. On recording the Sworn statement of the respondent and after examination of two witnesses, the Court below has taken the case on file, issued summons to the petitioners/accused for offences under Sections 381, 408, 447 and 120(b) of IPC, against which the present quash petitions have been filed.

2.The case of the respondent/complainant is that the respondent is the General Secretary of Kovai Periyar District Dravida Panchalai Tohzilalar Munnetra Sangam, started in the year 1958 and registered in the year 1959 in Registration No.2658. During the year 1960, an election to Sangam was held. The respondent/complainant was elected as the General Secretary. Lastly, on 02.12.2008, an election was held and the respondent was elected as General Secretary and one Thiagarajan as President. The Sangam owned property situated at No.69, Tadabath Street No.3, Coimbatore and the Sangam is an Umbrella organization. More than 60 Sangam are there under the control of the respondent.

3.The 1st and 2nd petitioners are employees of the above Sangam and the 3rd and 4th are casual visitors to the Sangam, who visit the Sangam to meet 1st and 2nd petitioners. In the year 1994, A5 was the Deputy General Secretary of the Sangam and thereafter, A5 joined another Sangam. Further petitioners/A1 to A5 were not employed in any cotton mill. The respondent is empowered to nominate the Honorary members to the Sangam. During the relevant period the petitioners/A1 to A5 are not nominated Honorary members of the Sangam. As per Rule 3 of the Sangam, if any person wishes to join as member of the above Sangam, they should be an employee in any Cotton Mill. Otherwise, as per rule 4, they could be nominated as Honorary member. Further the nominated member must hold the post at least for a period of six months, which was the eligibility to contest election. As per rule 20, the labour unions under this Sangam nominate persons, who will have a right to participate and vote in the respondent's Sangam. These persons are only to select administrators, as per rule 20, who will hold the post for a period of two years from the date of appointment. On 02.12.2008, the respondent along with other Sangam, administrators were elected, held their post till 01.12.2010.

4.The petitioners/A1 and A2, who worked in the Sangam for more than 45 years committed theft of the Documents, Registers, Accounts book, Receipt book from the locker, which were

entrusted to their custody. The 5th accused attempted to take over the property of the respondent's Sangam, filed a Civil Suit before the learned District Munsif, Coimbatore in O.S.No.2024 of 1994 and the same was dismissed and there was a permanent injunction against the 5th accused not to enter into the premises of the Sangam. The petitioners/accused conspired together to take over the respondent's Sangam and its properties. In furtherance to the same, on 25.03.2010, the 4th petitioner lodged a false complaint before the P-15, Rathanapuri Police Station Coimbatore alleging that on 24.03.2010, the petitioners/accused were elected as Office Bearers of the Sangam, the respondent/complainant and the said Thiyagaragan was restraining them from entering into the Sangam premises. The Rathanapuri Police issued a C.S.R.No.108 of 2010 on receipt of the complaint.

5. Thereafter, the petitioners conspired together, prepared a forged circular dated 06.03.2010 forging the signature of the respondent and projected that election for the year 2010-2011 and 2011-2012 was scheduled to be held on 24.03.2010 at 03.30 p.m. Based on the said forged circular, on 24.03.2010, it was projected as though meeting was held and 58 members participated in the meeting and four resolutions were passed and the said four resolutions were notarized and were produced before various forums. Using the same, a Civil Suit was filed by the petitioners in O.S.No.186 of 2010 before the I Additional Subordinate Judge, Coimbatore and they obtained an interim injunction on 27.03.2010 in I.A.No.136 of 2010. Armed with this order, 1st and 2nd petitioners/A1 and A2 committed theft of the documents. The petitioners/A3 to A5 along with 50 others trespassed into the Sangam to take over the Sangam. The respondent gave a complaint to the P-15, Rathanapuri Police Station and no action was taken. On the other hand, the police supported the petitioners/accused based on the complaint given by the 4th petitioner dated 25.03.2010 and initiated 145 Cr.P.C proceedings against the respondent. Hence, the respondent lodged a private complaint before the learned Judicial Magistrate No.II, Coimbatore against the accused persons for offences under Sections 381, 408, 447, 464, 465, 471 and 120(b) of IPC. The Court below recorded the statement of respondent/complainant and witnesses has taking into consideration of the Civil Suits between the petitioners and the respondent and on the basis of the allegations made and gave a finding that as per Section 195 of Cr.P.C, the Court has no jurisdiction to take Cognizance of certain of the offences and has taken cognizance against the petitioners for the offences under Sections 381, 408, 447 and 120 (B) of IPC, against which the present quash petition has been filed.

6. The contention of the learned counsel for the petitioners is that the private complaint against the petitioners are baseless. No offence is made out, on taking into the complaint

as a whole. It is seen that the private complaint is nothing but an abuse of process of law. The private complaint is without jurisdiction. He further submitted that the petitioners are legally elected Office Bearers as per the bye-law of the trade union. The petitioners are functioning as President, Treasurer, Deputy General Secretary and Secretary. The petitioners, who are newly elected Office Bearers of the Sangam were not allowed to function in their respective capacity by the previous office bearers despite injunction order passed in I.A.No.138 of 2010 in O.S.No.186 of 2010 by the learned Sub Judge, Coimbatore as well as the order passed in C.M.A.No.1308 & 109 of 2010 by this Court.

7.The learned counsel further submitted that the lower Court without looking into the fact that the Civil cases were pending between the petitioner and the respondent had taken cognizance of the private complaint and mechanically ordered summons to the petitioners. The respondent threatened and obtained affidavit from some of the General Council members as though many of them retracted, as though they have not participated in the election. The affidavit given to the respondent were created documents. The petitioners are trade union leaders with high reputation and have been falsely implicated in the case. Hence, the petitioners prayed for quashment of the proceedings.

8.The learned counsel for the petitioner relied upon the following citations

i) K.P.S.Jeyachandran Versus State represented by Deputy Superintendent of Police, Erode Town Sub Division, Erode District reported in (2014) 4 MLJ (Cr1) 166.

ii) Basir-ul-Huq and others Versus the State of W.B on the complaint of Dhirendra Nath Bera reported in AIR 1953 SUPREME COURT 293.

iii) Fredrick Gnanaraj & Another Versus A.P.Kumarakannan reported in 2001 (2) MWN (Cr.) 216.

9.The learned counsel for the respondent submitted that the respondent is an elected General Secretary of the Sangam and he is holding the post for the past several years. The election was held on 02.12.2008 and he held the post till 01.12.2010. He further submitted that there is no reason for the respondent to issue a notice dated 06.03.2010 to call for an election on 24.03.2010, when all the documents have been forged by the accused persons. The 1st and 2nd petitioners/A1 and A2, who are the employees of the Sangam were in possession of the entire records and documents and who have conspired with the other accused and to somehow wanted to takeover the respondent's Sangam. The petitioners/accused, who belong to the then ruling

party created forged documents and using the same had obtained orders from the Civil Court and attempted to take over the Sangam by force. The petitioners using the forged documents obtained an ex parte order and forcibly entered into the respondent's office and taken away all the documents. Thus, they have conspired with each other have criminally trespassed, committed theft of documents, converted to their own use and committed breach of trust.

10.He further submitted that the Civil proceedings initiated by the petitioners/accused has been finally decided by this Court vide Judgment dated 27.06.2017 in A.S.Nos.369 and 370 of 2014, categorically gave a finding that there is no election said to have taken place on 24.03.2010. The petitioners/accused are not entitled to call them as Officer Bearers of the Sangam and the respondent was recognized as the General Secretary of the Sangam.

11.Considering the submissions made on either side and on perusal of the documents and materials produced before this Court, it is seen that the lower Court had given a finding based on the Sworn statement of the respondent, statement of witnesses and on perusal of documents, the complaint with regard to certain offences as per Section 195 of Cr.P.C, is devoid of Jurisdiction. It had taken cognizance with regard to offence under Sections 381, 408, 447 and 120 (B) of IPC.

12.It is seen that the lower court has given a finding that a prima facie case has been made out against the petitioners. On analyzing the materials both oral and documentary evidences produced before this Court, it is seen that the above case is a warrant case instituted otherwise than on police report, at this stage only a prima facie material is to be looked into and thereafter only evidence is to be recorded in detail. Taking all the recorded evidences, if the Magistrate considers that no case against the accused has been made out, if un-rebutted, the Magistrate shall discharge the accused.

13.The learned Judicial Magistrate No.II, Coimbatore at this stage has only to ascertain the truth or falsehood of the allegations made in the complaint, on the materials placed by the respondent/complainant. The lower Court must satisfy itself for the limited purpose of finding, whether a prima facie case is made out for issue of process without adverting to any defence that the accused may have.

14.The points, which are to be looked now is that

i) Whether the allegations made in the complaint or statement of witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of

an offence which is alleged against the accused;

ii) Whether the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

iii) Whether the discretion exercised by the learned Magistrate in issuing process is capricious and arbitrary by taking into consideration the evidence and materials which are wholly irrelevant or inadmissible; and

iv) Whether the complaint suffers from fundamental legal defects such as want of sanction or absence of a complaint by legally competent authority and the like.

15. So far as the order of cognizance by the learned Magistrate is concerned the inherent power can be exercised when the allegations in the complaint together with the other materials on the face value does not constitute the offence alleged. At this stage it is not open either to sift the evidence or appreciate the evidence and come to a conclusion that no prima facie case is made out. In this case, the learned Magistrate has exercised his discretion and given cogent reason for his conclusion. The petitioners after evidence under Section 244 of Cr.P.C are at liberty to raise all the points and their contentions, if they feel so by invoking Section 245 of Cr.P.C.

16. In view of the same, this court is not inclined to entertain the Quash petition of the petitioners. Hence, the quash petitions are dismissed.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

vv2

To

The Judicial Magistrate Court No.II,
Coimbatore.

+1cc to Mr.C.K.Chandrasekhar, Advocate, S.R.No.27537
+1cc to Mr.A.Gopinath, Advocate, S.R.No.27432

Cr1.O.P.Nos.14895 of 2011 & 23920 of 2010

SR(CO)

RRS (08/05/2019)