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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.9677 OF 2022

&

CRL.M.P.NO.5674 OF 2022

Santha Lakshmi

... Petitioner/Accused

Vs.

1. The State by the Inspector of Police,
District Crime Branch,
Vellore.

... 1st Respondent/Complainant

2. Prabhu R

... 2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.174 of 2018 on the file of the Judicial Magistrate No.II, Vellore and quash the same.

For Petitioner : Mr.Manoj Sreevalsan

For Respondents : Mr.Leonard Arul Joseph Selvam,
Government Advocate (crl.side) - R1

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.174 of 2018 on the file of the learned Judicial Magistrate No.II, Vellore which was taken cognizance under section 211 of IPC along with other penal sections and quash the same.

2. The crux of the allegation against the petitioner is that she had allegedly given false evidence and documents before the Civil Court. The entire First Information Report narrates as if the petitioner herein produced false documents before the Civil Court and also gave false complaint against the petitioner.



3. The learned counsel appearing for the petitioner would state that filing of the First Information Report for the offence under section 211 of IPC by the police itself is not according to law and there cannot be any investigation for the above offence and there is a statutory bar under Section 195 Cr.P.C.

4. The learned Government Advocate [Criminal Side] appearing for the first respondent has not disputed the above fact.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate [Criminal. Side] appearing for the respondent.

6. It is relevant to note that for the offence under section 211 IPC and 195 of Cr.P.C., prosecution can be initiated only on the complaint in hand written by the public servant concerned or some other public servant whom he is administratively subordinate. Section 195 of Cr.P.C. 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



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in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

When there is a clear bar contained in the statute to initiate the prosecution by the police and the manner in which the prosecution has to be initiated, the First Information Report registered by the police for the offence under section 211 IPC is prohibited under section 195 of Cr.P.C. and the prosecution cannot be sustained in the eye of law. Therefore, prosecution is not sustainable against the petitioner and the prosecution against the petitioner has to be quashed.



7. Accordingly, this Criminal Original Petition is allowed and C.C.No.174 of 2018 on the file of the learned Judicial Magistrate No.II, Vellore is quashed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Judicial Magistrate No.II,
Vellore.
2. The Inspector of Police,
District Crime Branch,
Vellore.
3. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to M/s.Manoj Sreevalsan, Advocate, S.R.No.36053

Cr1.O.P.No.9677 of 2022

GPL(CO)
RLP(24/06/2022)