



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2019

CORAM :

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.4712 of 2019

and

Cr.M.P.(MD)Nos.2879 & 2880 of 2019

1.Periyasamy
2.Kannammal
3.Thiraviyam

... Petitioners

Vs.

Natarajan

... Respondent

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to C.C.No.351 of 2018 on the file of the learned Judicial Magistrate No.II, Karur, and quash the same as illegal.

For Petitioners: Mr.K.P.S.Palanivelrajan for
M/s.S.Shanmugamselvam

For Respondent : Mr.K.Suresh

O R D E R

This petition has been filed to quash the proceedings in C.C.No.351 of 2018 on the file of the learned Judicial Magistrate No.II, Karur.

2. The learned Counsel appearing for the petitioners would submit that the learned Magistrate taken cognizance, without even considering the closure report filed by the police in Crime No.241 of 2016 for the offences under Sections 294 (b), 448 and 506 (ii) of IOC. After registration of complaint, the police conducted investigation and closed the complaint as 'mistake of fact' by the closure report dated 23.12.2016. Thereafter, the refer charge sheet notice issued to the respondent/defacto complainant. On receipt of the same, the respondent/defacto complainant filed his objection by way of private complaint. But, the learned Magistrate, without even examining any of the witnesses, mechanically applied his mind, straight away taken cognizance and issued summons to the petitioners. Further, he relied upon the judgment in the case of A.Rajendra Vs. The Deputy Inspector of Police, Trichy reported in

[https://hccs-judges-e-courts.gov.in/\(Services\)](https://hccs-judges-e-courts.gov.in/(Services)) 771 held as follows:-



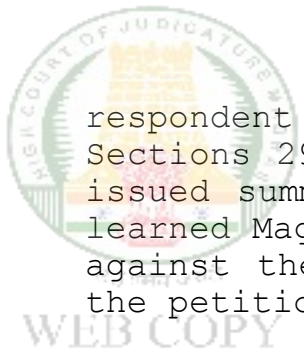
"9. When the protest petition is filed by the second respondent questioning the closure report filed by the Deputy Superintendent of Police, Thiruchendur Division, the Court below is left with three options. The first option is to disregard the closure report and take cognizance of the final report and issue summons to the accused person. The second option is to accept the closure report and issue refer charge notice to the defacto complainant to enable him to file a protest petition and the third option that is available to the Court below is to order further investigation on the protest petition filed by the defacto complainant.

10. If the Court below wants to convert the protest petition into a private complaint, it is open to the Court to do so, provided that the Court below had considered the entire closure report filed by the police and it had come to a conclusion that the materials placed by the defacto complainant was not considered by the respondent police or the defacto complainant has come up with some further materials in order to substantiate his case. This exercise has not been done by the Court below, while converting the protest petition into a private complaint and taking cognizance of the same.

15. The order of the Court below taking cognizance of the private complaint does not reflect any application of mind. The materials available on record does not make any offence under Section 120 (b), 420, 423, 467, 468, 406, 471 and 506 (i) of IPC. The Court below has mechanically passed an order taking cognizance of the private complaint by completely disregarding the closure reports filed by the police. That apart, the continuance of the criminal proceedings against the petitioners is a clear abuse of process of Court and the interest of justice requires the entire proceedings to be quashed."

- In view of the above, he prayed to quashment of the petition.

3. The learned counsel appearing for the respondent would submit that on receipt of the refer charge sheet notice in Crime No.241 of 2016, he raised his objection by way of filing private complaint under Section 190 of Cr.P.C., On receipt of the same, the learned Magistrate conducted trial by examining P.W.1 to P.W.3 and



respondent herein, rightly taken cognizance for the offences under Sections 294 (b), 448 and 506 (I) of IPC in C.C.No.351 of 2018 and issued summons to the petitioners/accused persons. Therefore, the learned Magistrate only after applying his mind, taken cognizance as against the accused persons. Therefore, he prayed for dismissal of the petition.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

5. The petitioners/Accused arrayed as A1 to A3. On the complaint lodged by the respondent, the Inspector of Police, Vangal Police Station, Karur, registered a case in Crime No.241 of 2016 for the offences under Sections 294 (b), 448 and 506 (i) IPC. After completion of investigation, they closed the FIR as 'mistake of fact' by the closure report dated 23.12.2016. On receipt of the same, the learned Magistrate, issued notice to the defacto complainant/respondent herein. Thereafter, the respondent filed a private complaint under Section 190 Cr.P.C., and raised his objection. The learned Magistrate examined the witnesses P.W.1 to P.W.3 and perused the evidence and materials produced by the respondent, taken cognizance for the offences under Sections 294 (b), 448 and 506 (i) IPC in C.C.No.351 of 2018 as against the petitioners.

6. The judgment of this Court is cited by the learned counsel for the petitioners held that if the protest petition filed against the closure report, the concerned Court can have three options. The first option is to disregard the closure report and take cognizance of the final report and issued summons to the accused person. The second option is to accept the closure report and issue refer charge notice to the defacto complainant to enable him to file a protest petition. The third option is that the Magistrate can order further investigation on the protest petition.

7. In the case on hand, the first option was taken by the learned Magistrate. Therefore, this Court does not find any illegality or infirmity on the cognizance taken by the trial Court. Therefore, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

8. However, the learned counsel for the petitioners requested that the petitioners 1 and 2 are being the aged persons, their appearance may be dispensed with.



for the petitioners, the personal appearance of the petitioners 1 and 2 before the trial Court is dispensed with. The trial Court is directed to complete the trial within a period of six months.

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Sd/-

Assistant Registrar (CS-II)

/ /2020

Sub Assistant Registrar(CS)

dss

To

The Judicial Magistrate No.II, Karur.

+1 CC to M/s.K. SURESH, Advocate (SR-101432[F] dated 26/11/2019)

+1 CC to M/s.N. SHANMUGA SELVAM, Advocate (SR-101810[F] dated 27/11/2019)

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