

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved On : 05.11.2020
Order Delivered On : 19.11.2020

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P No.23830 of 2019
and Crl.M.P.No.12562 of 2019

1. G.N.Rajan Babu
2. Usha Rajan

... Petitioners

Vs.

1. The State
Rep. by the Inspector of Police,
Vellore North Crime Police Station,
Vellore District.
(Crime No.115 of 2019).

2. Vijaya

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the Crime No.115 of 2019 on the file of the 1st respondent police and quash the same as far as the petitioner are concerned.

For Petitioner : Mr.C.Gunasekaran

For 1st Respondent: Mr.S.Karthikeyan
Additional Public Prosecutor

For 2nd Respondent: No appearance

O R D E R

The present Criminal Original Petition has been filed seeking a relief to quash the F.I.R. registered against the petitioner in Crime No.115 of 2019 on the file of the first respondent police, as illegal.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent. Though notice has been served to the second respondent, she has not appeared before this Court.

3. The first and foremost contention raised by the petitioner is that before lodging a present complaint, for the very same occurrence now narrated in the F.I.R., the second respondent herein filed a complaint before the learned Judicial Magistrate - IV, Vellore, under Section 200 of Cr.P.C., in which, he prayed to take action against the petitioner alleging that, he had committed the offence punishable under Sections 406, 420 and 506(ii) of I.P.C.

4. In response to the said submission, the learned Additional Public Prosecutor appearing for the first respondent police, fairly conceded that the submission made by the learned counsel for the petitioner, is true.

5. On a perusal of the relevant records which have been filed on the side of the petitioner, it is true that, through the impugned F.I.R., a case has been registered on 11.03.2019 against the petitioner for the offence punishable under Section 420 of I.P.C., in which, it was alleged that, the petitioner herein being the Partner of the defacto complainant, along with his wife and one Gopi, misappropriated a sum of Rs.12,40,029/-. Further, the petitioner herein is having an intention to deceive the second respondent.

6. Now, on going through the order dated 05.05.2011 in C.M.P.No.1284 of 2011 on the file of the learned Judicial Magistrate - IV, Vellore, it reveals that for the same occurrence now narrated in the F.I.R., the second respondent herein had already filed a complaint against the petitioner stating that, the petitioner herein committed the offence of cheating. The learned Judicial Magistrate - IV, Vellore, by following the procedures contemplated under Chapter XV of Code of Criminal Procedure, dismissed the said complaint, after observing as follows:-

"Vililantibus non dormien tibus jura subveniunt". Now when a civil remedy is barred by limitation complainant has come forward with this complaint giving it a new form suppression of compliant dated 3.7.2008 confirms the same. Hence this court is of the opinion that there is no material records and no prima facie case to proceed against the accused."

7. Thus, it is made clear that after suppressing the said order, the second respondent herein filed the present complaint against the petitioner herein, which is nothing, but, an abuse of process of law. No man can be tried for the same offence twice. Therefore, registering the F.I.R. against the petitioner is nothing but, abuse of process of law and therefore, in the

light of the above discussions stated supra, the Criminal Original petition is allowed. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

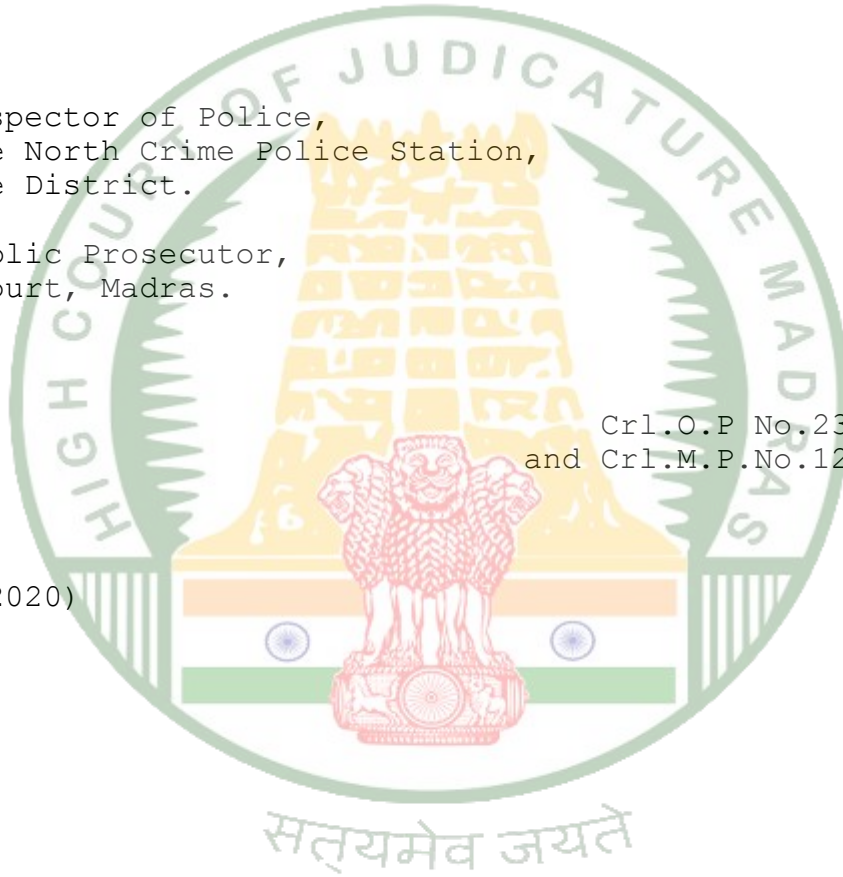
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To

1. The Inspector of Police,
Vellore North Crime Police Station,
Vellore District.
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P No.23830 of 2019
and Crl.M.P.No.12562 of 2019

PM(CO)
SP(09/12/2020)



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