

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.18915 of 2014

and

Crl.M.P.No.1 of 2014

1.Kumarasamy
2.Chandrika
3.Mohan

... Petitioners / Accused

Vs.

Rajamani

... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the Private Complaint in C.C.No.114 of 2013 on the file of the learned Judicial Magistrate No.IV, Tirupattur and quash the same.

For Petitioners : Mr.C.S.Dhanasekaran for P1 & P2
Mr.G.S.Vivekanandan for P3

For Respondent : (No Appearance)

ORDER

This Criminal Original Petition has been filed by the petitioners under Section 482 Cr.P.C. to call for the records relating to the Private Complaint in C.C.No.114 of 2013 on the file of the learned Judicial Magistrate No.IV, Tirupattur and quash the same.

2.The case of the complainant is that the 1st petitioner is a brother-in-law of the 2nd petitioner. The respondent purchased the property belonged to the 2nd petitioner's husband Nagireddy comprised in S.No.55/6 to the extent of 0.57 cents and and S.No.53/5 to the extent of 0.73 situated in Attur Kuppam Village, Tirupattur Taluk, Vellore District on 05.04.2010 for a sum of Rs.10,00,000/- (Rupees Ten Lakhs). Thereafter the said Nagireddy committed suicide and died on 13.08.2010. Suppressing the above fact that the said property was already sold by the deceased Nagireddy to the respondent, the 1st and 2nd petitioners again sold the very same property to the 3rd petitioner. Hence the above complaint lodged for the offence punishable 423, 465, 468, 471 and 420 of IPC.

3. The learned counsel for the petitioner further submitted that the respondent already lodged a very same complaint before the Inspector of Police, District Crime Branch and the same was registered in Crime No.16 of 2011 for the offences under Sections 465, 468, 471 and 420 of IPC as against the petitioners. Thereafter it was closed as 'mistake of fact' by the Inspector of Police, District Crime Branch. Hence, the respondent lodged a private complaint and the same has been taken cognizance for the offences under Sections 423, 465, 468, 470 and 420 of IPC as against the petitioners, in which, the petitioners are arrayed as A1 to A3. He further submitted that the learned Magistrate, Tirupattur without even conducting any enquiry, has straightaway taken cognizance as against the petitioners in C.C.No.114 of 2013 and issued summons. Therefore, the learned Magistrate, Tirupattur did not follow the procedures as contemplated under Section 202 of Cr.P.C and as such he prayed to quash the entire proceedings.

4. Heard the learned counsel for the petitioners and none appeared for the respondent.

5. The petitioners are arrayed as A1 to A3. A private complaint was lodged by the respondent in C.C.No.114 of 2013 on the file of the learned Judicial Magistrate No.IV, Tirupattur. Initially, the respondent lodged a complaint before the Inspector of Police, Vellore as against the petitioners and the same was registered in Crime No.16 of 2011 for the offences under Sections 465, 468, 471 and 420 of IPC. After conducting enquiry it was closed as 'mistake of fact' and a closure report was filed. The respondent herein lodged a private complaint. On receipt of the complaint, the learned Judicial Magistrate No.IV, Tirupattur issued summons to the petitioners. It also seems that the learned Magistrate, without conducting any enquiry with the complainant and without any supporting witnesses, straightaway has taken cognizance on the private complaint lodged by the respondent and issued summons. In this regard, It is relevant to rely upon the Judgment of the Hon'ble Supreme Court of India reported in the case of Aroon Poorie vs. Jayakumar Hiremath [(2017)7-SCC-767] which reads as follows:

1. Leave granted. The High Court of Karnataka has dismissed the petitions for quashing of the criminal proceedings filed by the appellants on the ground that this Court in Urmila Devi v. Yudhvir Singh has laid down the law that an order summoning the accused is revisable under Section 397 of the Code of Criminal Procedure., 1973 and hence the proceedings under Section 482 Cr.P.C would not be maintainable. We disagree with the view of the High Court. On a plain reading of the judgement of this Court in Urmila Devi v. Yudhvir Singh on such proposition of law has been laid down. In fact, in para 21.3 this Court has held to the contrary i.e., the power

under Section 482 CrPC would always be available to challenge an order issuing process or summons.

2. The above apart, from the materials on record it appears that the appellant-accused in the present appeals have and maintain residence beyond the local jurisdiction of the learned trial Court. Under the provisions of Section 202(1) CrPC, it was, therefore, mandatory for the learned Magistrate to hold an inquiry either by himself or direct an investigation by the police prior to the issuance of process. Admittedly, the same had not been done. If the aforesaid mandatory provisions of Section 202(1) CrPC had not been followed, the learned trial Court would not have the jurisdiction to issue process/summons as has been done.

3. We have also taken note of the complaint petition and the averments made therein and the necessary ingredients to attract the offence(s) alleged which is under Section 295-A read with Section 34 IPC.

4. On such consideration, we interfere with the orders of the High Court; allow the appeals and set aside and quash the proceedings qua the appellants as a whole including the summoning order dated 17.01.2015.

6. In the case on hand, the learned Judicial Magistrate No.IV, Tirupattur before taking cognizance, ought to have followed the procedures laid down under Section 202 Cr.P.C. Whereas, the learned Judicial Magistrate, after receipt of the private complaint from the respondent, without conducting any enquiry regarding the statement, evidence and the supporting evidence has taken cognizance and issued summons to the petitioners. Therefore, the above judgement is squarely applicable to the case on hand.

7. That apart, the case has been registered in Crime No.107 of 2010 for the offences under Sections 420 and 306 of IPC on the file of the Inspector of Police, Kupam Police Station as against the respondent. The 2nd petitioner's husband committed suicide on 13.08.2010. After the death of the husband of the 2nd petitioner, the 2nd petitioner executed a sale deed on 18.10.2010 in favour of the 3rd petitioner herein. Even then, the respondent interferes with the possession and enjoyment of the disputed property of the 3rd petitioner herein. As such, he filed a suit in O.S.No.377 of 2011 on the file of the District Munsif Court, Tirupattur as against the respondent and the same was also decreed in his favour by the judgement decree dated 01.10.2012. Therefore, the present complaint is nothing but a clear abuse of process of law.

8. In view of the above discussion, the impugned complaint cannot be sustained as against the petitioner and it is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the proceedings relating to the Private Complaint in C.C.No.114 of 2013 on the file of the learned Judicial Magistrate No.IV, Tirupattur is hereby quashed. Consequently, connected miscellaneous petition is closed.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

ssr

To.

The Judicial Magistrate No.IV
Tirupattur

+3CC to Mr.G.S.Vivekanandan Advocate SR.NO.36694

Crl.O.P.No.18915 of 2014
and
Crl.M.P.No.1 of 2014

MK:08/06/2019



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