



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRL.O.P. (MD) No. 2962 of 2016

and CRL. M.P. [MD] Nos.1459 & 01460 of 2016

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Jaya Subramonian

... Petitioner/Accused

Vs.

Paulraj

... Respondent/Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to quash the private complaint in C.C. No.177 of 2013, on the file of the learned Judicial Magistrate-II, Kuzhithurai.

For Petitioner : Mr.D. Srinivasaragavan

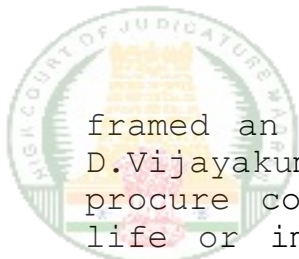
For sole Respondent : Mr. V. Sasikumar

ORDER

This Criminal Original Petition has been filed by the Petitioner/accused to quash the private complaint in C.C. No.177 of 2013 filed against him by the respondent/complainant, before the learned Judicial Magistrate No.II, Kuzhithurai.

2. The case of the complainant is that he, his mother and wife joined in the Life Insurance Policy, through an agent, by name D.Vijaya Kumar, who is practising Advocate. After remitting few instalments, it was defaulted by the complainant and his family members, so that the policies have been lapsed. On 07.01.2009, the police officials of Kollamkode Police Station took the said D.Vijayakumar into their custody and informed the complainant's wife and mother that they would arrange to return the lapsed policy amount very soon, if they approach the Station. Believing their words, on 08.01.2009, the complainant's wife and his mother went to the above said Police station along with the policy bond, wherein the petitioner herein/accused directed them to file a complaint against the said D.Vijayakumar. Both of them refused to file a complaint as D.Vijayakumar was not liable for the lapsed policy. However, the case was registered as against D.Vijayakumar, in Crime No.216 of 2018 of Kollamkode Police Station and in the said complaint, the complainant, his wife and mother were cited as witnesses.

3. During the relevant point of time, the complainant was in abroad and was working as a mason in Bahrain. But, on 08.01.2009, the police has recorded the statement under Section 161(3) Cr.P.C., in his name also. The petitioner/accused, being a public servant,



framed an incorrect document with an intention to cause injury to D.Vijayakumar and also fabricated false evidence with an intent to procure conviction of an offence punishable with imprisonment for life or imprisonment for 7 years. Hence, this complaint has been filed as against the petitioner/accused.

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4. Heard Mr.D. Srinivasaragavan, learned counsel appearing for the petitioner/accused and Mr. V. Sasikumar, learned counsel appearing for the sole respondent and perused the materials available on record.

5. The learned counsel for the petitioner would submit that the case was registered in the year 2008, when the petitioner was working as Inspector of Police in Kollamkode Police Station. He would further submit that the complainant's wife, mother and brother were also examined as witnesses and that apart, a male person in the name of the complainant appeared before the respondent police, during the relevant point of time. He would also submit that based on his statement, a statement was also recorded in the name of the complainant and the investigation in Crime No. 216 of 2008 has also been completed, as early as in the year 2009 and a final report has also been filed as against the said D.Vijayakumar and the same has been taken on file in C.C. No. 4 of 2009 by the learned Judicial Magistrate No.II, Kuzhithurai.

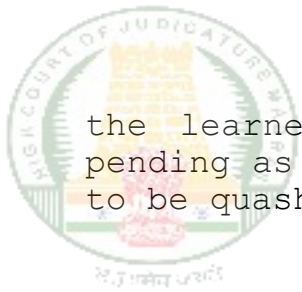
6. Per contra, the learned counsel for the complainant would submit that the complainant was in Bahrain from 12.06.2008 to 15.06.2011 and he has also produced his passport in respect of the same. He would further submit that, during the relevant point of time, he never returned India. However, under Section 161(3) Cr.P.C., a statement was recorded in his name as if he was not present in India and gave a statement before the petitioner/accused at Kollamkode Police Station.

7. The main contention of the complainant is that the statement under section 161(3) Cr.P.C., has been recorded in his name, when he was in abroad. That apart, the petitioner/accused has foisted the case in C.C. No. 4 of 2009 against the said D.Vijayakumar, who is a respectful person in the society. On the other hand, the learned counsel for the petitioner submitted that the statement has been recorded in the name of the complainant, from a person who has been produced by the complainant's wife and mother that he is Jeyasubramani.

8. It is the further case of the petitioner that in view of the provisions under Section 161(3) Cr.P.C., the signature has not been obtained while recording his statement and taking advantage of the same, this complaint has been foisted, at the instance of the accused (D.Vijayakumar) in C.C.No. 4 of 2009.

<https://hcservices.ecourts.gov.in/hcservices/>

9. This Court finds some force in the arguments advanced by



the learned counsel for the petitioner. Therefore, the complaint pending as against the petitioner in C.C. No. 177 of 2013 is liable to be quashed.

10. Accordingly, the private complaint in C.C. No.177 of 2013 pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai is hereby quashed. However, the respondent/ complainant is at liberty to raise his plea, before the concerned Jurisdictional Court in C.C. No. 4 of 2009. The presence of the petitioner herein before the Judicial Magistrate Court No.II, Kuzhithurai is dispensed with, but, he has to appear, when he has been summoned in that case. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate-II,
Kuzhithurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.SRINIVASARAGAVAN, Advocate, SR.No. 59626

+1cc to Mr.V.SASIKUMAR, Advocate, SR.No. 69663

Cr1.O.P. (MD) No. 2962 of 2016

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KK/SAR/25.06.2019/3P-5C