

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.02.2019

CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8266 of 2017 and Crl.M.P.Nos.5934
& 5935 of 2017 and 17356 2018

1.Paul Thamburaj
2.Rita Rufina

... Petitioners /Accused

Vs.

Rajkumar Paul

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.SR.No.550 of 2016 on the file of the XIII Metropolitan Magistrate at Egmore, Chennai, quash the proceedings as against these petitioners.

For Petitioners : Mr.K.S.Kumar

For Respondent : Mr.Rajkumar Paul
(Party in person)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.SR.No.550 of 2016 on the file of the learned XIII Metropolitan Magistrate at Egmore, Chennai.

2. Mr.K.S.Kumar, the learned counsel for the petitioner would submit that the entire proceedings as against the petitioners are liable to be quashed on the ground that even before numbering the case, summon has been issued to the petitioners. The learned XIII Metropolitan Magistrate, Egmore, Chennai without even recording the sworn statement and without even taking cognizance of the offences issued summon to the petitioners. Further even from the complaint there is absolutely no averments to attract the offences under Sections 120(b), 307, 384,, 420, 464, 506 (ii) and 494 I.P.C.

3. Per Contra, Mr.Rajkumar Paul, the respondent appearing in person would submit that the first petitioner is the brother in law and the second petitioner is the wife. He lodged a complaint before the Inspector of Police, D4 Zam Bazaar Police Station alleging that the petitioners came to Chennai and took him to Vellore Christian Medical College Hospital for Surgery. After discharge of him they took him to Nazareth where the second petitioner resides. They mislead the respondent to vacate his house. They also obtained rental advance from the house owner

stating that the petitioner would never come back to his house. Further they also picked up the bike of the petitioner and sold out by forging his signature in the TA Form through a police constable. The car belongs to the petitioner is also in their possession. Further submitted that he could not bear the harassment of the petitioners both at the hospital and at home. But the Inspector of Police conducted an enquiry and closed the same. Thereafter he filed complaint under Section 200 Cr.P.C. by way of private complaint before the learned XIII Metropolitan Magistrate, Egmore, Chennai and after recording his statement to settle the matter, notice was issued to the petitioners. Now it is challenged by the petitioners. Therefore, he vehemently opposed the petition and prayed for dismissal of the same.

4. Heard Mr.K.S.Kumar, the learned counsel for the petitioner and Mr.Rajkumar Paul, the respondent appearing in person.

5. It is seen that the petitioners are brother in law and wife of the respondent / defacto complainant. There is a dispute between the husband and wife in which the respondent suffered a lot. Therefore he initially lodged the complaint before the Inspector of Police, D4, Zam Bazaar Police Station and after enquiry it was closed. Thereafter he filed a private complaint in which after recording sworn statement of the respondent defacto complainant, the learned XIII Metropolitan Magistrate, Egmore, Chennai issued summon to the petitioners. It is under challenge in this petition. The learned XIII Metropolitan Magistrate, Egmore, Chennai after receipt of the complaint under Section 200 Cr.P.C., he recorded sworn statement of the defacto complainant. Admittedly without taking cognizance of the offences as alleged in the complaint and materials produced by the respondent, he directly issued summon to the accused persons in C.C.SR. Stage. It is unknown to law. In this regard, it is relevant to extract the provisions under Section 200 Cr.P.C., which reads as follows:

"202. Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:"

As per the procedure laid down under Section 200 Cr.P.C., on receipt of a complaint, the Magistrate shall examine the complaint and witnesses under Section 202 Cr.P.C. On receipt of complaint of offence of which the learned Magistrate is authorised to take cognizance under Section 204 Cr.P.C. and if

the learned Magistrate is of the opinion that if any prima facie case is made out to take cognizance of the offence, the learned Magistrate may issue summon to the accused persons. Therefore, it is clear that before taking cognizance of and before numbering the calendar case, the learned Magistrate shall not issue summon to the accused persons. In this case, the learned XIII Metropolitan Magistrate, Egmore, Chennai issued summons even before taking cognizance of the case and before numbering the case as such the impugned summon issued to the petitioners is liable to be quashed.

6. In view of the above discussion, the impugned summons issued to the petitioners in C.C.SR.No.550 of 2016 by the learned XIII Metropolitan Magistrate, Egmore, Chennai are quashed. However considering the nature of the allegations made in the complaint, the learned XIII Metropolitan Magistrate, Egmore, Chennai is directed to record sworn statement from the other witnesses if necessary follow the procedure laid down under Sections 202 and 203 I.P.C. and pass appropriate orders on the evidence recorded from the witnesses to take cognizance and thereafter number the case and issue summon to the accused persons, if any cognizable offence is made out as against the petitioners within a period of four weeks from the date of receipt of a copy of this Order.

7. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

lok

To

The XIII Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.K.S.Kumar, Advocate, S.R.No.11467

CrI.O.P.No.8266 of 2017 and
CrI.M.P.Nos.5934
& 5935 of 2017 and 17356 2018

BS (CO)

rrs 19/03/2019