

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.5560 of 2020
and Crl.MP.Nos.3131 of 2020

A.Asia Begum

... Petitioner

Vs.

State by

Inspector of Police (Crime)

Dharapuram Police Station,

Dharapuram, Tiruppur District.

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. calling for the records in STC No.1138 of 2019 on the file of the learned Judicial Magistrate-III, Tiruppur and quash the same.

For Petitioner : Mr.A.Gokulakrishnan

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in STC No.1138 of 2019, on the file of the learned Judicial Magistrate-III, Tiruppur.

2. The Court below initiated proceedings against the petitioner under Section 344 of Cr.P.C. on the ground of giving false evidence. This was challenged by the petitioner in Crl.OP.No.15873 of 2019 and this Court passed the following order on 20.06.2019:-

"2. The learned counsel for the petitioner submitted that for the show cause notice dated 10.01.2019 issued by the learned Judicial Magistrate, Dharapuram, the petitioner has already given his reply. In the mean time, appeals have been preferred against the main judgment, in C.A.Nos.4 and 6 of 2019 and the appeals are pending. The learned counsel therefore submitted that in terms of Section 344(4) of Cr.P.C., the proceedings will have to be stayed/kept in abeyance till the disposal of the appeals and the proceedings will have to abide by the result of the appeals.

3. The learned counsel for the petitioner submitted that in spite of the same being informed to the Court below, the Court below is proceeding further with the summary trial and therefore, left with no other option, the present petition has been filed before this Court.

4. Heard the learned Additional Public Prosecutor appearing on behalf of the respondent Police.

5. It is seen that the Court below has initiated proceedings under Section 344 Cr.P.C. against the petitioner on the ground that the petitioner has given a false evidence when she was examined as PW1 in C.C.No.455 of 2015. Even in the final judgment, a finding has been given to the effect that the petitioner has given false evidence. The Court below has issued show cause notice to the petitioner. The petitioner has also given the explanation to the show cause notice.

6. In the mean time, A2 has filed C.A.No.4 of 2019 and A1 has filed C.A.No.6 of 2019 against the final judgement in C.C.No.455 of 2015. In view of the same, Section 344(4) of Cr.P.C. comes into operation and the proceedings should be kept in abeyance till the disposal of the appeals and the proceedings shall abide by the result of the appeals. It is therefore clear that the Court below cannot proceed further with the proceedings initiated under Section 344 Cr.P.C. and it has to necessarily await the decision in the appeal.

7. This Criminal Original Petition is disposed of with a direction to the Court below to keep S.T.C.No.1138 of 2019 in abeyance and shall not proceed further with the case till the disposal of the appeals filed by the accused persons and pending in C.A.No. 4 and 6 of 2019. The case will be taken up for hearing only after the disposal of the appeals. Consequently, connected Miscellaneous petitions are closed.''

3. After the above orders were passed by this Court, the Criminal Appeals were taken up for hearing by the learned III Additional District and Sessions Court, Tiruppur at Dharapuram. The final Judgment was passed on 28.11.2019 and the Criminal Appeals were allowed and the accused persons were acquitted. While dealing with the appeals, the Appellate Court also dealt with the Suo Moto complaint initiated against the petitioner and rendered the following findings:-

''352. Certain Judges and Magistrates not to try certain offences when committed before themselves.

Except as provided in sections 344, 345, 349 and 350, no Judge of a Criminal Court (other than a Judge of a High Court) or Magistrate shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such judge or magistrate in the course of a judicial proceeding.

The provision of law itself clearly disclosed that the Magistrate cannot try the offence if it committed before himself or in contempt of his authority. In this regard Hon'ble Apex Court had held in the following case law that,

"Taking of cognizance is not an idle formality, but a sacrosanct judicial act as reiterated by the Supreme Court in *Sunil Bharati Mittal v. CBI* [2015 (1) Scale 140]. Therefore, though Section 352 Cr.P.C. does not speak about cognizance, yet applying the principle *nemo index in causa sua* - No man shall be a Judge in his own cause, which is a golden thread that runs through the judicial system, it will not be cognizance of the offence under Section 175 IPC. A similar view has been expressed by a learned single Judge of the Andhra Pradesh High Court in *S.Dashmantha Reddy and others v. State of Andhra Pradesh through Public Prosecutor* [AIR 1996 Cri.LJ 1804]. What the Cheyyar Magistrate should have done is, he should have drafted a complaint as a Public Servant of the offence under Section 175 IPC and should have forwarded it to the Chief Judicial Magistrate for taking cognizance and proceeding with the trial. Section 352 Cr.P.C. itself has provided certain exceptions where a Judicial Officer can act as the complainant and the Judge. Hence, in the opinion of this Court, the learned Magistrate erred on this aspect."

In a similar nature of another case of Hon'ble Andhra Pradesh High Court that - *S.Dashmantha Reddy and others v. State of Andhra Pradesh Through ...* on 22 January, 1996

Equivalent citations : 1996 (2) ALD 21, 1996 (1) ALD Cri 484, 1996 (1) ALT Cri 424, 1996 (2) APLJ 133, 1996 Cri LJ 1804 that,

"It is significant to note that the legislature empowered the public servant concerned or some other public servant to whom he is administratively subordinate and the Court concerned or some other Court to which such court is subordinate to lay a complaint in respect of offences specified in clauses (a) and (b) respectively, Thus, it is not as if, the Court in question alone was competent to lay the complaint. It

could have as well requested the District Court, to which it is subordinate to lay the complaint. Or, in the alternative, it could have laid the complaint before another court having jurisdiction. It has not chosen to do either. Instead, it laid the complaint before itself for the offences referred to in Section 195(1) of the Code and also took cognizance of the same. Thus, there can be no doubt that its action is illegal. I find a clear authority for this proposition in *Harekrishna Sahu v. State of Orissa*, 1986 CrL LJ 691 (Orissa). Reference may also be made to the following observation of the Supreme Court on judicial propriety of *Fakruddin v. The Principal, Consolidation Training Institute*, (1995) 7 JY (SC) 183: "Justice should not only be done but seen to be done. That is the basic structure on which confidence and faith in the institution rests. The judiciary from the bottom in hierarchy to the apex at the top commands respect because of its impartiality and objectivity. When a judge directs a case to be listed before another Court or Bench, as he knows one or the other party, it is not because any statutory law precludes him from hearing and deciding it but the propriety is practiced and observed to exclude even the remotest possibility of any misgiving or doubt about the impartiality of the judge as even if he is just and fair and his decision is correct yet it may not be satisfying." (Para 2)

9. In the light of the above, it must be held that the Court is not competent to lay a complaint before itself and take cognizance of offences complained of. This point is, accordingly, answered.

10. From the above discussion, the conclusion could be that *Sri.P.Prabhakar*, the then Judicial First Class Magistrate, Siddipet, who took cognizance of offences against the petitioners, acted in violation of the provisions of Section 352 of the Code, throwing the judicial propriety to wind. Further, having regard to the facts and circumstances of the case, I do not consider it expedient to direct a fresh enquiry into the matter. Therefore, these petitions must succeed. Accordingly, they are allowed and proceedings against the petitioners in C.C.No.114 of 1994 on the file of the Judicial First Class Magistrate, Gazwel, Medak District, are quashed.

11. Petition allowed."

Therefore, the Officer ought to have transferred the case to other competent Court through the Chief Judicial Magistrate for conduct trial as prescribed under Section 352 Cr.P.C.

Under these circumstances, considering all the above facts and circumstances, it is decided that the trial Court is not considered the case according to law and natural justice. Therefore, the conviction given by the trial Court is not justified and the accused is ordered to be set aside.

In the result, the criminal appeals are allowed and the trial Court Judgment rendered in CC 455 of 2015 dated 10.12.2018 is hereby set aside and the accused are ordered to be acquitted. The bail bond executed by the appellants / accused if any to be canceled. The fine amount paid by the appellants/accused to be refunded after the appeal time is over. In respect of the property concerned, the order of the trial Court is sustained."

4. The learned counsel for the petitioner submitted that in view of the judgment passed by the Appellate Court, the complaint initiated against the petitioner cannot be sustained and the same requires the interference of this Court under Section 482 of Cr.P.C.

5. Heard Mr.A.Gokula Krishnan, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of respondent.

6. When the matter came up for hearing, during the earlier round, this Court had directed the Court below to keep the proceedings pending till the disposal of the appeal by virtue of Section 344 (4) of Cr.P.C. The appeal has now been disposed of and the petitioner has been given a clean chit by the Appellate Court. In view of the same, the continuation of the proceedings against the petitioner before the Court below will tantamount to abuse of process of Court and the same requires the interference of this Court.

7. In the result, the proceedings in STC No.1138 of 2019, on the file of the learned Judicial Magistrate-III, Tiruppur, is hereby quashed and this Criminal Original Petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate III
Tiruppur

2.Do Through The Chief Judicial Magistrate
Tiruppur

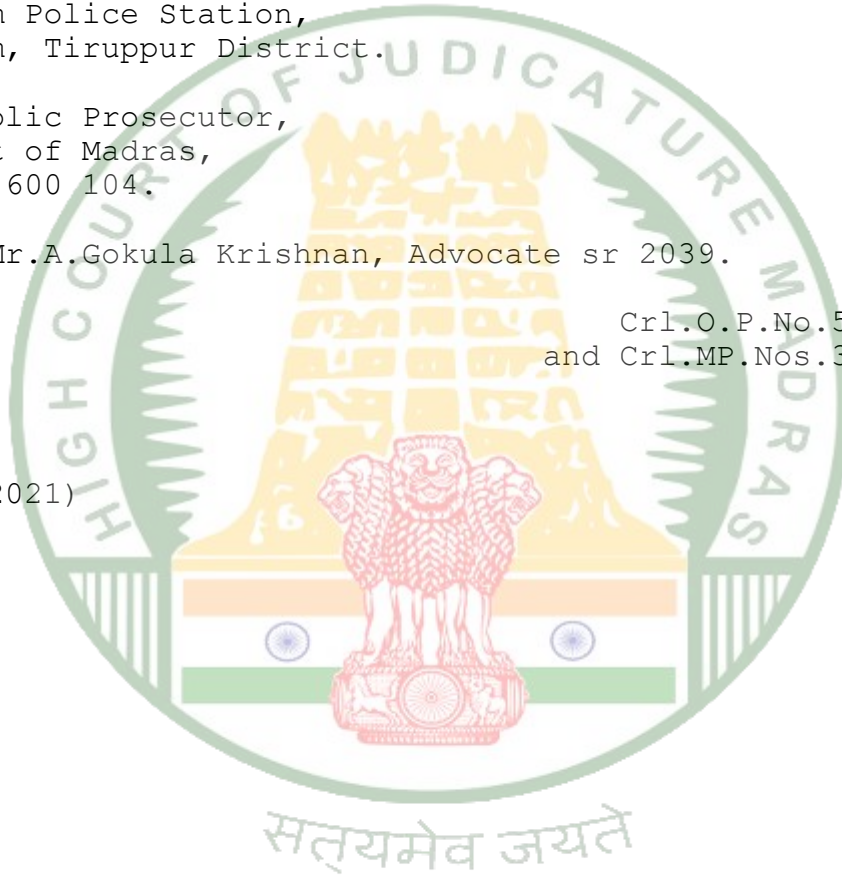
3. The Inspector of Police (Crime)
Dharapuram Police Station,
Dharapuram, Tiruppur District.

4. The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.

+1 CC to Mr.A.Gokula Krishnan, Advocate sr 2039.

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SSI (CO)
SP(25/01/2021)



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