

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.Rc.No.495 of 2019
and Crl.M.P.No.6871 of 2019

N.R.Babulal

... Petitioner/Complainant

vs.

1.K.E.Ramanan

... 1st Respondent/Accused

2.State Rep. by
Inspector of Police,
Salem Town Police,
Salem City.

... 2nd Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 CrPC against the order dated 26.04.2019 passed in Crl.M.P.No.138 of 2019 on the file of the Judicial Magistrate No.I, Salem.

For Petitioner : Mr.Kalyanaraman S.

For Respondent : M/s.Krithika Kamal,
Government Advocate (Crl. Side)

ORDER

For the sake of convenience, the parties are referred to by their name.

2. K.E.Ramanan lodged a complaint, based on which the Sub-Inspector of Police, Salem Town Police Station, registered a case in Crime No.486 of 2016 on 14.11.2016 for the offences under Sections 341, 294(b), 387 and 506 (ii) I.P.C., against N.R.Babulal. After completing the investigation, police closed the case in Crime No.486 of 2016 as Mistake of Fact and filed the Closure Report dated 01.11.2018 before the Judicial Magistrate No.I, Salem. Thereafter, Babulal filed a petition in Crl.M.P.No.138 of 2019 under Section 156(3) CrPC for prosecuting Ramanan under Section 211 CrPC for having filed a false complaint. The learned Judicial Magistrate No.I, Salem issued directions in Crl.M.P.No.138 of 2019 on 05.02.2019 directing the police to register an F.I.R. Thereafter, the police brought to the notice of the learned Magistrate that for prosecuting a

person under Section 211 CrPC, the concerned Court should only file a complaint as laid down in Section 195 CrPC and therefore, the Magistrate ought not to have passed the order for police investigation under Section 156(3) CrPC. Therefore, the learned Judicial Magistrate No.I, Salem vide impugned order dated 26.04.2019, has recalled his earlier order dated 05.02.2019 made in CrI.M.P.No.138 of 2019, challenging which Babulal is before this Court.

3. Heard Mr.S.Kalyanaraman, learned counsel for the petitioner, who submits that the learned Magistrate has no power to recall his own order in view of the bar under Section 362 CrPC.

4. However, on instructions, Ms.Krithika Kamal, learned Government Advocate (CrI. Side) would submit that challenging the order dated 05.02.2019 made in CrI.M.P.No.138 of 2019, Ramanan has preferred C.R.P.No.14 of 2019 before the Sessions Court Salem and in C.M.P.No.116 of 2019 in C.R.P.No.14 of 2019, the learned I Additional District and Sessions Judge, Salem, vide order dated 25.04.2019, has granted stay of the order dated 05.02.2019 passed in C.M.P.No.138 of 2019 by the learned Judicial Magistrate No.I, Salem. In C.R.P.No.14 of 2019, Babulal has been shown as one of the respondent.

5. In view of the above, this Criminal Revision Petition is allowed and the order dated 26.04.2019 passed in C.M.P.No.138 of 2019 by the learned Judicial Magistrate No.I, Salem is set aside, since he has no power to recall his own order in view of the bar under Section 362 CrPC. However, Babulal is directed to enter appearance in C.R.P.No.14 of 2019 on the file of the I Additional District Judge, Salem and contest the case of Ramanan there. Consequently, CrI.M.P.No.6871 of 2019 is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jvm

To

1.The Inspector of Police,
Salem Town Police, Salem City.

2.The Judicial Magistrate No.1,
Salem.

3.The Chief Judicial Magistrate,
Salem.

4.The I Additional District and Sessions Court,
Salem. [in CRP.No.14 of 2019]

5.The Public Prosecutor,
High Court, Madras

Copy To:

The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.S.Kalyanaraman, Advocate, Sr.No. 45447

Crl.Rc.No.495 of 2019

RV(CO)
CSL/11.06.2019



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