

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.15358 of 2014

M.P.Nos. 1 & 2 of 2014

1. Shanthi
2. Sengodan
3. Venkatesan

... Petitioners

Vs.

Govindarasan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the criminal case in C.C.No.163 of 2013 on the file of the learned Judicial Magistrate, Sankari quash the same by allowing this criminal original petition.

For Petitioners : Mr. M.Manokaran

For Respondent : No appearance

O R D E R

This petition has been filed to quash the proceedings in C.C.No.163 of 2013 on the file of the learned Judicial Magistrate, Sankari.

2. The learned counsel appearing for the petitioners submitted that the petitioners are arraigned as A1 to A3. The respondent filed a private complaint and the same has been taken cognizance for the offences under Sections 294(b), 341, 323, and 324 of IPC in C.C.No.163 of 2016. He further submitted that for the very same set of allegations, the respondent filed a complaint and registered in Crime No.436 of 2008 by the jurisdictional police and they conducted enquiry and closed as 'Mistake of facts'. After filing the referred charge sheet, the respondent filed protest petition in C.M.P.No.6026 of 2011 and the same was also dismissed. Thereafter, the present petition has been filed by the respondent on 11.02.2013 for the occurrence took place on 02.07.2008. Without even considering the said facts, the learned Magistrate mechanically have taken cognizance for the offence as stated above against the

petitioners.

2.1. He further submitted that in fact for the very same occurrence, the first petitioner was assaulted by the respondent's wife and his mother, in which he preferred a complaint in Crime No.437 of 2008 for the offences under Sections 294(b), 341, 323 and 324 of IPC against the respondent and his wife and mother. After investigation, charge sheet has also been filed in C.C.No.205 of 2008, and the same was ended in acquittal. Thereafter, the respondent filed a suit in O.S.No.1044 of 2008 on the file of the District Munsif Court, Salem for injunction. Therefore, the learned Magistrate ought not to have taken cognizance against the petitioners. Hence, he prayed for quashing the proceedings.

3. Per contra, the learned second respondent/defacto complainant submitted that the respondent lodged a complaint under Section 200 of Cr.P.C. for the offences under Sections 294 (b), 341, 323, and 324 of IPC. After recording sworn statement of the respondent and other witnesses, the learned Magistrate rightly has taken cognizance against the petitioners in C.C.No.163 of 2013. All the points raised by the petitioners have to be established only during the trial. Therefore, he prayed for dismissal of this petition.

4. Heard Mr.N.Manokaran, learned counsel appearing for the petitioners and no one is appeared on behalf of the respondent.

5. The private complaint filed by the respondent as against the petitioners having taken cognizance for the offences under Sections 294(b), 341, 323, and 324 of IPC in C.C.No.163 of 2013. It is seen that the allegations in the complaint in respect of the occurrence took place on 02.07.2008, in which already a case has been registered in Crime No.436 of 2008 and after enquiry it was closed as 'Mistake of facts'. In fact on the closure report, the respondent filed a protest petition in C.M.P.No.6026 of 2011 and the same was also dismissed. That apart, on the counter complaint filed by the first petitioner herein, against the respondent's wife and his mother, the same was registered in Crime No. 437 of 2008 for the offences under Sections 294(b), 341, 323, 324 of IPC. After completing the investigation, charge sheet also filed and the same was taken cognizance in C.C.No.205 of 2008 and subsequently ended in acquittal.

6. It is also seen that the respondent also filed a suit in O.S.No.1044 of 2008 and thereafter the present complaint has been filed for the occurrence took place on 02.07.2008. All the offences are punishable with imprisonment for terms not

exceeding three years. Therefore limitation under Section 468 of Cr.P.C. came into effect and the complaint itself barred by limitation. Immediately after the occurrence, crime was registered in Crime No.436 of 2008 and after enquiry closure report filed as 'Mistake of facts' on 27.03.2010 and it attains finality. Thereafter, the present C.C. has been filed by presenting private complaint and it is clearly barred by limitation and the learned trial Judge ought not to have been taken cognizance and it is clear abuse of process of law. Therefore, this Court feels that to meet the ends of justice, the present proceeding is liable to be quashed.

7. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.163 of 2013 on the file of the learned Judicial Magistrate, Sankari, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

rts

To

1. The Judicial Magistrate Court, Sankari.

2. - do - Through' The Chief Judicial Magistrate, Salem

+lcc to Mr.N.Manokaran, Advocate SR.No.18517

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NRL (CO)
GMY (01/04/2019)

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