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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.02.2022

PRONOUNCED ON : 16.03.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.21711 of 2016
and Crl.M.P.No.10056 of 2016

B.Gajendran ...Petitioner/Accused

Vs.

T.Arunachalam ...Respondent/Complainant

Prayer:- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the proceeding in C.C.No.143 of 2016 pending on the file of the Judicial Magistrate, Tambaram and quash the same.

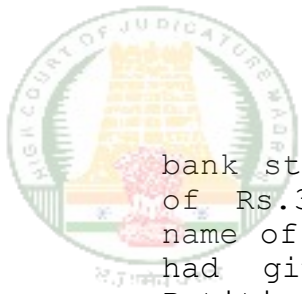
For Petitioner : Mr.K.Elangovan

For Respondent : Mr.R.Varadaraj for
M/s.R.V.Law Associates

ORDER

This petition is filed to call for the records pertaining to the proceedings in C.C.No.143 of 2016 pending on the file of the learned Judicial Magistrate, Tambaram and quash the same.

2.Respondent/complainant filed this complaint under Section 199 r/w 200 Cr.PC for the offence punishable under Section 211 IPC. Respondent was the then Managing Director of M/s.Srissai Arunachala Foundations Private Limited. This company was engaged in real estate business. The petitioner and respondent promoted the company in the name and style of M/s.Srissai Arunachala Foundations Private Limited on 14.08.2008. The registered office of the company was housed at respondent's residence in the first floor and his residence was in the ground floor. Petitioner frequented the residence of the respondent and be-friended with respondent's wife. Friendship culminated into illegal intimacy. Petitioner is Director in the company from 14.08.2008 till date. Petitioner eloped with respondent's wife on 12.11.2011. Respondent's wife took away share certificates from the TNSC

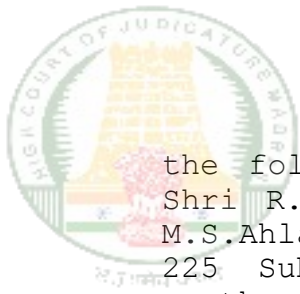


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bank standing in his name and his wife to an approximate value of Rs.3,75,00,000/-. Petitioner had fraudulently changed the name of the company to "SAF Private Limited". Respondent's wife had given all the share certificates to the petitioner. Petitioner forged the signature of the respondent in the share transfer form and transferred certificate in the name of his mother Prema. Respondent filed private complaint in C.C.No.4492 of 2013 for offences under Sections 379, 405, 406, 420, 463, 465, 467, 468 and 34 of IPC before the II Magistrate Court, Egmore, Chennai against the petitioner and others and the case is pending. Petitioner's wife Adhilakshmi filed a complaint against him to the Commissioner of Police, Greater Chennai on 09.01.2012. Respondent's wife filed a divorce petition against him before the Principal Sub Court, Tiruchirappalli in H.M.O.P.No.172 of 2012. He also filed divorce petition in O.P.No.900 of 2012 and it is pending before III Additional Family Court, Chennai. Under the Circumstances, petitioner filed a false private complaint in C.C.No.207 of 2014 for offences under Section 499, 500 IPC. The allegation in C.C.No.207 of 2014 is that respondent had falsely alleged that the petitioner, his friends namely Sridhar and Karunakara Pandian are in illegal intimacy with respondent's wife. C.C.No.207 of 2014 was filed to wreck vengeance against the respondent because of filing of the case in C.C.No.4492 of 2013. It is an offence liable to be punished under Section 211 of IPC. Therefore, this complaint is filed.

3.This case was taking cognisance in C.C.No.143 of 2016 by the learned Judicial Magistrate, Tambaram. Aggrieved against the taking of cognisance, this petition is filed for quash.

4.Learned counsel for the petitioner submitted that the petitioner initiated proceedings against the respondent for the offences punishable under Section 499 and 500 I.P.C. in C.C.No.207 of 2013 before the Judicial Magistrate, Tambaram and it is pending. Respondent initiated proceedings against the petitioner before the same Court for an offence punishable under Section 211 I.P.C. in C.C.No.143 of 2016 on the ground that proceedings in C.C.No.207 of 2013 has been initiated by the petitioner with an intend cause injury to the respondent without any just or lawful ground. The very taking of cognisance is barred by law. Section 195 (1) (b) Cr.P.C. puts a limitation on the power of a Court to take cognisance of the offence under Section 211 of I.P.C. Respondent cannot directly file private complaint before the Court and it is for the Court to give complaint for the offence under Section 211 I.P.C., in appropriate cases. Since, taking cognisance of the offence is contrary to the provision under Section 195 of Cr.P.C., the proceedings in C.C.No.143 of 2016 has to be quashed. In support of his submission, learned counsel for the petitioner relied on



the following judgments, 1) AIR 1967 SC 528 Shri M.Sethi Vs. Shri R.P.Kapur & Another, 2) (2000) 1 Supreme Court Cases 278 M.S.Ahlawat Vs. State of Haryana and another, 3) (2001) 1 Mah LJ 225 Subash Ramachandra Durge Vs. Deepak Annasaheb Gat and another and 4) (2011) 10 SCC 696 Abdul Rehman and others Vs. K.M.Anees-Ul-Haq.

5. In response, learned counsel for the respondent submitted that petitioner and respondent were close friends and business partners. Petitioner eloped with respondent's wife and had also filed defamation case against the respondent in C.C.No.207 of 2013. It is a false case and therefore, respondent filed C.C.No.143 of 2016 for the offence under Section 211 I.P.C. against the petitioner. The cognisance of the complaint by the respondent against the petitioner was taken at a stage when there was no proceeding in any Court of law pending and there could be no question of private complaint is being barred. The private complaint in C.C.No.143 of 2016 can be enquired along with the private complaint in C.C.No.207 of 2014. In support of his submission, learned counsel for respondent relied on the following judgments in Geethika Batra Vs. O.P.Batra and another reported in 2009 Cri LJ 2687, Arvind Kejriwal & Another Vs. Amith Sibal & Another reported in 2015 Cri LJ 215 and Abdul Rehman & others Vs. K.M.Anees-Ul-Haq reported in 2011 (10) SCC 696.

6. The issue involved in this case as to whether taking cognisance of an offence under Section 211 I.P.C. against the petitioner on the complaint given by the petitioner is in accordance with law.

7. Section 190 of Cr.P.C. Deals with cognisance of offences by Magistrate. This Section reads as follows,

190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

However, this power is controlled by Section 195 Cr.P.C. in



respect of certain offences.

8. Section 195 of Cr.P.C. deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. This Section reads as follows,

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), 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 of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 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 in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), 1 [except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

2.....

3.....

4.....

As per this Section, no Court shall take cognisance of any offence punishable under any of the following Sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196, 199, 200, 205 to 211, 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court or of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in



any Court, or of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

9. Learned counsel for petitioner submitted that as per this Section, an offence under Section 211 I.P.C., if committed in relation to any proceeding in any Court, no Court shall take cognisance, except on the complaint in writing of that Court or by officer authorized or some other Subordinate Court.

10. In the case before hand, the respondent alleges that petitioner had committed an offence in connection with proceedings pending in C.C.No.207 of 2013. In that case, only the Court or the officer of the Court or the Court Subordinate to that Court only can give complaint. No complaint can be filed directly before the Court.

11. It is observed in (2001) 1 Mah LJ 225 Subhash Ramchandra Durge Vs. Deepak Annasaheb Gat and another, that,

10. Section 195 of the Code of Criminal Procedure, 1973 deals with the provisions with respect to prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. The portion which is relevant for the purpose of the present case can be reproduced below:

"(1) No Court shall take cognizance

(a) (i)

(ii)

(iii)

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 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 in any Court, or

(ii)

(iii)

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate."



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11. In short, [section 195\(1\) \(b\) \(i\)](#) of the Code of Criminal Procedure, 1973, lays down that for any offence punishable under any section mentioned in that sub clause, no Court shall take cognizance of any offence mentioned in that sub clause except on the complaint in writing of that Court or of some other Court to which that Court is subordinate.

12. In the case reported in (2011) 10 SCC 696 Abdul Rehman and others Vs. K.M.Anees-Ul-Haq while interpreting the legal bar under Section 195 of the Code of Criminal Procedure in taking cognizance held that,

26. It would, in our opinion, be appropriate if the orders passed by the Metropolitan Magistrate and that passed by the High Court are set aside and the complaint filed by the respondent directed to be transferred to the Court dealing with the charge sheet filed against the respondent. The said court shall treat the complaint as an application for filing of a complaint under [Section 211](#) of the IPC to be considered and disposed of at the final conclusion of the trial; having regard to the provisions of [Section 340](#) of IPC and the finding regarding guilt or innocence of the respondent as the case may be recorded against him. The respondent shall also have the liberty to proceed with the complaint in so far as the same relates to commission of the offence punishable under [Section 500](#) of the IPC depending upon whether there is any room for doing so in the light of the findings which the court may record at the conclusion of the trial against the respondent.

In the case reported in (2000) 1 SCC 278 M.S.Ahluwat Vs. State of Haryana and another, the Hon'ble Supreme Court of India held that,

5. Chapter XI of [IPC](#) deals with false evidence and offences against public justice' and [Section 193](#) occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. [Section 195](#) of the Criminal Procedure Code (Cr.P.C.) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under [Section 193](#) IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate



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proceedings. Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

6. Section 340 Cr.P.C. prescribes the procedure as to how a complaint may be preferred under Section 195 Cr.P.C. While under Section 195 Cr.P.C., it is open to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 Cr.P.C. prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 Cr.P.C. are mandatory and no court can take cognizance of offences referred to therein. It is in respect of such offences the court has jurisdiction to proceed under Section 340 Cr.P.C. and a complaint outside the provisions of Section 340 Cr.P.C. cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction.

In AIR 1967 SC 528 Shri M.L.Sethi Vs. Shri R.P.Kapur and another, the Hon'ble Supreme Court of India held that,

10. In the interpretation of this clause (b) of Sub-Section (1) of Section 195, considerable emphasis has been laid before us on the expression "in, or in relation to", and it has been urged that the use of the expression "in relation to" very considerably widens the scope of this -section and makes it applicable to cases where there can even in future be a proceeding in any Court in relation to which the offence under Section 211, I.P.C., may be alleged to have been committed. A proper interpretation of this provision requires that each ingredient in it be separately examined. This provision bars taking of cognizance if all the following circumstances exist, viz., (1) that the offence in respect of which the case is brought falls under Section 211 I.P.C.; (2) that there should be a proceeding in any Court; and (3) that the allegation should be that the offence under s. 211 was committed in, or in relation to, such a proceeding. Unless all the three ingredients exist, the bar under Section 195(1)(b) against taking



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cognizance by the Magistrate, except on a complaint in writing of a Court, will not come into operation. In the present case also, therefore, we have to see whether all these three ingredients were in existence at the time when the Judicial Magistrate at Chandigarh proceeded to take cognizance of the charge under Section 211, I.P.C., against the appellant.

13. The learned counsel for the respondent also relied on the judgment in Geetika Batra Vs. O.P. Batra & another, for the proposition that,

.....(1) that the offence in respect of which the case is brought falls under Section 211, I.P.C.; (2) that there should be a proceeding in any Court; and (3) that the allegation should be that the offence under Section 211 was committed in, or in relation to, such a proceeding. Unless all the three ingredients exist, the bar under Section 195(1)(b) against taking cognizance by the Magistrate, except on a complaint in writing of a Court, will not come into operation.

14. He relied on the judgment in Arvind Kejriwal and another Vs. Amith Sibal and another, for the proposition that there are two stages in the criminal trial. First is the issuance of process under Section 204 Cr.P.C. when the Magistrate found there are sufficient grounds for proceeding the matter. The second stage is for framing charge, Court satisfied that prima facie case is made out against the accused. He further relied on the judgment in AIR 1967 SC 528 Shri M.L. Sethi Vs. Shri R.P. Kapur and another and the judgment Abdul Rehman and others Vs. K.M. Anees-UL-HAQ. The latter judgment was relied for the proposition that complaint shall be treated as an application for filing a complaint under Section 211 I.P.C. to be considered and disposed of to final conclusion of the trial.

15. The reading of judgment in AIR 1967 SC 528 Shri M.L. Sethi Vs. Shri R.P. Kapur and another shows that the bar under Section 195 Cr.P.C. operates when the following circumstances exist, 1) that the offence in respect of which the case is brought falls under Section 211 I.P.C. 2) that there should be a proceeding in any Court, 3) that the allegation should be that the offence under Section 211 was committed in, or in relation to, such a proceeding.

16. It is the submission of the learned counsel for the respondent that the complaint in C.C.No.207 of 2013 was presented on 27.03.2014. Respondent filed a petition under Section 211 I.P.C., on 23.12.2014 itself in C.C.No.143 of 2016, that is before the start of criminal proceeding in C.C.No.207 of 2013. It is his submission that since there was no proceeding



in any Court on the date of filing of 211 I.P.C. complaint, the bar under Section 195 (1) (b) Cr.P.C. is not applicable to this case. This submission of the learned counsel for the respondent cannot be accepted for the reason that even as per his submission when the complaint in C.C.No.143 of 2016 for the offence under Section 211 I.P.C was filed, the proceeding in C.C.No.207 of 2013 for the offences under Section 499 and 500 I.P.C. was pending. The case in C.C.No.143 of 2016 was filed in relation to the proceedings in C.C.No.207 of 2013 pending on the file of Judicial Magistrate, Tambaram. Therefore, there is a bar under Section 195 (1) (b) Cr.P.C. to directly file the complaint by the respondent. Only the Court or officer authorized by the Court or the Court subordinate to that Court alone can file a complaint. The Court taking cognisance on the basis of the complaint given by the respondent in C.C.No.143 of 2016 on the file of the learned Judicial Magistrate, Tambaram, is contrary to law and liable to be quashed and accordingly quashed.

17.In fine, Criminal Original petition in Crl.O.P.No.21711 of 2016 is allowed and the proceedings against the petitioner in C.C.No.143 of 2016 on the file of the learned Judicial Magistrate, Tambaram, is quashed. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Tambaram.

2.-do-through Chief Judicial Magistrate,
Egmore, Chennai.

+2ccs to Mr.K.Elangovan, Advocate SR.No.18240

+1cc to M/s.R.V.Law Associates, Advocate SR.No.18937

CRL.O.P.No.21711 of 2016
and Crl.M.P.No.10056 of 2016

GPL(CO)
GMY(05/04/2022)