



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2019

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CRL.O.P. (MD) No.10979 of 2015

and

M.P. (MD) Nos.1 & 2 of 2015

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A.Palanikumar

... Petitioner/Accused No.2

Vs.

Mary Pappa Jebamani

... Respondent/ Complainant

Prayer: Criminal Original petition is filed under Section 438 of Cr.P.C., to call for the records relating to the impugned complaint of the respondent in C.C.No.209 of 2012 on the file of the Judicial Magistrate No.II, Virudhunagar and quash the same.

For Petitioner : Mr.P.Mahendran

For Respondent : No appearance.

ORDER

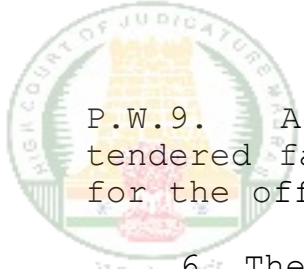
The respondent herein filed C.C.No.209 of 2012 before the Judicial Magistrate No.II, Virudhunagar, for prosecuting the petitioner and others for the offences under Sections 107, 108, 109, 191, 192, 193, 195 and 196 of I.P.C.

2. Cognizance of the offences was taken and the case was taken on file by the Court below in C.C.No.209 of 2012. To quash the same, the petitioner herein has filed this criminal original petition.

3. Notice was issued to the respondent/complainant and she entered appearance through a counsel. But then, the learned counsel who entered appearance for the complainant filed a withdrawal memo and the name of the respondent is printed in the cause list.

4. There is no appearance for the defacto complainant.

5. The case of the respondent is that she and her father were prosecuted in S.C.No.236 of 2001 on the file of the IV Additional District and Sessions Judge(PCR), Madurai, for the offence under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes Act 1989. In the said case, the defacto complainant was one Jeyapandi. She was eventually acquitted by the Judgment dated 15.11.2002. In the said case, the petitioner herein, namely, Palanikumar was examined as P.W.2. Abdul Rahman was examined as P.W.3. The fourth accused Sivaraman was the investigating officer who was examined as



P.W.9. According to the complainant herein, all these accused tendered false evidence and that therefore they should be punished for the offences under Sections 193 to 196 of I.P.C.

6. The learned counsel appearing for the petitioner pointed out that Section 195 of Cr.P.C. contains a bar for taking cognizance of the offence in question at the instance of the respondent herein. Section 195(1) (b) 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. "

7. Therefore, only the Court concerned before whom the false evidence was allegedly adduced or any officer of the said Court could have filed a complaint. Cognizance of the offence in question could not have been taken at the instance of the respondent. Since the act of taking cognizance runs counter to the statutory mandate of Section 195(1) (b) of Cr.P.C., I have no hesitation to hold that the impugned prosecution deserves to be quashed.



8. The criminal original petition stands allowed. The second accused has not filed this quash petition. But then, the benefit of this order will enure in favour of the non-petitioning accused also. Consequently, connected Miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (crl side)

// True Copy //

Sub Assistant Registrar(CS)

pmu

To

The Judicial Magistrate No.II,
Virudhunagar.

+1 CC to Mr.P. MAHENDRAN, Advocate (SR-92016[F] dated 15/10/2019)

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VB(11.12.2019) 3P 3C