

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.22432 of 2016

and

CrI.MP.NO.10429 of 2016

1.Abdul Majeed

2.Tajuddin

3.Nissar

4.Basha

..Petitioners/Accused

.Vs.

Rasheed

..Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in PRC.2/2016, on the file of the Judicial Magistrate, Sankarapuram, and to quash the same.

For Petitioners : Mr.R.Vajravelu

For Respondent : Mr.S.Kumara Devan

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings pending before the Court below in PRC.No.2 of 2016.

2.It is seen from records that the respondent had given a complaint against the petitioners and an FIR came to be registered in Cr.No.67 of 2014, for an alleged offence under Sections 294(b), 436, 307 r/w 109 IPC. The Police investigated the case and filed a Closure Report as mistake of fact in RCS No.17 of 2014. The respondent also filed a Protest Petition before the concerned Court and there was no action taken on the Protest Petition.

3.While so, the respondent proceeded to file a fresh complaint on the same set of facts before the Court below and the Court below after examining the respondent and some other witnesses, had taken cognizance of the complaint for an offence

under Section 294(b) and 436 of IPC. Since the case is triable by the Court of Sessions, the case is now pending at the committal stage in PRC No.2 of 2016.

4.This proceeding is now under challenge before this Court on the ground that the Court below had entertained a second complaint for the same set of facts.

5.The learned counsel for the petitioners submitted that the Court below ought not to have entertained the second complaint filed by the respondent. The learned counsel further submitted that the Protest Petition is admittedly pending before the Court below and the Court should have taken a decision on the Protest Petition and the Court cannot proceed further to entertain a fresh complaint on the same set of facts. The learned counsel concluded his arguments by submitting that the Court below while taking cognizance of the complaint, has not taken into consideration the Closure Report filed by the Police and the statements that were recorded during the course of investigation. Therefore, the learned counsel sought for quashing of the proceedings.

6.The learned counsel appearing on behalf of the respondent submitted that the Court below has the jurisdiction, to take cognizance of a Protest Petition also under Section 200 of Cr.P.C., by converting the same into a private complaint. The learned counsel further submitted that there are prima facie materials available against the petitioners and this Court should not interfere with the proceedings at this stage.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.In this case admittedly, a Closure Report has been filed by the Police and the respondent has also filed a Protest Petition before the Court below. Even in the complaint filed thereafter, the respondent has specifically stated that he has filed a Protest Petition and no action has been taken on the same.

9.The Court below should have taken note of this fact and must have considered the Protest Petition filed by the respondent. While considering the Protest Petition, it was open to the Court below to treat it as a complaint under Section 200 of Cr.P.C., and it could have proceeded further in accordance with law. However, the Court did not chose to adopt this procedure. The Court completely disregarded the Protest Petition and entertained the private complaint by examining the complainant and some witnesses.

10.The Order taking cognizance which has been produced before this Court clearly shows that the Court below has not applied its mind on the Closure Report filed by the Police and the statements recorded from the witnesses. In such a case, the cognizance taken by the Court below is not in accordance with law. Useful reference can be made to the judgment of this Court in Kumaravel and Others .Vs. A.Thangapandian made in CrI.O.P. (MD).No.6902 of 2016 dt.05.10.2018. The relevant portions of the judgment is extracted hereunder:

"8. This Court has carefully considered the submissions made on either side. The entire allegations, in the considered view of this Court, is totally civil in nature and the police after investigation has found the complaint to be false. Therefore, the Court below ought not to have entertained a fresh complaint on the very set of facts for which the police have already filed a closure report.

9.After the police filed the closure report, the Court below could have entertained the complaint as a protest petition and dealt with the same. However, the Court below has taken cognizance of the complaint indendently without taking note of the closure report filed by the police. In the considered view of t his Court, there is total non application of mind on the part of the Court below and the Court below ought not to have taken cognizance of the private complaint independently without taking into account the closure report filed by the police.

10.This Court is of the considered view that the private complaint filed by the respondent clearly amounts to abuse of process of Court. The respondent is trying to re-agitate the matter which is purely civil in nature and which has already been found by the police to be a false complaint. This Court has to necessarily exercise its jurisdiction under Section 482 Cr.P.C., in order to meet the ends of justice."

11.In view of the above, the cognizance taken by the Court below has to be necessarily interfered with by this Court. Accordingly, the order taking cognizance, dated 29.01.2016, is hereby set aside. The Court below is directed to treat this complaint as a Protest Petition and proceed further to decide the same in accordance with law as per the guidelines given in A. Rajendra & Others .Vs. the State & Others reported in [2019

1LW (Cr1.) 771]. The Court below shall take into consideration the Closure Report filed by the Police and the statements that were recorded from the witnesses before taking cognizance of the complaint, if the Court is going to convert the Protest Petition into a complaint under Section 200 of Cr.P.C.

12.In the result, the cognizance taken by the Court below by an order dated 29.01.2016, is hereby set aside and the matter is again remanded back to the learned Judicial Magistrate, Sankarauram, to deal with the case in line with the directions given by this Court supra, and proceed further in accordance with law.

This Criminal Original Petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CSII)

True Copy

Sub-Assistant Registrar

KP

To

Judicial Magistrate, Civil Judge (Junior Division),
Sankarapuram.

+1 cc to Mr.S.Kumara Devan Advocate sr68742

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