



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 14.11.2019

Pronounced on: 20.11.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **V. PARTHIBAN**

Crl.O.P(MD)No.10075 of 2015

1.L.Mutthiah
2.Dr.L.Subramanian : Petitioners/Accused 1 and 2

Vs.

1.The Inspector of Police,
Central Police Station,
Tuticorin : First Respondent/Complainant

2.L.Baskaran : Second Respondent/De facto complainant

(R2 is impleaded as per order of this Court dated 14.11.2019 made in Crl.M.P(MD)No.633 of 2018)

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records relating to Crime No.558 of 2011 in issuing the summons to the petitioners dated 21.05.2015 by the learned Judicial Magistrate No.II, Tuticorin and quash the same.

For Petitioners : Mr.R.Shanmuga Sundaram
Senior Counsel

For Respondent No.1 : Mr.V.Neelakandan
Additional Public Prosecutor

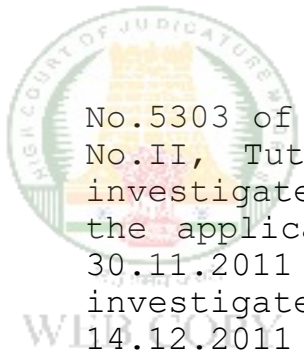
For Respondent No.2 : Mr.A.Thiruvadikumar

ORDER

This Criminal Original Petition has been filed to quash the summons issued by the learned Judicial Magistrate No.II, Tuticorin, dated 21.05.2015 to obtain specimen signatures in Crime No.558 of 2011 pending on the file of the respondent police for the alleged offences under Sections 406 and 420 IPC.

2. According to the petitioners, the defacto complainant, who is the brother of the petitioners, filed a petition in Crl.M.P

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



No.5303 of 2011 on 22.11.2011 before the learned Judicial Magistrate No.II, Tuticorin, for a direction to register the complaint and investigate the case under Sections 406 and 420 IPC. In response to the application, the learned Magistrate has passed an order dated 30.11.2011 directing the respondent police to register the case and investigate the same. Thereafter, a case was registered on 14.12.2011 for the offences punishable under Sections 406 and 420 IPC.

3. The case of the prosecution briefly was that the defacto complainant and the petitioners herein/accused are the brothers. There are other brothers and sisters in their family. Their father died on 17.06.1991 and before his death, he owned several properties including a Marriage Hall namely, Baskaran Marriage Hall situate at Door Nos.372 and 373-A of Victoria Extension Road, Tuticorin and house at Chidambaranagar Second Street, Tuticorin and many other properties as well. The defacto complainant offered to get release deed with regard to the above mentioned properties from his brothers and sisters.

4. According to the defacto complainant, all other brothers and sisters accepted the offer and gave a release deed of their share on money value for their share to the tune of Rs.7 lakhs from the defacto complainant. However, according to the defacto complainant, despite the receipt of money for releasing their share, the petitioners have not executed the release deed and therefore, a complaint came to be registered for the offences under Sections 406 and 420 IPC.

5. According to the petitioners herein, money was not paid at all by the defacto complainant and therefore, there was no question of committing offence under Sections 406 and 420 IPC.

6. When the matter stood thus, the prosecution filed a requisition petition before the learned Magistrate to compare the signature of the petitioners with a crucial document in order to ascertain and verify the signatures. The learned Magistrate issued summons on 21.05.2015 directing the petitioners to appear on 08.06.2015 to obtain the specimen signature. The said order issuing summons to the petitioners is the subject matter of the present quash petition.

7. Mr.Shanmuga Sundaram, learned Senior Counsel would at the outset submit that the learned Judicial Magistrate, while ordering issuance of summons to the petitioners, has not followed the procedure contemplated under Section 311(A) of the Code of Criminal Procedure.

8. Section 311(A) of Cr.P.C reads thus:

311-A. Power of Magistrate to order person to give signatures or handwriting. - If a Magistrate of



the first class is satisfied that, for the purpose of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case, the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting.

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

9. The learned Senior Counsel appearing for the petitioners would submit that without issuing any notice to the petitioners seeking their objection, straightaway the learned Magistrate has issued summons to them for obtaining their specimen signature. Therefore, such order passed by the learned Magistrate is in violation of the provision of Section 311-A of the Code of Criminal Procedure.

10. Mr.A.Thiruvadikumar, learned counsel appearing for the defacto complainant resisted the quash petition.

11. I have given my anxious consideration to the submissions made by the learned Senior Counsel appearing for the petitioners, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent/defacto complainant.

12. Considering the submissions made on behalf of the parties, particularly the submission made on behalf of the learned Senior Counsel appearing for the petitioners, this Court is of the view that scope of Section 311(A) of Cr.P.C provides for an opportunity to be given to the accused before issuance of summons to them in order to verify the signature. In any case, any order adverse to the interest of the parties, the parties should be put on notice before passing of the order.

13. In the circumstances of the case, this Court is of the view that the order passed by the learned Magistrate No.2, Tuticorin dated 21.05.2015 issuing summons to the petitioners cannot be countenanced both on facts and law and therefore, the same is liable to be quashed. Accordingly, the same is hereby quashed.

14. The learned Judicial Magistrate No.II, Tuticorin, is directed to issue notice to the petitioners herein and after taking their objections, the learned Magistrate shall pass appropriate orders in the circumstances of the case. Since the matter relating to the year 2011, the learned Magistrate is also directed to



date of receipt of a copy of this order.

15. In fine, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

CM

To

1. The Judicial Magistrate No.II, Tuticorin.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-98290 & 99856 [F]
dated 14/11/2019)

+1 CC to M/s.S. RAVI, Advocate (SR-99890[F] dated 20/11/2019)

ORDER MADE IN
Crl.O.P(MD)No.10075 of 2015
20.11.2019

JMN(04.12.2019) 4P : 6C