

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 29.04.2022

Pronounced On : 13.06.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.18174 of 2019
and Crl.M.P.No.9208 of 2019

1. S.Radhika

2. Mrs.Kamatchi

3. Mr.Ravindran

4. Mr.N.Kumar

... Petitioners

Vs.

Mr.Sivakumar

... Respondent

PRAYER: Criminal Original petition has been filed under Section 482 of Cr.P.C, prayed to call for the records in STC.No.419 of 2018 on the file of the learned Judicial Magistrate, Alandur and quash the same.

For Petitioners : Mr.G.Krishnamurthy

For Respondents : Mr.P.Anandan

ORDER

This Petition had been filed to quash the case in STC.No.419 of 2018 on the file of the learned Judicial Magistrate, Alandur.

2. The learned Counsel for the Petitioners submitted his arguments. As per his submission, the Petitioners are wife, mother-in-law and father-in-law of the Respondent herein/Complainant.

2.1. It is the contention of the learned Counsel for the Petitioners that the Respondent herein started living with another girl. Subsequently he married the girl viz., Lakshmisree on 09.04.2010 and in that relationship, a girl child was born on 21.01.2011. At that time, that woman came to know that the Respondent herein was already married and had

contracted the second marriage. Therefore, she preferred a Complaint before Kalastri Police Station and subsequently FIR in Cr.No.66 of 2014 was registered and the Respondent was arrested for the alleged offences under Sections 493, 495, 496 and 417 of IPC. At that time, the Respondent/Complainant begged the Petitioners herein to release him on bail. Accordingly, the Petitioners herein had helped him to be released on bail. Subsequently, the Respondent started to ill-treat the first Petitioner. Therefore, the first Petitioner filed HMOP.No.78 of 2016 before the Family Court at Chennai and the same is pending, till date. The Respondent/Complainant filed a private Complaint before the learned Judicial Magistrate, Alandur. As per the averments in the private Complaint, the first Petitioner herein filed a case in D.V.C.No.09 of 2016 before the learned first Additional Family Judge at Chennai. It is the claim of the Respondent/Complainant that in the D.V.C.No.09 of 2016, the first Petitioner along with her parents had committed breach of trust and cheating. The learned Judicial Magistrate, Alandur had taken cognizance of the private Complaint as S.T.C.No.419 of 2018, it is an abuse of process of Court.

2.2. The learned Counsel for the Petitioners invited the attention of this Court to the allegations in the private Complaint. The learned Counsel for the Petitioners read out from the averments in the private Complaint that what are all stated in the private Complaint does not state the incriminating conduct of the Petitioners herein. What had been stated are subject matter to be filed as a Suit and a Civil dispute is converted into a criminal case. The private Complaint does not seek Police protection for the Respondent and his mother. Therefore, the private Complaint is without any specific averments regarding the Land Grabbing. The private Complaint is vague, the conduct of the learned Judicial Magistrate, Alandur having taken cognizance is without any legal basis. Therefore, the learned Counsel for the Petitioners seeks to quash the private Complaint in S.T.C.No.419 of 2018 on the file of the learned Judicial Magistrate, Alandur.

2.3. The learned Judicial Magistrate, Alandur had taken the Complaint only under Section 200 of Cr.P.C., and not under any of the specific offences in IPC. Therefore, issuance of process to the Petitioners herein is without any legal basis. The learned Counsel for the Petitioners invited the attention of this Court to the downloaded printed copy of the daily status wherein it is stated as "Business: Complainant present. On perusal of Complaint, sworn statement and statement of witnesses and documents, Prima facie made out only for offence u/s. 506 (I) IPC. Hence this case is hereby taken on cognizance u/s. 506 (I) IPC against R1 to R5/A1 to A5. Assign STC. No.419/2018. Issue summons to LW1 to 3 by 01.11.2018". Therefore, he seeks

to quash the Complaint in S.T.C.No.419 of 2018 on the file of the learned Judicial Magistrate, Alandur.

3. The learned Counsel for the Respondent vehemently objected to the arguments of the learned Counsel for the Petitioners stating that what are all stated by the learned Counsel for the Petitioners shall be considered as valuable defence of the Accused, this Court by exercising the extraordinary power under Section 482 of Cr.P.C., cannot quash the criminal Complaint. Further, he had submitted that the averments in the Petition, it has been made clear that misusing relationship of the Respondent herein/Complainant, the first Petitioner as Wife, Petitioners 2 and 3, who are father-in-law and mother-in-law respectively, had threatened the Respondent and his mother by throwing them out of possession from the properties that were acquired by the Respondent/Complainant. Therefore, the Complaint is maintainable.

4. On consideration of the rival submissions, the submission of the learned Counsel for the Petitioners is found acceptable considering the fact that the Petitioners had stated that HMOP between the first Petitioner and the Respondent is pending on the file of the Family Court, Chennai and the D.V.C is pending on the file of the learned First Additional Family Court at Chennai. Under those circumstances, as rightly pointed out by the learned Counsel for the Petitioners, the learned Judicial Magistrate had taken cognizance of the offence. Though it was an offence under Section 506 (i) of IPC, the averments are a different story that the Petitioners are alleged to have caused Land Grabbing. If the allegations of the private Complaint is to be taken as bona-fide case, it is a subject matter to be considered during trial in a Civil Suit. Regarding the claim of the Respondent/Complainant that the property acquired by him was sold and subsequently property was purchased in the name of the first Petitioner, these are to be proved through oral and documentary evidence, instead as a counter blast to the case in HMOP and DVC preferred by the first Petitioner, the present Complaint had been preferred. The arguments of the learned Counsel for the Petitioners that private Complaint in S.T.C.No.419 of 2018 on the file of the learned Judicial Magistrate is found to be without any legal basis. The averments in the private Complaint is with regard to a claim in a civil Suit. But the learned Judicial Magistrate had taken cognizance of the Complaint under Section 506 (i) of IPC and numbered as STC.No.419 of 2018. The Complainant had preferred a Complaint under Section 200 of Cr.P.C and not mentioned the offences alleged to have been committed by the Petitioners herein. Under those circumstances, taking cognizance of the Complaint is the judicial work applying law to the facts of the case by the learned Magistrate. Here, the learned Judicial

Magistrate has not acted as per the powers conferred on him under Cr.P.C. When the private Complaint is bereft of averments regarding the offences committed under the relevant Provision of IPC, the act of the learned Judicial Magistrate in taking cognizance of the private Complaint in S.T.C.No.419 of 2018 as though the offences under Section 506 (i) of IPC is found, not acceptable in the eyes of law. Therefore, it is nothing but an abuse of process of Court for harassing the Petitioners. Therefore, the averments of the learned Counsel for the Petitioners are accepted and the learned Counsel for the Respondent/complainant is rejected.

In the result, this Criminal Original Petition is allowed.

The private Complaint in S.T.C.No.419 of 2018 on the file of the learned Judicial Magistrate, Alandur is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

dh

To.

1. The Judicial Magistrate,
Alandur.
2. The Public Prosecutor,
High Court, Chennai.

+1cc to M/s.Majestic Law Firm, Advocate, S.R.No.36014

Cr1.O.P.No.18174 of 2019

PMK(CO)
SB(12/07/2022)