



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P. (MD)No.22594 of 2014

and

M.P. (MD)Nos.1 & 2 of 2014

Poongothai

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by the Director General of Police,
Chennai - 600 009.

2. The Assistant Commissioner of Police,
Srirangam, Thiruchirappalli.

3. The Inspector of Police,
Cantonment Police Station, Trichy - 01.

4. Samsudhakar

... Respondents

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the original records in respect of C.C.No.198 of 2014 on the file of the Judicial Magistrate No.II, Thiruchirappalli and quash the same.

For Petitioners : M/s.T.Banumathi

For R-1 to R-3 : Mr.A.Robinson,
Government Advocate(Crl.Side).

For R-4 : Mr.C.Jegannathan

ORDER

This petition has been taken out to quash the proceedings in C.C.No.198 of 2014 on the file of the learned Judicial Magistrate, Trichy. The fourth respondent herein is the defacto complainant. First Information Report in Crime No.1321 of 2010 was registered by the Contonment police station, Trichy. Investigation was taken up and final report was filed and it was taken on file and cognizance of the offences under Sections 147, 177, 506(1), 193, 195(A) r/w 120 (B) of I.P.C., was taken. The case was pending for trial in C.C.No.198 of 2014 for the last four years. To quash the same, this Criminal Original petition has been filed.

2. When the matter was taken up for hearing, the learned counsel appearing for the petitioner drew my attention to Section 195 of Cr.P.C. Section 195(1) of Cr.P.C. 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, 1860 (45 of 1860); or

(ii) of any abetment of, or 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.

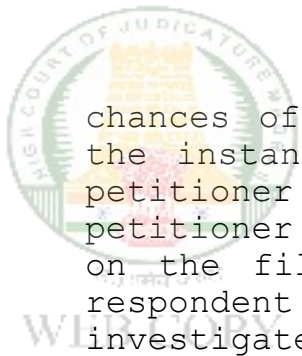
(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code, 1860 (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any 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 by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate."

3. It is thus beyond dispute that the offence under Section 177 of I.P.C., could have been taken cognizance only on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. Likewise cognizance of the offence in respect of Sections 193 and 195(A) of I.P.C., could have taken only on the basis of the complaint in writing given by the Court concerned. In this case, no such complaint has been filed. Based on the police report, cognizance of these offences was taken. Therefore I am in full agreement with the contention of the petitioner's counsel that the Court below could not have taken cognizance in respect of the aforesaid offences. But then, the question that arises is whether on this technical ground, I should quash the entire proceedings.

4. The learned counsel appearing for the fourth respondent submitted that the fourth respondent was functioning as a President of the Trichy Seventh Day Adventist Church. He was due for promotion to the South East Union President. In order to frustrate the



chances of the fourth respondent from getting the higher post, at the instance of this inimically disposed towards them through the petitioner herein, a false complaint of rape was engineered. The petitioner herein is the defacto complainant in Crime No.72 of 2009 on the file of the Contonment police station against the fourth respondent herein. It is not in dispute that the police investigated the said criminal case and closed the same as "Mistake of fact". But then, the petitioner herein filed a protest petition.

5. It is also seen that the validity of the referred charge sheet filed by the police which was pending for consideration before the concerned Magistrate till 19.08.2013. Even on the said date, while allowing the protest petition filed by the petitioner herein, the referred charge sheet was rejected by the Court concerned. Even the private complaint filed by the petitioner herein suffered a dismissal for non-prosecution in the year 2017. Therefore, the complaint made by the fourth respondent herein before the police in the year 2010 was rather premature.

6. In this view of the matter, the impugned proceedings stands quashed. This Criminal Original petition stands allowed. Liberty is given to the fourth respondent to prosecute the petitioner appropriately, if he is so advised. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Director General of Police, Chennai - 600 009.
 2. The Assistant Commissioner of Police,
Srirangam, Thiruchirappalli.
 3. The Inspector of Police,
Cantonment Police Station, Trichy - 01.
 4. The Judicial Magistrate No.II, Thiruchirappalli.
 5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-84365[F] 30/08/2019)
+1 CC to M/s.T.BANUMATHY, Advocate (SR-84709[F] dated 30/08/2019)

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