

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.23992 of 2018
and
CMP.No.13558 of 2018

BalaThilakar

...Petitioner

-Vs-

M.Sailesh Kumar

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.9095/2017 on the file of the XIV Metropolitan Magistrate at Egmore, Chennai and quash the proceedings.

For Petitioner : Mr.R.Rajarathinam

For Respondent : No appearance

ORDER

This petition has been filed to call for the records in C.C.No.9095/2017 on the file of the XIV Metropolitan Magistrate at Egmore, Chennai and quash the proceedings.

2. When the matter came up for hearing, this Court has admitted this petition and private notice was ordered.

3. In pursuance of the said direction, the learned counsel for the petitioner had sent a private notice to the respondent on 31.10.2019 by RPAD. The said notice (RPAD) was returned on 01.11.2019 as "addressee left" and hence, the learned counsel for the petitioner has made a request to this Court to permit him to serve notice to the counsel appearing for the respondent before the trial Court.

4. Considering the same, though private notice was already permitted, subsequently this Court had ordered fresh notice to the respondent and also permitted the petitioner to serve notice on the respondent's counsel who had appeared before the lower Court.

5. In pursuance of the aforesaid order, the learned counsel for the petitioner has sent private notice to the

respondent as well as to the counsel for the respondent who had appeared before the lower Court and filed AOS to that effect. Private notice which was sent by RPAD to the respondent to the address mentioned in the complaint was returned as "addressee left" and another notice which was sent by RPAD to the respondent was also returned as "addressee left". The notice which was sent to the counsel for the respondent by RPAD served and to that effect, track consignment was also filed. Hence, the name of the respondent was printed in the cause-list. But he has not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the records, order is being passed in this petition.

6. The learned counsel for the petitioner has submitted that the respondent herein has filed a private complaint stating that the petitioner herein has committed an offence punishable under Section 497 IPC and based on the said complaint, the learned XIV Metropolitan Magistrate, Egmore, Chennai has taken the case on file in C.C.No.9095 of 2017 and issued summons to the petitioner. He further submitted that after receipt of the summons, the petitioner has filed the present petition to quash the proceedings against him.

7. He further submitted that the Hon'ble Supreme Court in Joseph Shine Vs. Union of India, (2019) 3 SCC 39 has struck down Section 497 IPC as unconstitutional being violative of Articles 14, 15(1) and 21 of the Constitution of India and hence, the complaint filed by the respondent against the petitioner has to be quashed.

8. In Joseph Shine Vs. Union of India, (cited supra), the Hon'ble Supreme Court has struck down the Section 497 IPC as unconstitutional being violative of Articles 14, 15(1) and 21 of the Constitution of India. Hence, the complaint which has been filed by the respondent against the petitioner before the XIV Metropolitan Magistrate, Egmore, Chennai in C.C.No.9095 of 2017 is not maintainable and the same is liable to be quashed.

9. In the result, this Criminal Original Petition is allowed. The proceedings against the petitioner in C.C.No.9095 of 2017 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai are quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

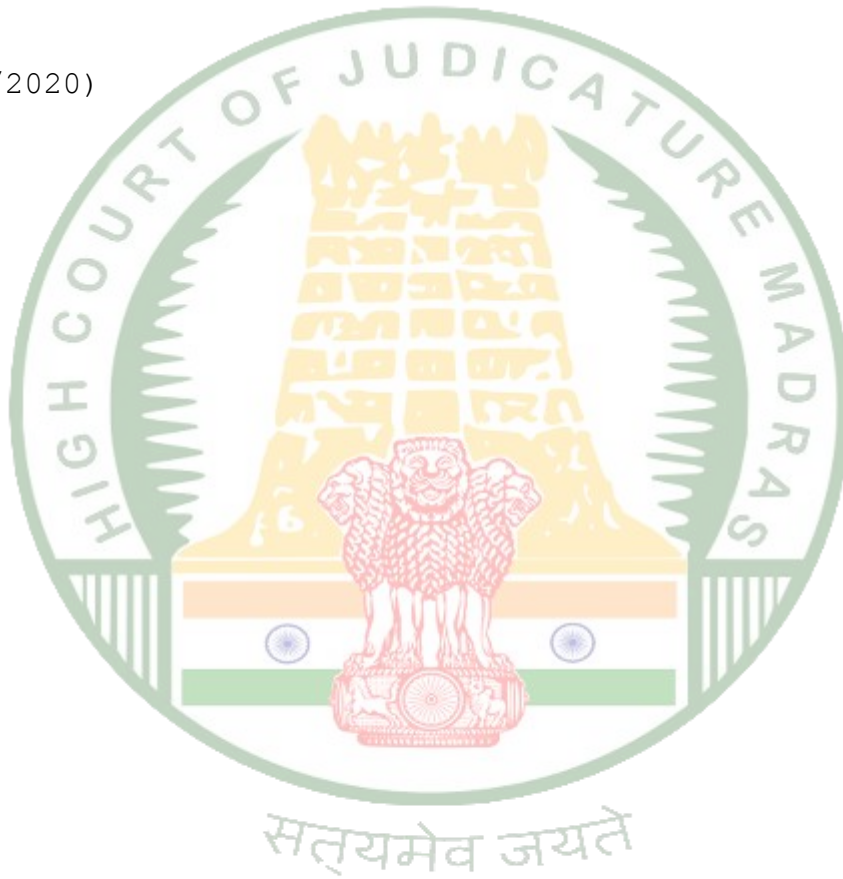
To

The XIV Metropolitan Magistrate at Egmore,
Chennai.

+1cc to Mr.R.Rajaratnam, Advocate SR.No.1882

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BP (CO)
GMY (14/02/2020)



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