

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2021

Coram

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.27498 of 2019
and Cr1.M.P.Nos.14675 & 14676 of 2019

Giri Prasath

...Petitioner

Versus

1. The Inspector of Police,
T-10, Thirumullaivoyal Police Station,
Chennai,
Crime No.659 of 2018

2. B.Navin kumar

...Respondents

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code praying to call for the records in CC.No.10 of 2019 on the file of the learned Judicial Magistrate, Ambattur against the petitioner and quash the same.

For Petitioner : Mr.K.T.S.Sivakumar
For Respondents: Mr.C.Raghavan R1
Government Advocate(Cr1. Side)
No appearance R2

O R D E R

This petition has been filed challenging the proceedings in CC.No.10 of 2019 on the file of the learned Judicial Magistrate, Ambattur.

2. The second respondent gave a complaint before the first respondent on 12.06.2018 to the effect that he is a college student, who was doing catering services as a part time job. On 11.06.2018, when the second respondent along with his brother got down in Annanur Railway Station and were walking in the main road, the second respondent is said to have been intercepted by the petitioner and two others and he was asked to hand over the hand bag. Thereafter, it was again returned back to the second respondent. Later, when the second respondent opened the hand bag, he found that his mobile phone was missing. Therefore, a complaint came to be given before the first

respondent on 12.06.2018 and an FIR was registered against the petitioner and two others for offence under Section 379 of IPC.

3. On completion of the investigation, a final report was filed before the Court below by the respondent police for the offence under Section 392 read with 34 of IPC. The Court below took cognizance of the final report and process was issued to the accused persons. Aggrieved by the same, the present petition has been filed before this Court.

4. Heard Mr.K.T.S.Sivakumar, learned counsel for the petitioner, Mr.C.Raghavan, learned Government Advocate, appearing on behalf of first respondent. The second respondent has been served with notice and his name is also printed in the cause list and there is no appearance either in person or through counsel.

5. The main contention that has been raised by the learned counsel for the petitioner is that a false case has been foisted against the petitioner by the respondent police. It is further submitted that the complaint given by the second respondent and the statement recored from the second respondent did not constitute an offence under Section 392 IPC. It was submitted that even if the allegations are taken as it is, it does not satisfy the ingredients of Section 390 of IPC.

6. The complaint given by the second respondent and also the statement recorded from the witnesses, does not anywhere indicate that the second respondent was put to threat to an extent of causing death or hurt or wrongful restraint. In fact, it was an improvement of the case done by the prosecution at the stage of filing the final report. There is absolutely no material to sustain the final report for the offence under Section 392 of IPC.

7. Insofar as the contention raised on behalf of the petitioner to the effect that a false case has been foisted by the respondent, that is an issue which cannot be gone into by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. The same requires assessment of facts and appreciation of evidence which can be done only during the course of trial before the Court below.

8. In view of the above, the final report filed by the respondent for the offence under Section 392 of IPC is not sustainable and the Court below is directed to take cognizance of the final report for the offence under Section 379 of IPC read with Section 34 of IPC. The Court below shall proceed further and frame charges and complete the trial within a period of three months from the date of receipt of a copy of this order.

9. This Criminal Original Petition is partly allowed with the above directions. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To

1. The Judicial Magistrate, Ambattur.
2. The Inspector of Police,
T-10, Thirumullaivoyal Police Station,
Chennai.
3. The Public Prosecutor,
High Court of Madras.

+1 cc to Mr.K.T.S.Sivakumar, Advocate Sr No.13978

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PMK (CO)
RG.26.04.2021 (3P/5C)