



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 27.01.2021

DATE ON WHICH PRONOUNCED : 26.02.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.8477 of 2017

and

Crl.MP(MD)No.5727 of 2017

1.Selvam

2.Vijay

... Petitioners/Accused Nos.1 & 2

Vs.

1.K.Nagaraj @ Nagarajan

... Respondent/Complainant

2.The Inspector of Police,
Ponnamaravathi Police Station,
Ponnamaravathi,
Pudhukottai District.

... 3rd Respondent/Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the complaint in C.C.54 of 2017 on the file of the learned Judicial Magistrate, Thirumayam, and quash the same.

For Petitioners : Mr.V.Kannan

For R1 : Mr.R.Rajaraman

For R2 : M.Ganesan

Government Advocate

ORDER

This Criminal Original Petition has been filed to quash the complaint in C.C.54 of 2017, on the file of the learned Judicial Magistrate, Thirumayam.

2. Brief facts of the case is as follows:-

The first petitioner is the father of the second petitioner. A dispute of water right for the agriculture land is existing between the petitioners and the first respondent.

3.Contents of the complaint filed by the first respondent is briefly as follows:-



On 13.11.2016, the first petitioner gave a complaint before the second respondent stating that on 13.11.2016, the respondent attacked the first petitioner with aruval. But, actually on the date mentioned in the complaint, the first respondent was taking treatment in Pilroth Hospital, Chennai, as inpatient. Since the complaint was found to be false, the respondent police closed the same as 'mistake of fact'.

4. On the earlier occasion also, i.e., 2015 with the instigation of the petitioners herein, one Kannan gave a false complaint against the first respondent herein. The case was registered in Crime No.361 of 2015 for the punishable offences under Sections 147, 148, 294(b) and 324 of IPC.

5. Again on 10.12.2016, the petitioners have given another false complaint before the second respondent stating that the first respondent assaulted the injured in a road accident, by name Palaniappan. But, later, that was also closed. The petitioners and his party are continuously gave false complaints against the first respondent. So, on 20.09.2016, the first respondent lodged a complaint before the second respondent. But, no action was taken.

6. On 22.02.2017, the first respondent filed a petition under Section 156 (3) Cr.P.C, before the Judicial Magistrate, Tirumayam and the same was taken on file in C.C.No.54 of 2017.

7. Seeking quashment of the complaint, this petition is filed by the petitioners, who are the accused before the Trial Court, mainly on the ground that none of the ingredients mentioned in the offences alleged against the petitioners are attracted. No special allegations are levelled and the complaint has been filed only to harass the petitioners.

8. On the side of the petitioner written submissions were filed.

9. The main ground on which this petition is filed is that none of the allegations mentioned in the petition or in the compliant attract any of the provisions of Indian penal code and moreover, no particulars have been given in the compliant about the offences.

10. Reading of the complaint shows that the complainant / the respondent herein wants the court to take action against the petitioners on the ground that repeatedly they have filed false complaints against him, as a result of which, he suffered. As mentioned in the compliant, the first allegation is that even though the first respondent was admitted in Bilroth Hospital Chennai on 3.11.2016, a false complaint has been given stating that he attacked the petitioners. The police made an enquiry and came to the conclusion that the compliant is false and so, no action was taken.



11. The next incident, according to the petitioners is that, on 10.12.2016, an accident took place involving one Palaniapan, the first respondent admitted him in the hospital, when he was in unconscious stage. Taking advantage of the same, the petitioners, lodged a false complaint against the first respondent stating that he attacked him. So, according to the first respondent, repeated complaints, which were false and false to knowledge of the petitioners have been made only to harass the respondent.

12. The petition has been filed invoking the jurisdiction of the court provided under section 156 (3) of criminal procedure code. But when the court called for the records from the trial court it is found that the trial court took cognizance of the offence on recording the statement of the complainant / respondent and his witnesses herein on 19.4.2017. The offences which were taken cognizance by the trial court are under section 182 and section 193 of Indian Penal Code. After taking the cognizance, case number in Calendar Case Number.54 of 2017 was assigned. Summons were also issued to the accused to appear. At this stage, the petition has been filed by the petitioners.

13. Even though the petitioner has filed the petition on the ground that none of the allegations mentioned in the complaint filed by the respondent attracts any of the ingredients of the provisions of Indian penal code, perusal of the records of the trial court shows that a fundamental mistake has been committed by the trial court, while taking cognizance. Even though, the respondents filed the complaint under section 156(3) Cr.PC, seeking a direction to the police to register a case. But it appears that the trial court has taken the case on file and took Cognizance of the offence under sections 182 and 193 of Indian Penal Code. So I'm of the considered view that the the petition can be disposed off on the question of law rather than on the questions mentioned in the petition.

14. Section 182 of Indian penal code reads as and under,

'Whoever gives to any public servant any information which he knows or believed to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such a public servant-

a) to do or omit to anything which such a public servant ought not to do or omit it if the true state of facts respecting which such information is given well known by him, or

b) to use the lawful power of the of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine which may extend to 1000 or with both.'



15. Reading of the provision shows that offence is attracted if a person gives a false information to a public servant with the intention of causing any injury to any person or to cause annoyance of any person. According to the respondent/complainant for the purpose of causing injury to his reputation a false information has been given by the petitioner to the public servant as mentioned above.

16. The next offence which alleged in the complaint is section 193 of Indian penal code. The section reads as an under,

'Whoever intentionally gives false evidence in any stage of judicial proceedings, or fabricates gives false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to 3 years, and shall also be liable to fine.'

17. According to the respondent/complainant, the petitioners indulged in giving false evidence not only before the court but also before the investigating officers.

18. The question which arises for consideration is whether the cognizance taken by the trial court is in accordance with law. Because there is a specific bar under section 195 (1) (a) (i) . This section reads as under,

'No court shall take cognizance- (a) (i) of any offences punishable under sections 172 to 188 (both inclusive) of the Indian penal code or (ii) of any abetment of, or attempt to commit, such offence; or (iii) of any criminal conspiracy to commit such offence, Except on the complaint in writing by the public servant concerned or of some other public servant to whom he is administratively subordinate;'

19. Reading of this provision clearly shows that if an offence is committed under section 182 of Indian penal code then a complaint can be given only by a public servant or by a person who is administratively subordinate . So this private complaint filed by private parties cannot be entertained. So the cognizance taken by the trial court for the offence punishable under section 182 Indian penal code is not in accordance with law.



20. With regard to offence under section 193 Indian penal code, again section 195 (1) (b) (i) Cr.PC reads as an under,

'No Court shall take cognizance:-

Of any offence punishable under any of the following sections of the Indian penal code, 1860, namely section 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding any court; '

- Except on the complaint in writing of that court or by such officer of the court as to that court may authorise in writing in this behalf, or of some other court to which that court is subordinate.

21. Reading of this provision clearly shows that if a person has committed an offence punishable under section 193 Indian penal code ,only the court before which such false evidence is given is competent to file the complaint and not a private person. So the cognizance taken by the trial court for the offences punishable under section 182 and 193 of Indian penal code is not in accordance with law and the complaint filed by the respondent is liable to be quashed and accordingly quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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,
Thirumayam,
Pudukottai District.



2.The Inspector of Police,
Ponnamaravathi Police Station,
Ponnamaravathi,
Pudhukottai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Rajaraman, Advocate Sr.No.7730

CrI.O.P. (MD)No.8477 of 2017
and
CrI.MP (MD)No.5727 of 2017

26.02.2021

NR(16.03.2021) 6P:5C