



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 25.09.2019
Pronounced on : 27.09.2019
CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.11756 of 2019

and

Crl.M.P. (MD) Nos.7375 and 7377 of 2019

Dr.J.Amala Devi

... Petitioner/A2

Vs

J.Selva Rani

... Respondent/Complainant

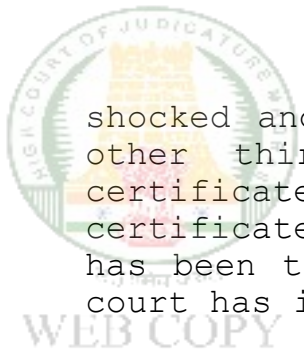
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to Private complaint in C.C.No.222 of 2018 on the file of the Judicial Magistrate No.1, Dindigul and quash the same as illegal as against the petitioner alone.

For Petitioner : Mr.T.Lajapathi Roy
For Respondent : Mr.R.Karunanithi

O R D E R

This petition has been filed to quash the private complaint lodged by the respondent, which was taken cognizance in C.C.No.222 of 2018 on the file of the Judicial Magistrate No.1, Dindigul for the offence under Sections 120(B), r/w 177, 179, 181, 182, 197, 198, 200, 465, 466, 468, 471, 507 of I.P.C. r/w Section 26 of Juvenile Justice Act (Care and Protection of Children) Act, 2000 and Sections 23(1)(b) & 3 of the Registration of Birth and Death Act, 1969.

2.The learned counsel appearing for the petitioner would submit that the respondent lodged a complainant as against three accused, in which, the petitioner is arraigned as A2. The crux of the complaint is that the third accused brought the respondent to A1 hospital for aborting her child in the womb with the aid of the petitioner and the petitioner refused to abort the pregnancy and requested them to give the child to the parent, who are ready to adopt the child. Thereafter, the respondent gave birth to a female child and accused persons forced the respondent to pay the hospital fees for discharge. She could not make the payment. As such, she left the child with the accused and requested that she will take the child after payment. When she went to the hospital with money, the accused persons refused to receive the money and they offered her some consideration for the child. Thereafter, the respondent



shocked and surprised to know that her child was sold out to some other third parties and the petitioner signed in the birth certificate along with the adopted parents and obtained birth certificate and hence, she lodged the private complaint and the same has been taken cognizance for the aforesaid offences and the trial court has issued summons to the petitioner and others.

3.The learned counsel appearing for the petitioner would submit that there is absolutely no prima facie made out as against the petitioner to attract any of the offences as alleged by the respondent herein. The respondent lodged the complaint with vague and bald allegations and in fact, she herself admitted that she went to AI hospital for abortion in the month of April 2014 and thereafter, the birth of the child was registered on 09.02.2014 and she was admitted to the hospital on 08.02.2014. He further submitted that the alleged parents, who had adopted the child are not impleaded as accused in the present complaint. As per Section 25 of the Registration of Births and Deaths Act, 1969, the office authorised by the Chief Registrar has to initiate prosecution and hence, the respondent has no locus to lodge any complaint to punish the petitioner for the offences under Section 25 of the Registration of Births and Deaths Act, 1969.

4.He further submitted that as per the procedure contemplated under Section 195 of Cr.P.C., the offences punishable under Sections 172 to 188 of I.P.C., no Court shall take cognizance, except on the complaint in writing of the public servants concerned and as such, the respondent has no competence to lodge the complaint punishable under Sections 177, 179, 181 and 182 of I.P.C. Insofar as the other offences viz., under Sections 179, 198, 200 of I.P.C. are concerned, when such offences are alleged to have been committed, in or in relation to any proceedings in any Court, admittedly, the offences are not committed in any of the proceedings pending before the Court. Insofar as the offences under Sections 465, , 466, 468, 471 of I.P.C. are concerned, the petitioner never fabricated any of the documents and also never forged any of the signature and in fact, no such allegation made in the complaint itself. Insofar as the offence under Section 507 of I.P.C. is concerned, the complaint was lodged after a period of 4 years from the date of commission of offence and as such, it is directly hit by Section 468 of Cr.P.C., since for the offence under Section 506 of I.P.C. the accused person shall be punished with imprisonment of either description for a term which may extend to two years. Therefore, he prayed for quashment of the criminal original petition.

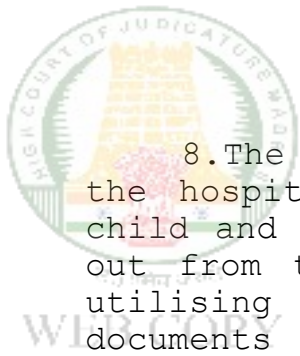
5.Per contra, the learned counsel appearing for the respondent filed counter and submitted that the respondent lodged the complaint with specific allegation that the petitioner conspired with other accused persons, sold her child to one Gunasekaran and Lakshmi, who hails from Tirunelveli by way of creating false documents and forged



hospital for treatment, but the petitioner utilising her innocence and also conspired with other accused persons and fabricated document as if the said Gunasekaran and Lakshmi are the biological parents of child and obtained birth certificate. In fact, when the petitioner appeared before police officer, she gave statement that the child was born at her hospital and handed over the child to the defacto complainant. The petitioner is a retired Government Doctor and obtained birth certificate as if the child was born to Gunasekaran and Lakshmi by using her informations with the help of forged medical records. The petitioner received more than a sum of Rs.5 lakhs for selling the child to them. In fact, on the advice of the third accused, the defacto complainant was taken to the hospital of the petitioner herein during her pregnancy for the reason that the third child born to the respondent is a mentally and physically challenged person. Hence, during her pregnancy, she wanted to make a thorough checkup and utilising the said circumstances and her poverty, the petitioner gave improper advice and on 08.02.2014, the respondent was admitted in the petitioner's hospital and she delivered her 4th female child and provided all treatments. Thereafter, third accused informed the respondent to pay a sum of Rs.18,000/- towards hospital expenses. Therefore, the respondent requested time for payment of the said amount, for which, A3 advised her to sell the child. But, the defacto complainant refused to agree for the same and immediately, she was forcibly sent out from the hospital by saying that till the payment, they would keep the child in their custody. Thereafter, they created false documents and sold out the child to the third parties for a sum of Rs.5 lakhs. In this regard, she filed a complaint before the Dindigul Taluk Police Station on 15.09.2017 and also sent so many complaint to the higher authorities. Unfortunately, the police personnel did not take any action on the complaint and as such, she was constrained to file a private complaint before the learned Judicial Magistrate No.1, Dindigul. However, he submitted that the points raised by the petitioner cannot be considered before this Court without conducting any trial and hence, he prayed for dismissal of this petition. To support of his contention, he relied upon the decision of the Hon'ble Supreme Court dated 02.04.2019 made in ***Crl.A.No.579 of 2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar and another.***

6.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on records.

7.This petition has been filed to quash the private complaint by the petitioner, who arraigned as A2 in C.C.No.222 of 2018 on the file of the learned Judicial Magistrate No.1, Dindigul, having been taken cognizance for the offence under Sections 120(B), r/w 177, 179, 181, 182, 197, 198, 200, 465, 466, 468, 471, 507 of I.P.C. r/w Section 26 of Juvenile Justice Act (Care and Protection of Children) Act, 2000 and Sections 23(1)(b) & 3 of the Registration of Birth and Death Act, 1969.



8.The crux of the complaint is that the respondent admitted to the hospital belonging to the petitioner for her delivery of 4th child and since she was not able to pay the fees, she was sent out from the hospital by keeping the child in their custody and utilising this circumstance, they also fabricated the false documents as if one Gunsekaran and Lakshmi are the biological parents and sold out the child to them for a sum of Rs.5 lakhs. When the respondent went to hospital with money, she came to understand that her child has already been sold out. Thereafter, on the complaint, the child was again handed over to the respondent. But, the police officials failed to register any case as against the petitioner and other accused persons.

9.On the complaint lodged by the respondent before the Dindigul West Town Police Station, they conducted enquiry and found that the child born to the respondent was handed over by her to one Gunasekaran and Lakshmi and thereafter, she wanted back her child and as such, her child was handed over to her by the police officials. Further, when the respondent made so many allegations as against the accused persons 1 to 3, she failed to implead the persons, who alleged to have purchased her child.

10.It is seen from the complaint that though all along she made allegations as against them, she did not implead them as accused for the reasons best known to her. It is relevant to extract the offence under Section 25 of the Registration of the Births and Deaths Act, 1969:

"25.Sanction for prosecution .- No prosecution for an offence punishable under this Act shall be instituted except by an officer authorised by the Chief Registrar by general or special order in this behalf."

11.As per the above section, no prosecution for an offence punishable under this Act shall be instituted except by an officer authorised by the Chief Registrar. In the case on hand, the respondent lodged private complaint for the offence under Sections 23(1)(b) & 3 of the Registration of Births and Deaths Act, 1969. Therefore, the petitioner is not a competent person to prosecute the petitioner under the above said Act.

12.Insofar as the offences under Sections 177 to 182 of I.P.C. are concerned, the complaint can be instituted only by the public servant. Except the public servant, no Court shall take cognizance for this offence. It is also relevant to extract Section 195 of Cr.P.C., which reads as follows:

"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, attempt to commit, such offence, or

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

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), (except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.)

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a



Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

13. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in Criminal Appeal No.211 of 2019 dated 04.02.2019 in the case of **Sh.Narendra Kumar Srivastava Vs. The State of Bihar & Ors**, where, the Hon'ble Apex Court has held as follows:

"20. As already mentioned, clauses under Section 195(1)(b) of the Cr.P.C. i.e. subsection 195(1)(b)(i) and subsection 195(1)(b)(ii) cater to separate offences. Though Section 340 of the Cr.P.C. is a generic section for offences committed under Section 195(1)(b), the same has different and exclusive application to clauses (i) and (ii) of Section 195(1)(b) of the Cr.P.C.

21. In Sachida Nand Singh (supra) relied on by the learned counsel for the appellant, this Court was considering the question as to whether the bar contained in Section 195(1)(b)(ii) of the Cr.P.C. is applicable to a case where forgery of the document was committed before the document was produced in a court. It was held:

"6. A reading of the clause reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence



punishable under Sections 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. There is no dispute before us that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. There is also no dispute that if forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person. If so, will its production in a court make all the difference?

xxx xxx xxx

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)

(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court. Accordingly we dismiss this appeal."

22. In Sachida Nand Singh (supra), this Court had dealt with Section 195(1)(b)(ii) of the Cr.P.C unlike the present case which is covered by the preceding clause of the Section. The category of offences which fall under Section 195(1)(b)(i) of the Cr.P.C. refer to the offence of giving false evidence and offences against public justice which is distinctly different from those offences under Section 195(1)(b)(ii) of Cr.P.C, where a dispute could arise whether the offence of forging a document was committed outside the court or when it was in the custody of the court. Hence, this decision has no application to the facts of the present case.

23. The case in hand squarely falls within the category of cases falling under Section 195(1)(b)(i) of the Cr.P.C. as the offence is punishable under Section 193 of the IPC. Therefore, the Magistrate has erred in taking cognizance of the offence on the basis of a private complaint. The High Court, in our view, has rightly set aside the order of the Magistrate. However, having regard to the facts and circumstances of the case, we deem it proper to set aside the costs imposed by the High Court."

14. The object of the above section is to protect person from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill-will or frivolity of disposition at the instance of private individuals for the offences specified therein. Therefore, it is mandatory that the



Court has no jurisdiction to take cognizance of any of the offence mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the section.

15.Perusal of the said decision along with the facts and circumstances of the case, the above said decision is squarely applies to the case on hand and the respondent has no competence to prosecute the petitioner for the offences under Sections 177, 179, 181, 182, 197, 198 and 200 of I.P.C.

16.At the same time, the other offences under Sections 465, 468 and 471 of I.P.C. are concerned, they are with related to document produced or given in evidence in a proceedings in any Court as per the procedure contemplated under Section 195 of Cr.P.C. Therefore, the present complaint has no legs to stand further and the same is liable to quashed.

17.Insofar as the offence under Section 507 of I.P.C. is concerned, the alleged birth certificate has been fabricated in the year 2014, whereas, the present complaint has been lodged only in the year 2018. The punishment for the said offence may extend to two years. Therefore, the complaint should have been lodged within a period of three years, whereas, the present complaint is lodged after four years and as such, it is directly hit under Section 468 of Cr.P.C. and this complaint is barred by limitation.

18.It is also seen that even as per the case of the respondent, she was admitted in the hospital and gave birth to a female child. Thereafter, she was discharged from the hospital and went to her house for the reason that she was directed to pay a sum of Rs.18,000/- towards medical expenses. No prudent women left the new born child with the hospital for a period of one week. Therefore, only at the instance of the respondent, the child was handed over to one Gunasekaran and Lakshmi and thereafter, since the respondent wanted to return back her child, the child also handed over to her by the police officials. Even then, the said Gunasekaran and Lakshmi are not impleaded as accused in the complaint lodged by the respondent. Hence, the intention of the respondent is that if the said persons are impleaded as accused, the entire truth will come out and as such, cleverly and conveniently, she omitted them to implead as accused. Therefore, the entire complaint is nothing but clear abuse of process of law and as such, the petitioner need not undergo for ordeal of the trial.

19.The learned counsel appearing for the respondent relied upon the the decision of the Hon'ble Supreme Court dated 02.04.2019 made in ***Crl.A.No.579 of 2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar and another***, where, the Hon'ble Apex Court has as follows:



"11.In our view, in order to attract the rigor of Section 197 of the Cr.P.C., it is necessary that the offence alleged against a Government Officer must have some nexus or/and relation with the discharge of his official duties as a Government Officer. In this case, we do not find it to be so.

12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings."

20.In the above decision, the Hon'ble Apex Court dealt with in respect of the procedure contemplated under Section 197 of Cr.P.C with regard to obtain sanction to prosecute as against the Government Officials. However, the above said case is no way connected with the present case, since no points have been raised under Section 197 Cr.P.C., since the petitioner is already retired from service.

21..In view of the above discussion, this criminal original petition is allowed and the proceedings in C.C.No.222 of 2018 on the file of the Judicial Magistrate No.1, Dindigul is quashed as against the petitioner. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

The Judicial Magistrate No.1,
Dindigul.

+1 CC to Mr.R.KARUNANIDHI, Advocate (SR-16669[I] dated 30/09/2019)

Order made in

CRL.O.P (MD) No.11756 of 2019

27.09.2019

arul

MK (17.10.2019) 9P 3C

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