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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CrI.O.P.No.12747 of 2017  
and  
CrI.MP.Nos.8308 and 8325 of 2017

Iyyappan

...Petitioner/Accused

Vs.

1.State By,  
The Sub-Inspector of Police,  
Ooty Town West,  
Nilgiris.

... 1st Respondent /  
Complainant

2. Mr.Veerapandi  
The Inspector of Police,  
Ketti Police Station,  
Udhagai,  
The Nilgiris.  
Crime No.129/2017

... 2nd Respondent/Defacto  
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for records pertaining to the case pending S.T.C.No.990 of 2017 on the file of Learned Judicial Magistrate at Uthagamandalam and quash the same.

For Petitioner :Mr.T.Balaji

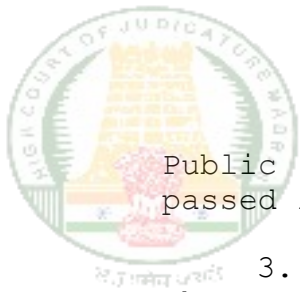
For Respondents :Mr.M.Mohamed Riyaz  
Additional Public Prosecutor for R1

:No Appearance for R2.

O R D E R

This petition has been filed by the Accused to quash the proceedings in S.T.C.No.990 of 2017 on the file of the Judicial Magistrate, Uthagamandalam.

2. Though notice was served on the second Respondent and his name also printed in the cause list, he has not appeared either in person or through his counsel. Hence, after hearing the learned counsel for the petitioner and the learned Additional



Public Prosecutor for the first respondent, order is being passed in this petition.

3. The learned counsel for the petitioner has submitted that the second respondent has summoned the petitioner under Sections 160 and 91 of Cr.P.C, relating to the case in Cr.No.232 of 2016. He further submitted that since the petitioner is residing at Chennai, as per Section 160 of Cr.P.C., he cannot send summons to the petitioner. He further submitted that after receipt of the summons, since the petitioner was not well, he sent a letter with medical certificate to extend the time, but without considering the same, the Second Respondent has lodged a complaint before the first respondent and based on the same, the first respondent has registered a case in Cr.No.129 of 2017 under Section 174 of IPC. He further submitted that the first respondent after registering the F.I.R., investigated the matter and filed a Final Report and based on the same, the learned Judicial Magistrate, Udthagamandalam has taken the case on file in S.T.C.No.990 of 2017. He further submitted that in respect of the offence under Section 174 of IPC, the Magistrate should not have taken cognizance of the case based on the Police report, in view of the specific bar under Section 195 of Cr.P.C, and therefore he prayed to quash the proceedings against the petitioner in S.T.C.No.990 of 2017 on the file of the Judicial Magistrate, Udthagamandalam.

4. Per contra, the learned Additional Public Prosecutor has fairly conceded that since there is a specific bar under Section 195 of Cr.P.C for taking cognizance on the Police Report in respect of the offence under Section 174 of IPC, he prays that appropriate orders may be passed.

5. This Court has considered the submissions made on either side and perused the materials available on record.

6. Section 195 (1) of Cr.P.C. reads thus:

" 195.Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence (1) No court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860),

or

(ii) of any abetment of , or attempt to commit, such offence,

or



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(iii) of any criminal conspiracy to commit such offence, expect on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;"

7. From the aforesaid provisions, it is clear that no Court shall take cognizance of any offence punishable under Sections 172 to 188 of IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

8. In this case, admittedly the second respondent has not filed any complaint in respect of the offence under Section 174 of IPC before the concerned Magistrate. On the contrary, he lodged a complaint before the 1<sup>st</sup> respondent Police and the 1<sup>st</sup> respondent Police has registered First Information Report and after investigation, filed Final Report and based on the same, the learned Judicial Magistrate has taken the case on file. The procedure followed by the Learned Judicial Magistrate is contrary to the provisions under Section 195 (1) (a) of Cr.P.C. Therefore, this Court is of the view that the proceedings against the petitioner are liable to be quashed.

9. In the result, this petition is allowed. The case pending in S.T.C.No.990 of 2017 on the file of Learned Judicial Magistrate at Uthagamandalam is quashed. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

jrs  
To

1.The Judicial Magistrate  
Uthagamandalam

2.Do Through The Chief Judicial Magistrate  
Nilgiris District

3. The Sub-Inspector of Police,  
Ooty Town West,  
Nilgiris.



4. The Public Prosecutor,  
High Court, Madras.

+1 CC to Mr.R. Gopinath, advocate sr 104630.

+2 CCs to Mr.R. Gopinath, advocate sr 104630 (08/01/2020)

Crl.O.P.No.12747 of 2017  
and  
Crl.MP.Nos.8308 and 8325 of 2017

LN(CO)  
SP(07/01/2020)