

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9757 of 2014
and Crl.M.P.No.1 of 2014

D.S.Sivasamy

... Petitioner/Accused

Vs.

1.State Represented by
The Inspector of Police,
Pallavaram Police Station,
Pallavaram,
Chennai - 600 043.

...1st Respondent/Complainant

2.K.M.R.Nizar Ahmed

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in connection with C.C.No.668 of 2012 on the file of the Learned Judicial Magistrate, Tambaram and Quash the same.

For Petitioner : Mr.M.Babu Muthu Meeran

For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For RR2 : No Appearance

ORDER

This petition has been filed to call for the records in connection with C.C.No.668 of 2012 on the file of the Learned Judicial Magistrate, Tambaram and Quash the same.

2. The learned counsel for the petitioner would submit that the petitioner being a Government servant during the course of his employment, he had served various places in various capacities, and prior to his retirement he had also served as Regional Director of Municipal Administration, Chengalpattu and thereafter retired as Additional Director of Municipal Administration. He further submits that the petitioner also the President of the Federation of Civil and Welfare Associations of Pallavaram, in the capacity of which he brought to the notice of the Municipal Administration certain misdemeanor and mal

administration and sought to set right the same, and even the petitioner also received several complaints by various civic welfare association and also by the general public about the mismanagement of the municipal authority, whereas a false complaint has been preferred against the petitioner itself before the respondent police and case has been registered in Crime No.112 of 2012 for the offences punishable under Sections 501 and 505 I.P.C.

3. The learned counsel for the petitioner further submits that the above offences under Sections 501 and 505 I.P.C. are non-cognizable in nature and the learned Judicial Magistrate has no power to take cognizance of the same. Even then the respondent police has filed final report and the same has also been taken on file in C.C.No.668 of 2012. Hence he prayed for quashment of the entire proceedings.

4. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent. Though notice was served, none appeared for the second respondent.

5. It is seen that a complaint has been preferred against the petitioner before the respondent police and case has been registered in Crime No.112 of 2012 for the offences punishable under Sections 501 and 505 I.P.C. The learned counsel for the petitioner submits that the offences under Sections 501 and 505 I.P.C. are non-cognizable offences as such the learned Magistrate ought not to have taken cognizance of the same. In this regard, the learned counsel for the petitioner has relied upon the judgment in the case of Kedar Nath Singh Vs. State of Bihar reported in AIR 1962 SCC 955(1), wherein the Hon'ble Supreme Court of India has held as follows:

"29. It is only necessary to add a few observations with respect to the constitutionality of Section 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquillity; or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under Section 505 has reference to, and a direct effect on, the

security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that clause (2) of Article 19 clearly saves the section from the vice of unconstitutionality."

6. The above judgment is squarely applicable to the present case and as such the learned Magistrate ought not to have taken cognizance of the complaint. Hence this Court is inclined to allow the prayer sought for by the petitioner. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.668 of 2012 on the file of the learned Judicial Magistrate, Tambaram is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pds/lok

To

- 1.The Inspector of Police,
Pallavaram Police Station,
Pallavaram,
Chennai - 600 043.
- 2.The Judicial Magistrate,
Tambaram.
- 3.The Additional Public Prosecutor,
High Court of Madras.

+1cc to Mr.M.Babumuthu Meeran, Advocate Sr.18447

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kj[co]
srg 24/04/2019