



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.11.2021

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

WEB COPY

Crl.OP(MD)No.22793 of 2016
and
Crl.M.P.(MD)No.11929 of 2016

1.Ramaraj
2.Sathish Prabhu

... Petitioners/A4 and A5

Vs.

T.Rajeswari

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for records in S.T.C.No.121 of 2014 on the file of the Judicial Magistrate Court No.II, Srivilliputhur and quash the impugned complaint and all further proceedings insofar as the petitioners are concerned.

For Petitioners : Mr.D.Shanmugaraja Sethupathi

For Respondent : Mr.Sasikumar

ORDER

This Petition is to quash the private complaint given by the respondent, namely, Rajeswari alleging that the petitioners herein being the Police Officials, in the course of search of her husband, have exceeded the power and committed offence under Sections 147, 148, 294(b), 451, 427 and 506(i) of I.P.C read with Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. Even on the face of the complaint, it appears that the petitioners herein in discharge of their duties, had gone in search of persons/accused of offence under Sections 147, 148, 294(b), 323, 324, 332, 307 and 506 (ii) of I.P.C. in Crime Nos.631 and 632 of 2013.

2.The quash petition is filed on two grounds. Since the alleged act has been committed while discharging their duty, the action of the petitioners is protected and further, the private complaint filed in the name of Rajeswari was taken cognizance and summons served on the petitioners without recording the sworn statement of the complainant.

3.The learned counsel for the respondent would submit that it is not mandatory that the complainant should be examined by the learned Magistrate. It is the subjective satisfaction of the learned Magistrate to peruse the statement of the witnesses before issuing the process under Section 202 of Cr.P.C.



4.Heard the learned counsel for the petitioners and the learned counsel for the respondent.

5.This Court, on considering the submissions made by the respective learned counsels appearing for the parties, holds that in a case of this nature, when there is a specific allegation of excessive exercise of power by the Police and the person, who has given the complaint also coming from a legal background, it is prudent to examine the private complaint before causing summons and it is insufficient to rely on hearsay evidence and the persons, who are not competent to speak about the complaint.

6.On perusing the records, this Court finds that the learned Magistrate erred in causing summons while taking the private complaint on file under Section 200 of Cr.P.C., without recording the sworn statement of the complainant Rajeswari. The statements of Sivakumar, Shunmathi and Thiruamalaiappan are all referring about the incident, which occurred on 30.09.2013 in early hours. Though the learned Magistrate in his order, expressing his satisfaction to cause notice refers about the sworn statement of the complainant Mrs.Rajeswari, the said sworn statement does not find place in the record. When the de-facto complainant has not come before this Court to support her complaint, the statements of P.W.1 to P.W.3 is not suffice to cause summons and for the sole reason, the private complaint in S.T.C.No.121 of 2014 on the file of the Judicial Magistrate Court No.II, Srivilliputhur, is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Judicial Magistrate No.II,
Srivilliputhur.

CrI.OP(MD)No.22793 of 2016
26.11.2021

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