

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2020
PRONOUNCED ON : 26.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**Crl.O.P.No.1205 of of 2015
and
M.P.No.1 and 2 of 2015**

Palaniyappan ... Petitioner / 8th Accused

Vs.

K.Kumar @ Rameshkumar ... Respondent /Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records with respect of the complaint filed by the respondent herein STC.No.828 of 2014 on the file of Judicial Magistrate V, Salem and quash the same as against the petitioner is concern.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.C.Kulanthaivel

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in STC.No.828 of 2014 on the file of the learned Judicial Magistrate V, Salem.

2. The brief facts of the case is that due to civil dispute, on a private complaint filed under Section 200 of Cr.P.C., before the learned Judicial Magistrate V, Salem, against the petitioners and 8 others, the learned Judicial Magistrate taken cognizance over the above complaint under Section 147, 323, 506(ii), 447 and 120(b) IPC and issued summons to the petitioners herein. Hence, the petitioner is before this Court with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that with respect civil disputes between the respondent's family and one Raja and others, civil Suits were filed between them in O.S.No.718 of 2007 and O.S.No.138 of 2008. Subsequent to that, on 07.05.2011, there was some dispute while removing pipe line connection with respect to the property, which is the subject matter of the above suit. Pursuant to which, the respondent herein attacked the 2nd accused in the above case and

made a complaint before the Inspector of Police, Kondalampatti Police station and they registered a complaint in Crime No.485 of 2011 under Section 294(b), 323 and 506 (ii) IPC. Pursuant to that, the respondent herein to the counter blast foisted a complaint in Crime No.486 of 2011 under Section 147, 294(b), 341 and 323 IPC. It was further contended that after investigation, the Inspector of Police, Kondalampatti Police station filed final report in Crime No.385 of 2011 and referred the complaint as mistake of fact on the complaint of the respondent registered in Crime No.386 of 2011. Later, after three years from the said occurrence, the respondent herein filed the above complaint under Section 200 Cr.PC., and the same was taken cognizance under Sections 147, 323, 506(ii), 447 and 120(b) IPC.

4. It is further contended by the learned counsel for the petitioner that the learned Magistrate ought not to have taken cognizance on the above complaint, since the complaint made by the respondent before the Kondalampatti Police Station, registered in Crime No.486 of 2011, under Sections 147, 294(b), 341, 323 IPC was referred as mistake-of-fact in the year 2011 itself, however, after three years from the date of occurrence, he has

made the above complaint, which is barred by limitation under Section 468 of Cr.P.C., Further, as per the complaint, the allegation does not attract any offence, more particularly, Section 506 (ii) IPC. On merits, the learned counsel submitted that even according to the respondent, the petitioner was not present in the scene of occurrence. The only contention is that the petitioner is the reason for the alleged offence committed by the other accused, as stated in the complaint, FIR as well as in the private complaint. But, no material produced against the petitioner to establish that he had conspired with the other accused in commission of the above offence. The learned counsel in support of his contention, relied on the Judgment of the Hon'ble Apex Court in ***Krishnapillai Vs. T.A.Rajendran and another*** reported in ***(1990 SCC Crl. 646)***, wherein it has been clearly held that filing of a complaint in Court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Hence, the learned prayed for quashing of the proceedings in STC.No.828 of 2014, on the file of the learned Judicial Magistrate V, Salem.

5. The Learned Counsel for the respondent submitted that this case arises out of Crime No.486 of 2011, which was closed as mistake-of-fact and no notice was served on the respondent. Thereafter, on coming to know the same, the respondent had filed a protest petition before the learned Judicial Magistrate V, Salem, on 26.05.2011, protest petition was not entertained. Hence the respondent has filed the above private complaint. He further submitted that the petitioner had lodged the complaint in Crime No.486 of 2011 to the same police. On completion of investigation, charge sheet was filed in C.C.No.173 of 2012 and the respondent herein is arrayed as A-8 in that case. After full fledged trial in C.C.No.173 of 2012, the respondent along with three accused were acquitted by the trial Court by Judgement dated 18.07.2015. The petitioner's group are the prosecution witnesses in that case.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. It is seen that there is dispute with regard to laying of Panchayat pipe line between the petitioner's group and the father of the respondent. Civil Suits were filed by both the groups in O.S.No.718 of 2007 and O.S.No.138 of 2008. The civil Suit filed by the petitioner's group was dismissed and the Suit filed by father of the respondent was decree in their favour. Thereafter, on 07.05.2011, while removing the pipe line, there was fight between the petitioner's group and the respondent, both the group gave complaints. Crime No.485 of 2011, for the offence under Sections 294(b), 324 and 506(ii) of IPC., registered against the respondent and his family members, charge sheet filed in C.C.No.173 of 2012. The case ended in acquittal by Judgment dated 08.07.2015. On the other hand, the complaint lodge by the respondent group, registered in Crime No.486 of 2011 for the offence under Sections 147, 294(b), 341 and 323 of IPC., after investigation closed as mistake-of-fact, on 03.10.2011. Thereafter, the above private complaint was filed belatedly and cognizance was taken only during 2014. Admittedly, petitioner was not present in the scene of occurrence. Petitioner being the President of Panchayat it is alleged that at his instance the occurrence had taken place, further he influenced the Kondalampatti Police to drop the case of

the respondent. In this case, the cognizance ought to have been taken within a period of three years, as per Section 468 of Cr.P.C. In this case cognizance taken beyond the period of limitation. The Hon'ble Apex Court in the Judgment reported in reported in **(1990 SCC Crl. 646)** (*cited supra*) had held that the period of limitation to be considered on the date of taking cognizance. In this case, cognizance taken only during 2014, well after three years, beyond the period of limitation. Thus, both on the facts of the case and on the law taking cognizance of this case beyond the period of limitation is bad in law. In view of the same, this Court is inclined to quash the proceedings.

8. In the result, this Criminal Original Petition is allowed and the proceeding in STC.No.828 of 2014, on the file of the learned Judicial Magistrate V, Salem, is hereby quashed. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No
Internet : Yes/No

MPK

To

1. The Judicial Magistrate V,
Salem

2.The Public Prosecutor,
High Court, Chennai.



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M.NIRMAL KUMAR, J.

MPK



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