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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2022

PRONOUNCED ON : 21.02.2022

CORAM : JUSTICE N.SESHASAYEE

CRL.R.C.NO.807 OF 2021
AND
CRL.M.P.NO.11842 OF 2021

S.Sarangapani ... Petitioner/1st Respondent
.Vs.

K.P.Chandrasekaran ... Respondent/Complainant

PRAYER:-

Criminal Revision Petition filed under Section 397 r/w.401 of Cr.P.C., to call for the records in Crl.M.P.No.8595 of 2021 on the file of the II Metropolitan Magistrate, Egmore, Chennai and set aside the order dated 11.10.2021 passed in the same as erroneous and unsustainable in law.

For Petitioner : Mr.B.Mohan

For Respondent : Mr.K.P.Chandrasekaran
(Party-in-Person)

O R D E R

The revision petitioner herein challenges the order of the II Metropolitan Magistrate, Egmore in Crl.M.P.No. 8595 of 2021 dated 11.10.2021 by which the trial Court has taken cognizance of the offence in terms of the complaint of the respondent.

2. A brief note of the facts that led to the filing of this petition may be stated:-

(a)According to the revision petitioner, his son had purchased a certain property some 18 years prior to 2018, that after obtaining necessary approval from the authorities concerned, he has put up a residential building therein.



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(b) There is a temple near by, of which a certain Kumar is the priest. Due to certain enmity between Kumar and the complainant, at the instigation of Kumar a certain Saranya, an advocate, issued notices claiming that the property is a temple property and also made use of it to blackmail the revision petitioner along with her father, the respondent herein and also her mother Ambika.

(c) There are certain ancillary proceedings between the parties which may not be very germane for the present. While so, the revision petitioner preferred a complaint to initiate action against the aforesaid temple priest Kumar, the respondent herein K.P.Chandrasekaran, along with his wife Ambika and the aforesaid Sharanya.

(d) This private complaint was taken on record by the learned II Metropolitan Magistrate, Egmore in CrI.M.P.No.1254 of 2019 and Vide Order dated 06.09.2019 it dismissed the same.

(e) Pursuant to the same, the present respondent had preferred a complaint in CrI.M.P.No.8595 of 2021 against the revision petitioner herein alleging that the previous complaint which the revision petitioner had filed in CrI.M.P.No.1254 of 2019 was a false complaint, that the revision petitioner and others, who are arrayed as party accused in second mentioned CrI.M.P.No.8595 of 2021 alleging that he along with others have committed an offense under Section 211 of IPC. This was taken cognizance of by the learned Metropolitan Magistrate.

3. The accused in CrI.M.P.8595 of 2021 challenges the order of the learned Magistrate taking cognizance of commission of an offence under Section 211 of Cr.P.C in this revision.

4. The learned counsel for the revision petitioner's arguments are two fold;

(a) If an offence under Section 211 is committed, it is for the Court to initiate action under 340 Cr.P.C, which should then satisfy the precondition under Section 195 Cr.P.C.

(b) Nowhere in the Order in CrI.M.P.No.1254 of 2019 has the learned Magistrate indicated that the complaint preferred by the revision petitioner was a false complaint.

He relied on the authority of the Hon'ble Supreme Court in CrI.A.No.45 of 1972 dated 13.12.1978.



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5. The respondent submitted :

(a) that inasmuch as the complaint preferred by the respondent is a private complaint under section 200 Cr.P.C, there is no need for the Court to resort to 340 Cr.P.C and 195 Cr.P.C. He relied on SLP.Nos.4161 to 4164 of 2008 dated 14.11.2011.

(b) After taking cognizance, the learned Magistrate has taken on the complaint to his file in C.C.No.7656 of 2021 and therefore, any revision against an Order taking cognizance is not maintainable.

6. In response, the learned counsel for the revision petitioner submitted that he has not even been served with the summons of the case by the learned Magistrate and hence revision is maintainable

7. The allegation in CrI.M.P.No.8595 of 2021, now pending in C.C.7656 of 2021 is that the revision petitioner has made a false statement in his CrI.M.P.No.1254 of 2019 seek their prosecution under Sec.211 IPC. As per Sec.195 Cr.P.C., a private complaint for an offence under Sec.211 IPC is not maintainable. Sec.195 Cr.P.C. Reads:

"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 Section 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 1980), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211



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(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).

[except on the complaint in writing of that Court 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.]

In terms of Sec.195(1)(b)(i), no Court can take cognizance of an offence under Sec.211 IPC except on a complaint in writing by the Court or any such officer of the Court as the Court may authorise, and it is not given to any private individual to invoke Sec.200 Cr.P.C. for initiating an action on an accusation of committing an offence under Sec.211 IPC. Therefore, the learned Magistrate has egregiously erred in invoking his jurisdiction in taking cognizance of an offence under Sec.200 Cr.P.C. on the basis of a private complaint as it is patently against the statutory bar provided in Sec.195 Cr.P.C. This is not just impropriety or irregularity but goes to the root of the matter as it is plainly illegal to take cognizance of an offence under Sec.211 IPC on the basis of a private complaint.

8. Hence, this revision is allowed, the order taking cognizance of an offence under Sec.211 IPC based on a complaint in CrI.M.P.No.8595 of 2021 is hereby set aside. Necessarily C.C.No.7656 of 2021 also is struck off from the file of the II Metropolitan Magistrate Court, Egmore, Chennai. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



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To

1. The II Metropolitan Magistrate Court,
Egmore, Chennai.
2. -Do Thro the Chief Metropolitan Magistrate,
Egmore, Chennai.

Copy To:-

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.P.Chandrasekaran, Party-in-Person, S.R.No.11945
+1cc to Mr.B.Mohan, Advocate, S.R.No.11296

CRL.R.C.NO.807 OF 2021

GPL (CO)
PBS/31/03/2022