



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:07.12.2020
CORAM
THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

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Crl.O.P.(MD).No.15530 of 2016
and
Crl.M.P.(MD).Nos.7358 and 7359 of 2016

N.Bose ...Petitioner/ Accused No.1
Vs
1.The Inspector of Police,
Paramakudi Town Police Station,
Paramakudi,
Ramanathapuram District. ... 1st Respondent/Complainant.
2.S.K.P.Ilango ...2nd Respondent/Defacto complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the Charge Sheet in Calendar Case No.83 of 2016 on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District, and quash the same.

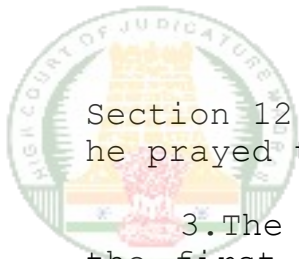
For Petitioner : Mr.D.Senthil

For 1st Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

ORDER

This criminal original petition has been filed to quash the proceedings in Calendar Case No.83 of 2016 on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District, as against the petitioner.

2.The learned Counsel appearing for the petitioner submitted that the entire proceedings as against the petitioner is vitiated, since all the offences are non cognizable offence. Therefore, there is a bar under Section 199 of Cr.P.C, Police personnel, who registered a case without obtaining any prior permission from the Court concerned. He further submitted that totally there are two accused in this case, in which, the petitioner has been arrayed as A1. He further submitted that the other offence registered by the first respondent is under Section 12 of the Press and Registration of Books Act, 1867, only as against the second accused is also non cognizable offence. He further submitted that the first respondent police ought not to have filed charge sheet as against the petitioner for the offence under Sections 500 and 501 of IPC and



Section 12 of the Press and Registration of Books Act, 1867. Hence he prayed to quash the same.

3.The learned Government Advocate (criminal side) appearing for the first respondent police submitted that on the complaint lodged by the second respondent, the first respondent Police has registered the case in Crime No.212 of 2014 for the offence under Sections 500 and 501 of IPC and Section 12 of the Press and Registration of Books Act, 1867, alleging that the petitioner and other accused to defame the name of the second respondent by affixing posters contended that the second respondent has collected exorbitant fees from the students of 6th to 12th standards and in every admission has also collected Rs.10,000/- from their parents. Now, the first respondent police has completed the investigation and filed a charge sheet and the same was taken cognizance in C.C.No.83 of 2016 by the learned Judicial Magistrate, Paramakudi, Ramanathapuram District. He further submitted that now the trial has been commenced and P.W.1 to P.W.3 were examined and the matter was posted for further evidence. Therefore, he prayed for dismissal of this quash petition.

4.Though notice has been served on the second respondent, but none appeared on behalf of the second respondent either in person or through pleader.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the first respondent.

6.On perusal of the records, it is seen that totally there are two accused in this case, in which, the petitioner has been arrayed as A1. On the complaint lodged by the second respondent herein, the first respondent Police has registered the case in Crime No.212 of 2014 for the offence under Sections 500 and 501 of IPC and Section 12 of the Press and Registration of Books Act, 1867. After completion of investigation, the first respondent has filed a charge sheet and the same has been taken cognizance for the offence under Section 500 and 501 as against the petitioner herein. When the offences charged against the petitioner is non cognizable one and as such, the first respondent Police has absolutely no power to register any case for non cognizable offence as contemplated under Section 199 Cr.P.C. Section 199 of Cr.P.C., is extracted hereunder:

"199. Prosecution for defamation.-

(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the

offence: Provided that where such person is under



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the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a

<https://hcservices.ecourts.gov.in/> Magistrate having jurisdiction or the power of



such Magistrate to take cognizance of the offence upon such complaint."

7. In the case on hand, admittedly the second respondent has lodged a complaint before the first respondent and the same was registered in Crime No.212 of 2014 for the offence under Sections 500 and 501 of IPC and Section 12 of the Press and Registration of Books Act, 1867. It is relevant to extract the offence under Section 12 of the Press and Registration of Books Act, 1867, as follows:

"12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act, shall, on conviction before a Magistrate, be punishable by fine not exceeding 7 [two thousand] rupees, or by simple imprisonment for a term not exceeding 8 [six months], or by both. "

8. it is relevant to extract provision under Section 155 of Cr.P.C., as follows:

155. Information as to non-cognizable cases and investigation of such cases.—

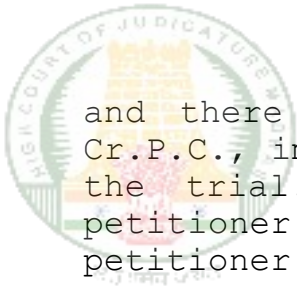
(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

9. Admittedly, the first respondent has registered a case and after completion of investigation, filed a final report before the learned Judicial Magistrate, Paramakudi, Ramanathapuram District,



and there is no provision as contemplated under Section 199 of Cr.P.C., implicating them and taken cognizance and also proceed with the trial. Therefore, the entire proceedings as against the petitioner is vitiated and it cannot be sustained as against the petitioner.

10. Accordingly, this criminal original petition stands allowed and the proceedings in C.C.No.83 of 2016 is hereby quashed on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Judicial Magistrate,
Paramakudi,
Ramanathapuram District.
- 2.The Inspector of Police,
Paramakudi Town Police Station,
Paramakudi,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P.(MD).No.15530 of 2016

and

CrI.M.P.(MD).Nos.7358 and 7359 of 2016

07.12.2020

(NA)

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