

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.14364 of 2017
and Crl.M.P.No. 9116 of 2017

1. G.Venugopal
2. V.Mugundhan
3. V.Veeraraghavan
2. V.Govindaraj ... Petitioners/Al to 4

Vs.

M.Rajendran ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the C.C.No.10 of 2011 on the file of the Judicial Magistrate No.II, Ponneri quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.D.Dayalan

For Respondent : Mr.T.R.Ravi

O R D E R

This Criminal Original petition has been filed to call for the records relating to the C.C.No.10 of 2011 on the file of the Judicial Magistrate No.II, Ponneri and quash the same by allowing this Criminal Original Petition.

2. It is seen that there a counter case in C.C.No.5 of 2005 on the file of the learned Judicial Magistrate, Ponneri, in which the petitioners are the complainants and the respondent are facing trial. On the complaint lodged by the respondents, an FIR in Crime No.673 of 2004 was registered on the file of the E6, Ponneri Police Station. However, the complaint lodged by the respondent has been closed as mistake of fact in the year 2005 itself. On receipt of Referred Charge Sheet

summons, the respondent filed a protest petition and the case has been taken cognizance in C.C.No.10 of 2011 on the file of the learned Judicial Magistrate No.II, Ponneri and issued summons to the accused persons. After their appearance the learned Judicial Magisterial had proceeded with the trial and also had examined the complainant/respondent as PW1. As per the procedure contemplated under Section 464 of the Criminal Procedure Code, without framing any charge, the trial cannot be commenced. It is relevant to extract the provisions under Section 464 (1) and (2):-

464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

3. Admittedly, in the case of C.C.No.10 of 2011, the trial Court has commenced the trial before framing of charges and has examined PW1. As contemplated under Section 464 (2)(a) of the Criminal Procedure Code, the trial Court can frame the charges and recommence trial from the point, immediately after the framing of the charges.

4. In the result, the commencement of trial in C.C.No.10 of 2011 and the examination of PW1 is hereby set aside. The trial Court is directed to framing the charges as against the petitioners and thereafter commence the trial as contemplated under Section 464 (2) (a) of the Criminal Procedure Code.

5. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

ssr

To

1. The Judicial Magistrate No.II, Ponneri

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.R.Ravi, Advocate SR.No.38396

+1cc to M/s.D.Dayalan, Advocate SR.No.38451

CrI.O.P.No.14364 of 2017
and CrI.M.P.No. 9116 of 2017

SAI (CO)
GMY (25/06/2019)

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