

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.10050 of 2018
and
CrI.M.P.Nos.5134 & 5187 of 2018

M.Jeyabalan

.. Petitioner

Vs.

V.Baskaran

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the proceedings in C.C.No.10 of 2018 on the file of the Judicial Magistrate No.I, Erode and quash the same.

For Petitioner : Mr.A.Thiyagarajan
For Respondent : No Appearance

O R D E R

This petition has been filed to quash the proceedings in C.C.No.10 of 2018 on the file of the Judicial Magistrate No.I, Erode.

2.The learned counsel for the petitioner submitted that the averments does not constitute any offence under Section 191 r/w 193 IPC as against the petitioner. He further submitted that under Section 195(1) (b) of Cr.P.C., no Court shall take cognizance under Section 191 r/w 193 IPC. Therefore, he submitted that the learned Magistrate without conducting any enquiry under Section 200 Cr.P.C., straight away taken cognizance under Section 191 r/w 193 IPC. Therefore, he prayed to quash the proceedings.

3.Heard Mr.A.Thiyagarajan, learned counsel for the petitioner. Though notice has been served, none appeared on behalf of the respondent.

4.It is seen that the respondent lodged the complaint before the trial Court and the same has been taken cognizance in C.C.No.10 of 2018 for the offence under Section 191 r/w 193 of IPC. It is relevant to extract the provisions under Section 195 (1) (b) of Cr.P.C., which reads as follows:-

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence -

(1) No Court shall take cognizance-

(a)....

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

6.The learned Magistrate did not follow the procedure as contemplated as above and directly have taken cognizance that too without any evidence for the offence under Section 191 r/w 193 IPC. That apart, there is absolutely no evidence to show that the learned Magistrate conducted enquiry under Section 200 Cr.P.C., and he straight away taken cognizance as against the petitioner.

7.The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court reported in (2017) 3 SCC in the case of Saloni Arora Vs. State (NCT of Delhi), which reads as follows:-

10.It is apposite to reproduce the law laid down by this Court in Daulat Ram which reads as under:
(AIR p. 1206)

"There is an absolute bar against the Court taking seisin of the case under Section 182 IPC except in the manner provided by Section 195 Cr.P.C.

Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under Section 182 is complete when a person moves the public servant for action. Where a person reports to a Tahsildar to take action on averment of certain facts, believing that the Tahsildar would take some action upon it, and the

facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tahsildar, as the public servant concerned under Section 182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under Section 182 without the Tahsildar's complaint in writing is therefore, without jurisdiction ab initio."

11.It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in Daulat Ram quoted above.

8.In the case on hand, also the learned Magistrate without following the procedure contemplated under Section 195 of Cr.P.C., have taken cognizance. Therefore, the entire proceedings is vitiated as held by the Hon'ble Supreme Court of India.

9.In view of the above the criminal original petition is allowed and the proceedings in C.C.No.10 of 2018 on the file of the Judicial Magistrate No.I, Erode is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

AT
To
The Judicial Magistrate No.I, Erode.

+1cc to Mr.T.Thiyagarajan, Advocate SR.No.27351

+1cc to Mr.A.Sathasivam, Advocate SR.No.28188

Cr1.O.P.No.10050 of 2018
and
Cr1.M.P.Nos.5134 & 5187 of 2018

BR(CO)
GMY(02/05/2019)