

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.O.P.No.1328 of 2017

and

Crl.M.P.Nos.14138, 944 & 943 of 2017

M.A.M.R.Muthiah ... Petitioner/Accused I

Vs.

K.Muthuvelliyan ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the prosecution in C.C No:6066/2016 pending on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai, for the offences under Sections 427 and 448 IPC.

For Petitioner : Mr.A.Ramesh, Senior Counsel
for Mr.C.Arun Kumar

For Respondent : Mr.N.R.Elango, Senior Counsel
for Mr.S.Sithirai Anandam

O R D E R

This Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the prosecution in C.C.No:6066/2016 pending on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, for the offences under Sections 427 and 448 IPC, insofar as the petitioner is concerned.

2.The case of the respondent is that the petitioner is the adopted son of one Dr.M.A.M.Ramaswamy. Initially, a criminal complaint was preferred against the petitioner and Security Guards of Chettinad Security Services Private Limited, lead by one Azhagu and his associates for the criminal offence of trespass, mischief and criminal intimidation.

3.A land measuring 50 grounds, located at R.S.No.4288/2013 at M.R.C.Nagar, Chennai-28, was inherited and owned by Dr.M.A.M.Ramaswamy, Kumararani Dr.Meena Muthiah and

Mr.M.A.M.M.Annamalai. On 21.02.2015, at about 7.30 p.m., at the instigation of the petitioner / adopted son of Dr.M.A.M.Ramaswamy, one Azhagu, (Security Officer, Chettinad Security Services Private Limited, Chennai) along with his associates, broke open the lock of the vacant land, trespassed into it and snatched the key and mobile phone from the security guard and further threatened to assault.

4.Immediately thereafter, i.e. on 22.02.2015, Dr.M.A.M.Ramaswamy verified the same and found property worth Rs.25,000/- was damaged. Hence, a complaint was preferred by him before E5, Pattinapakkam Police Station against the petitioner and Azhagu, the Security Officer, Chettinad Security Services Private Limited, Chennai. On 23.02.2015, the police issued C.S.R.No.125/2015, however, no action was taken.

5.Thereafter, on 05.03.2015, the respondent, in-charge of day-to-day maintenance of Chettinad House, approached the jurisdictional Magistrate with a private complaint under Section 200 Cr.P.C. for the offences under Sections 109, 448, 427 and 506(ii) IPC, as the earlier complaint of Dr.M.A.M.Ramaswamy did not evoke any response from the Police.

6.Thereafter, on 04.11.2015, the learned Magistrate recorded the sworn statement of the respondent. On 25.11.2015, the learned Magistrate recorded the sworn statement of one Srinivasan, the Security Guard, who was present at the time of occurrence in the relevant disputed property. After recording the statements, the learned jurisdictional Magistrate, issued a direction to the Inspector of Police, E5, Pattinapakkam Police Station, to hold an investigation under Section 202 Cr.P.C. and file a report.

7.Accordingly, on 21.07.2016, the Inspector of Police, E5-Pattinapakkam Police Station, submitted a report before the learned Magistrate stating that there are materials to establish commission of an offence of criminal trespass and there are sufficient grounds, through documentary and oral statement of the de-facto complainant Muthuvellayan, to proceed further in this case.

8.On receipt of the police report, on 22.12.2016, the learned Magistrate took cognizance in C.C.No.6066 of 2016 for the offences under Sections 427 and 448 I.P.C and issued summons, dated 27.01.2017, to the petitioner. Challenging the said calendar case, the present Criminal Original Petition is filed.

9.The learned Senior counsel appearing for the petitioner would submit that though a private complaint was filed by the

respondent in the capacity of Power Agent of Dr.M.A.M.Ramaswamy, after filing the complaint, Dr.M.A.M.Ramaswamy passed away and once the Principal dies, the capacity of Power Agent goes and it has no effect. The learned Senior Counsel, therefore, contended that when the Principal dies, there is no authorisation to continue the prosecution by the Power Agent.

10.The learned Senior Counsel would further submit that though the private complaint was filed alleging commission of offences under Sections 109, 448, 427 and 506(ii) IPC, the learned Magistrate, after receipt of the police report, took cognizance only for offences under Sections 427 and 448 IPC. It is the further submission of the learned Senior Counsel for the petitioner that as the above said Sections are very clear that unless the person against whom allegations are made is present at the scene of occurrence, he cannot be implicated for the offences under Sections 109, 448, 427 and 506(ii) IPC, the learned Magistrate took only cognizance for offences under Sections 427 and 448 IPC, as the necessary grounds required for taking cognizance under Sections 109 and 506(ii) IPC were not satisfied before the learned Magistrate. Hence, the learned Senior Counsel prays for quashing of the summons issued by the learned Magistrate. The learned Senior Counsel for the petitioner, in support of his contention, relied upon an unreported judgment of this Court in Crl.O.P.Nos.27285 and 27329 of 2018 (Deepalakshmi & Others Vs. K.Murugesh, Rep. by his father / Power of Attorney Holder Dr.A.R.Kalilingam & others), wherein it has been held as follows:-

'26.Now coming to the general power of attorney, here, there is a relationship of principal and agent. As and when the principal is not able to act on his own in person, he gives power to some one else to act on his behalf. Here the agent acts only on behalf of the principal and under his directions. Such power is always revocable. The principal, after revoking the power, can appoint a new power agent. For any reason, if the principal dies, the agent cannot continue with the proceedings because the power dies with the principal. Thereafter, it is only for the legal representatives of the principal to prosecute the matter further. Similarly, if the power agent dies during the pendency of the proceedings, then the principal will have right either to prosecute the case by making his own appearance or by appointing a new agent on his behalf. Thus, the relationship between the principal and power agent is totally distinguishable from the relationship between the aggrieved person and the authorised person as referred to in Section 198 Cr.P.C. So far as Section 198

Cr.P.C. is concerned, it relates only to the relationship of the aggrieved person and the authorised person and the same has got nothing to do with the relationship between the principal and the agent.

28.The learned senior counsel has relied on yet another judgment of the Hon'ble Supreme Court in Shankar Finance and Investments Vs. State of Andhra Pradesh and Others (2008) 8 SCC 536. That was also a case of prosecution launched by the power of attorney holder on behalf of his principal. There also, the Hon'ble Supreme Court has held that a complaint filed by the power of attorney holder on behalf of the principal is certainly maintainable but he can only speak about the facts, which are within his personal knowledge and he cannot speak to the facts, which are in the exclusive knowledge of his principal.

29.From these two judgments, it is very clear that there is no bar in our Indian Criminal Jurisprudence for a power agent to file a private complaint on behalf of his principal. But the only restraint is that the power agent cannot speak to a fact of which he has got no knowledge. It is after all a very elementary principle of rule of evidence as envisaged in the Indian Evidence Act. Except the said raider, absolutely, there is no bar for a power agent to file a complaint.''

11.Per Contra, the learned Senior Counsel appearing for the respondent would submit that taking cognizance is only procedural and the learned Magistrate did not express any opinion on the merits of the matter and only after issuing process, charges will be framed upon hearing the accused, but, however, the petitioner has approached this Court before framing charges, which act is unsustainable one. According to the learned Senior Counsel, mere taking cognizance itself is not a ground to challenge the complaint filed by the respondent.

12.The learned Senior Counsel would further submit that after taking cognizance, under Section 251 Cr.P.C., in a summons-case, when the accused appears or brought before the Magistrate, the particulars of the offence will be put to him and he would be asked whether he pleads guilty or has any defence to make, but it shall not be necessary for the Magistrate to frame a charge. Further, it is for the prosecution to establish the offences against the accused beyond

reasonable doubt by adducing oral and documentary evidence, hence, quash petition filed under Section 482 of Cr.P.C. is prematured.

13.The learned Senior Counsel for the respondent further submitted that since there was no further action on the complaint given by Dr.M.A.M.Ramaswamy on 22.02.2015 about the incident, which took place on 21.02.2015, his Power Agent viz., the respondent herein was forced to approach the learned Metropolitan Magistrate to prefer complaint under Section 200 Cr.P.C. The learned Senior Counsel further submitted that the learned Metropolitan Magistrate after examining the respondent and witnesses, on oath and recording their statements, wherein the respondent and the witnesses have elaborately stated about the incident. The learned Metropolitan Magistrate has also examined one Mr.Srinivasan, Security Officer, who sustained injuries at the hands of the petitioner and others and he has stated about the incident and also requested the learned Metropolitan Magistrate to take action against the petitioner and others. Thereafter, the learned Metropolitan Magistrate has required the Police to investigate into the matter and submit a report and accordingly, the Police investigated into the complaint and submitted a positive report stating that there are materials to proceed further against the petitioner and others and only thereafter, the learned Metropolitan Magistrate has taken cognizance and issued summons to the petitioner. Therefore, it is the submission of the learned Senior Counsel that merely because the Principal died, subsequently, it cannot be contended by the petitioner that the respondent cannot continue the prosecution further.

14.I have heard the learned Senior Counsel for the petitioner as well as the learned Senior Counsel for the respondent.

15.Before considering the submissions made by the learned Senior Counsel on either side, it is to be stated that inherent powers of High Court under Section 482 of Cr.P.C. as held in a catena of decisions of the Hon'ble Apex Court and various High Courts, could be exercised only in rarest of rare cases. The Hon'ble Apex Court has authoritatively held in the celebrated judgment, in the case of State of Haryana and Others vs. Ch.Bhajan Lal and Others reported in AIR 1992 Supreme Court 604, which was again reiterated in the case of Som Mittal v. Government of Karnataka reported in 2008 (2) R.C.R. (Criminal) 92, that the criminal prosecution can only be quashed in rarest of rare cases at the initial stage as per the following conditions:-

'(i)Where the allegations made in the First Information Report or the complaint, even if they are

taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii)Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

(iii)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv)Where, the allegations in the FIR, do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of Magistrate as contemplated under S.155(2) of the Code.

(v)Where, the allegations in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(vii)Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16.Above being the legal position, now, the short, but significant question, that arises for determination in the instant petition is, as to whether the impugned complaint filed by the complainant-respondent and the summoning order dated 03.01.2017 by means of which, the petitioner/accused was ordered to be summoned to face the trial under Sections 427 and 448 IPC, by the learned Magistrate deserve to be quashed, at this preliminary stage or not?

17. Having regard to the legal position and on a perusal of the records, it is seen that the petitioner is the adopted son of Dr.M.A.M.Ramaswamy and the adoption was taken place in the year 1996. Subsequently, there was a serious dispute in between the adopted father and the petitioner and the said adoption itself is disputed and there are several litigations pending before this Court and also before the jurisdictional Civil Courts.

18. On a perusal of the impugned complaint dated 05.03.2015, it emerges that the complainant was in-charge of day-to-day maintenance and other activities of Chettinad House, MRC Nagar, Rajah Annamalaipuram, Chennai - 600 028. The land in R.S.No.4288/2013 at MRC Nagar, Chennai - 600 028, was owned by Dr.M.A.M.Ramaswamy, Kumararani Dr.Meena Muthiah and Mr.M.A.M.M.Annamalai, measuring about 50 grounds. Initially, the property was given on oral lease to South India Corporation Private Ltd., till 31.03.2014. After the expiry of the lease period, the South India Corporation Private Ltd. voluntarily vacated and surrendered possession. Thereafter, the entire property was in the possession, ownership and enjoyment of Dr.M.A.M.Ramaswamy and others as Co- owners.

19. While being so, the Chettinad Security Group lead by one Azhagu (2nd Accused) and his associates, allegedly, at the instigation of the petitioner herein with an intention to grab the above said property, trespassed unlawfully and caused damage to the property and threatened the Security Staff with dire consequences and to overcome their illegal activities, the 2nd accused made a false police complaint against the respondent.

20. Immediately thereafter, the Security Officer in the land in question informed Dr.M.A.M.Ramaswamy about the illegal activities of the petitioner to grab the property from Dr.M.A.M.Ramaswamy and the damage to the main gate of the property to an extent of Rs.25,000/- and also the trespass into the above said property.

21. Thereafter, Dr.M.A.M.Ramaswamy, the adoptive father of the petitioner, made a complaint before the Inspector of Police and a receipt was issued in C.S.R.No.325/2015. However, since there was no progress made in respect of the above said complaint, Dr.M.A.M.Ramaswamy authorised the respondent to file a private complaint. Accordingly, a private complaint was lodged by the respondent on 05.03.2015 before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai. After following the due procedures and after taking cognizance, the learned Magistrate has issued summons for framing charges. The said impugned complaint is under challenge before this Court.

22. The main ground on which, the petitioner seeks to quash

the criminal case is that the private complaint given by the Power Agent cannot be continued, since the Principal himself has expired. It is true that the complaint before the learned Metropolitan Magistrate was preferred by the respondent in his capacity as the Agent of Dr.M.A.M.Ramaswamy, owner of the property in question. The learned Metropolitan Magistrate after recording the statements of the complainant and the witnesses, on oath, after satisfying as to the prima facie case, referred the complaint to Police for investigation and report under Section 202 Cr.P.C. The Police also, before when earlier the Principal has filed a complaint, in their report has categorically stated about the availability of material to proceed against the petitioner, finding truth in the complaint. Only thereafter, the learned Metropolitan Magistrate has taken cognizance after considering all the materials before him and issued summons. In the above facts and circumstances, it cannot be contended that since the complainant, who gave police complaint earlier died, the present complaint given by the respondent supported by the statement given by the victim in the incident, cannot be proceeded further and liable to be quashed. Further, as per Section 251 Cr.P.C., after taking cognizance, the accused persons have only been asked to appear before the Magistrate to put forth their defence. As per Section 251 Cr.P.C., when in a summons case, the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused will be stated to him, and he will be asked whether he pleads guilty or has any defence to make. When an accused in response to the summons appears before the Magistrate, it is open to him to plead before the Magistrate that the process against him ought not to have been issued and can also raise a plea of maintainability of the complaint. The Magistrate is competent to decide the said plea before he takes any other steps. The Magistrate may drop the proceedings, if he is satisfied on re-consideration of the complaint that there is no evidence, for which, the accused could be tried. It is his judicial discretion. The order issuing the process is an interim order and not a judgment. It could be varied and recalled. Therefore, it is premature to seek quashment of the complaint.

23. Though the complaint was initially filed under Sections 109, 448, 427 and 506(ii) of IPC, the learned Metropolitan Magistrate has taken cognizance only under Sections 427 and 448 IPC, after receiving report from the Police under Section 202 Cr.P.C. Taking cognizance is the course of procedure and the learned Metropolitan Magistrate has not expressed any opinion in respect of the complaint filed by the complainant. Being the Security Officer, who was in charge of the place at the time of occurrence, is entitled to file a complaint, in the present case, the Security Officer, who was present at the scene of

occurrence, i.e. M.Srinivasan has been arrayed as a witness and his statement has also been recorded by the learned Metropolitan Magistrate. The learned Metropolitan Magistrate has power to consider the same even at the time of framing of charges.

24. It is now well settled proposition of law that at this stage, the learned Magistrate has only to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary enquiry under Sections 200 and 202 Cr.P.C., there is prima facie evidence in support of the allegations levelled against the accused. All that he has to see is whether or not there is 'sufficient ground for proceeding' against the accused. At the stage of summoning, the learned Magistrate is not to weigh the evidence so meticulously as he is required to do so during the course of trial of main case. The standard to be adopted by the learned Magistrate in scrutinizing the evidence at the time of issuing summons is not the same, as the one which is to be kept in view at the stage of framing charges. This matter is no more res integra and is well settled.

25. The Hon'ble Apex Court in the case of Shivjee Singh vs. Nagendra Tiwary and Others reported in 2010 (7) SCC 578, wherein the view taken in the case of Mohinder Singh v. Gulwant Singh reported in 1992 (2) RCR (Criminal) 134, was reiterated and observed (paras 11 & 12) as under:-

"11. The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complaint and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called during the

course of such enquiry.

12. The use of the word 'shall' in proviso to Section 202(2) is prima facie indicative of mandatory character of the provision contained therein, but a close and critical analysis thereof along with other provisions contained in Chapter XV and Sections 226 and 227 and Section 465 would clearly show that non examination an oath of any or some of the witnesses cited by the complainant is, by itself, not sufficient to denude the concerned Magistrate of the jurisdiction to pass an order for taking cognizance and issue of process to note that the word 'all' appearing in proviso to Section 202(2) is qualified by the word 'his'. This implies that the complainant is not bound to examine all the witnesses named in the complaint or whose names are disclosed in response to the order passed by the Magistrate. In other words, only those witnesses are required to be examined whom the complainant considers material to make out a prima facie case for issue of process. The choice being of the complainant, he may choose not to examine other witnesses. Consequence of such non-examination is to be considered at the trial and not at the stage of issuing process when the Magistrate is not required to enter into detailed discussions on the merits or demerits of the case, that is to say whether or not the allegations contained in the complaint, if proved would ultimately end in conviction of the accused. He is only to see whether there exists a sufficient ground for proceeding against the accused."

26. In the light of aforesaid reasons identified and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the main complaint case, as there is no merit, the instant petition is hereby dismissed as such.

27. Needless to mention that nothing observed, here-in-above, would reflect in any manner on merits during the trial of the main complaint case, as the same has been so recorded for the limited purpose of deciding the present petition in this relevant direction. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Section Officer,
Criminal Records,
High Court of Madras, Chennai.

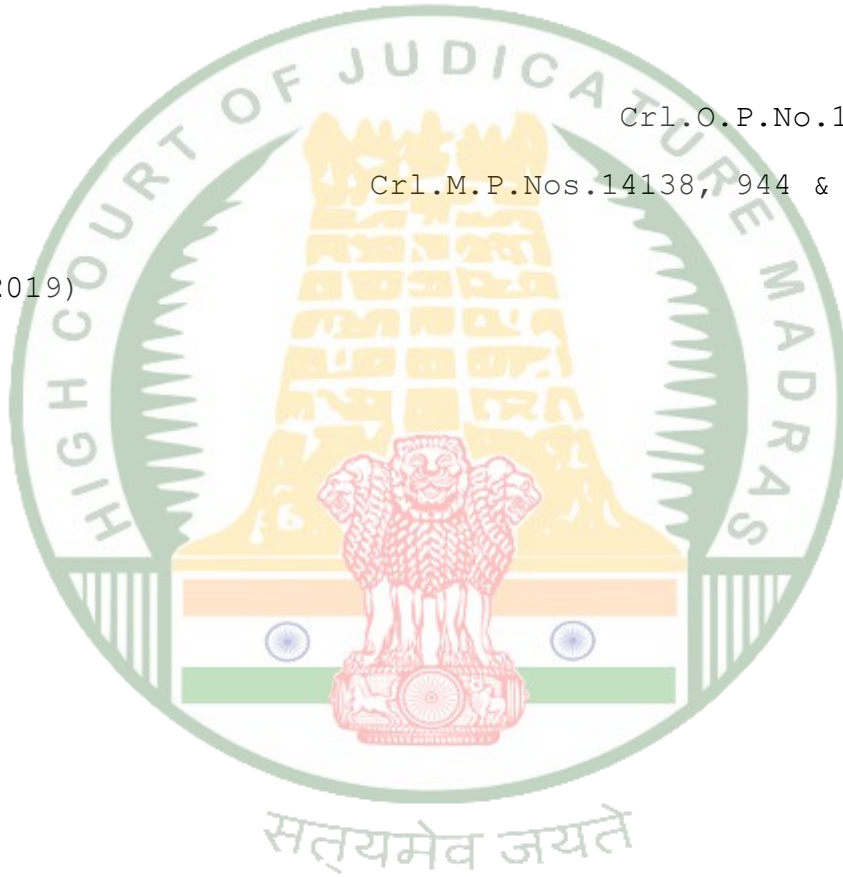
+lcc to Mr. S.Sithirai Anandam, Advocate, S.R.No. 7693

+lcc to Mr. C.Arun Kumar, Advocate, S.R.No. 8558

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