

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:11.02.2019
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.2362 of 2015
and M.P.No.1 of 2015

Mr.M.Rajkumar

... Petitioner/Accused-3

Vs.

T.Arunachalam

... Respondent/Respondent

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.4492 of 2013 on the file of the II Metropolitan Magistrate, Egmore, Chennai and quash the complaint.

For Petitioner : Mr.P.Ayyaswamy
For Respondent : Mr.R.Varadaraj

ORDER

This Criminal Original Petition has been filed to quash the complaint in C.C.No.4492 of 2013, taken cognizance for the offences under Sections 379, 405, 406, 420, 463, 465, 467, 468 and 34 of IPC, on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.

2. The learned counsel appearing for the petitioner would submit that there are totally four accused, in which, the petitioner is arraigned as third accused. He further submitted that the allegations made in the sworn statement and the documents filed along with the complaint are totally false and did not disclose any offence, having been taken cognizance by the learned Trial Court Judge. He further submitted that there is absolutely no evidence to disclose the offences of theft, criminal breach of trust and cheating punishable under Section 379, 405, 406 and 420 of IPC, as against the petitioner. It is nothing but a malicious prosecution as against the petitioner.

2.1. The learned counsel for the petitioner further submitted that the defacto complainant did not lodge any complaint before any police officer before filing private complaint under Section 200 Cr.P.C. The complainant necessarily has to lodge a complaint before the concerned jurisdictional

Police Station and only thereafter, he has to file a complaint under Section 200 of Cr.P.C. by way of private complaint. Therefore, the petitioner prayed to quash the complaint in C.C.No.4492 of 2013 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.

3. Per contra, the learned counsel for the respondent would submit that there are four accused, in which, the petitioner is arraigned as third accused. The first accused is the friend of the defacto complainant and the second accused is none other than his own wife thereafter eloped with the first accused along with all share certificates. The third accused/petitioner is the close friend of the first accused, who allegedly signed as authorised signatory in the share certificates. The fourth accused is the mother of the first accused, to whom the shares were transferred by fabricating the documents and cheated the defacto complainant. Therefore, the specific allegations and averments as against the petitioner are true and there are materials to prove the charges for the offences under Sections 379, 405, 406, 420, 463, 465, 467, 468 and 34 of IPC, as against all the accused.

3.1. Further, he submitted that after hearing the submissions of both side counsel, the learned II Metropolitan Magistrate, Egmore, Chennai, having been satisfied with the averments and statements produced produced before the trial Court, had taken cognizance for the above said offences and issued summons to the petitioner. After the trial commenced, the petitioner and other accused persons are directed to present before the trial Court, in which, PW1/defacto complainant filed proof of affidavit. At the time of cross-examination, the present quash petition has been filed, that too after the period of two years from the filing of the calender case by suppressing the fact that the trial was commenced. Due to this quash petition, the entire trial proceedings have been stalled and it is pending. Therefore, he prayed for the dismissal of the quash petition.

4. Heard Mr.P.Ayyasway, learned counsel appearing for the petitioner and Mr.R.Varadaraj, learned Additional Public Prosecutor appearing for the respondent.

5. The first point raised by the learned counsel for the petitioner is that without lodging any complaint before the police, private complaint cannot be maintained. Section 200 of Cr.P.C. never indicates that before filing the private complaint, the complainant shall file a police complaint and only thereafter, he has to file a private complaint under Section 200 of Cr.P.C. It is relevant to extract the provision under Section 200 of Cr.P.C., which 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:

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."

The defacto complainant filed a complaint under Section 200 Cr.P.C. After receipt of the complaint, the learned II Metropolitan Magistrate, Egmore, recorded the statements of the defacto complainant on 24.07.2013 and thereafter, on 20.09.2013, other two witnesses have been examined. After examining the three witnesses and perusal of the documents and depositions of the witnesses, he found that there are prima facie to make out the case. Thereafter, the learned Magistrate have taken cognizance for the offences under Sections 405, 406, 420, 463, 465, 467 and 468 IPC in C.C.No.4492 of 2013 and issued summons to all the accused. In fact, after the receipt of the summons, all the accused were present and also trial commenced by way of proof of affidavit by PW1/defacto complainant. At that stage, the third accused/petitioner filed this quash petition on the ground that without lodging the complaint before the police, private complaint is not maintainable. To file a private complaint there is absolutely no necessity to file a police complaint as contemplated under Section 200 of Cr.P.C. Therefore, the contention of the petitioner is untenable.

6. It is also seen from the complaint that there are specific averments and allegations as against each of the accused, as such it has to be looked into during the trial and all other points raised by the learned counsel appearing for the petitioner can be established before the trial Court. Therefore, this Court is not inclined to entertain this quash petition. However, considering the case is of the year 2013, this Court

deems to fit to direct the learned II Metropolitan Magistrate, Egmore, Chennai, to complete the trial within a period of three months from the date of receipt of a copy of this order.

7. With the above directions, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

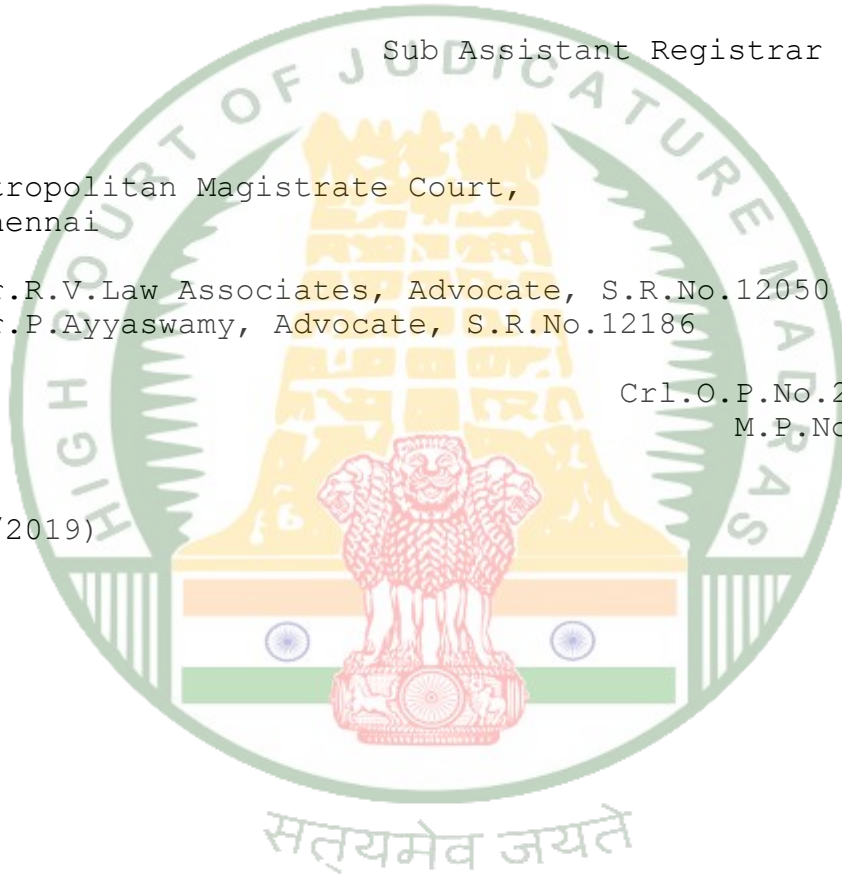
nsd/rts
To

The II Metropolitan Magistrate Court,
Egmore, Chennai

+2cc to Mr.R.V.Law Associates, Advocate, S.R.No.12050
+1cc to Mr.P.Ayyaswamy, Advocate, S.R.No.12186

Crl.O.P.No.2362 of 2015
M.P.No. 1 of 2015

VGII (CO)
GSP(26/02/2019)



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