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CrI.O.P.No.22666 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2022

PRONOUNCED ON: 07.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.O.P.No.22666 of 2022

and

CrI.M.P.No.14535 of 2022

Pallavi Koduri	...	Petitioner
	/vs/	
Saravana Ammapalli	...	Respondent

Prayer : Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records and quash the proceedings in C.C.No.2072 of 2022 on the file of the Learned XVII Metropolitan Magistrate Court, Saidapet, Chennai against the petitioner herein.

For Petitioner	...	Mr. J.Jayabalan
Respondent	...	Mr.Saravana Ammapalli Party – in - person

ORDER

The petitioner, challenging the criminal proceedings in C.C.No.2072 of 2022 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai, has filed this criminal original petition.



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2.The counsel for the petitioner submits that the petitioner is an accused in C.C.No.2072 of 2022 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai. The petitioner filed a petition under Section 12 of The Domestic Violence Act, 2005 for the relief under Sections, 18, 21 & 22 of the Domestic Violence Act 2005 against the respondent, who is her husband and in-laws before the XVII Metropolitan Magistrate Court, Saidapet, Chennai in Crl.M.P.No.4673 of 2013. Thereafter, it was numbered as DVC.No.102 of 2017. In that case, judgment was pronounced on 05.01.2022 and allowed partly. During the pendency of the abovesaid DVC No.102 of 2017, the petitioner challenged the order passed in Crl.M.P.No.4673 of 2013 in Crl.A.No.114 of 2014 and Crl.M.P.No.2121 of 2021 in Crl.A.No.25 of 2021 before the Sessions Court.

3.In Crl.M.P.No.2121 of 2021 in Crl.A.No.25 of 2021, the petitioner mentioned her as unemployed person. According to the respondent/complainant, the petitioner filed a false affidavit, which was affecting the administration of justice. Hence, he filed a private complaint



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in C.C.No.2072 of 2022 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai. The criminal proceedings is abusing the process of the Court for the reason that the complainant has no right to file a private complaint before the Metropolitan Magistrate Court. The alleged false affidavit was filed before the Sessions Court, if any action has to be taken, the Sessions Court has to initiate criminal proceedings for filing false affidavit. The complainant has no right to file a private complaint before the Metropolitan Magistrate Court but the learned Magistrate failed to consider the Criminal Procedure Code under Section 195 as well as 340 Cr.P.C. Private prosecution are barred absolutely and only the Court, in relation to which the offence was committed, may initiate proceedings. Therefore, criminal proceedings is not maintainable, they have to be quashed. To support his argument, the learned counsel relied upon the judgment of this Court in ***K.Ramaswami Iyengar Vs. K.V.Panduranga Mudaliar*** reported in (46 L.W.704) and ***M.S.Ahlawat Vs. State of Haryana and Another*** reported in (2000) 1 Supreme Court Cases 278 and thus, pleaded to quash the criminal proceedings in C.C.No.2072 of 2021 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai



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4.The respondent/complainant appeared before this Court as party-in - person and filed a written argument and contended that the petitioner made a false allegations suppressing the material facts and by way of misrepresentation obtained order in Crl.A.No.114 of 2014 on 24.03.2015 before the VII Additional Sessions Court. The appellate Court granted maintenance of Rs.15,000/-to the child alone. This Court by way of a common order dated 20.01.2016 in Crl.R.C.No.556 & 702 of 2015, granted maintenances a sum of Rs.5,000/- to the child alone and directed the XVII Metropolitan Magistrate Court, Saidapet, Chennai, to dispose the Domestic Violence Case within a period of two months. Therefore, the accused has to be prosecuted for giving false affidavit before the Court and she should be punished under Section 193 IPC and thus, pleaded to dismiss the criminal original petition.

5.I have considered the submission made by the learned counsel for the petitioner as well as the submission made by the respondent, who is appeared party-in-person.



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6.A perusal of the records reveals the fact that the petitioner is an accused in C.C.No.2072 of 2022 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai. The petitioner/accused and the respondent/complainant were married on 16.04.2008 at Chittoor as per Hindu Rites, Caste and Customs. Out of the wedlock, they are having a female child, who was born on 10.01.2010, now aged about 12 years. Due to the difference of opinion between them, they are living separately. The petitioner wife filed the criminal case in DVC No.102 of 2017 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai. During the pendency of case, the petitioner filed criminal appeal in Crl.A.No.25 of 2021 in Crl.M.P.No.2121 of 2021 before VII Additional Sessions Judge. In the affidavit, she had pleaded that she was an unemployed person and she had to take care of herself and minor daughter. According to her husband/complainant, she was employed and working, since she filed a false affidavit. She has to be punished under Section 193 IPC. Therefore, the complainant/husband filed the impugned criminal proceedings in C.C.No.2072 of 2022 for the alleged false affidavit filed by the wife before



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VII Additional Sessions Judge in Crl.Appeal No.25 of 2021. After recording the sworn statement of the complainant, the learned XVII Metropolitan Magistrate Court, Saidapet, Chennai, took the case on file in C.C.No.2072 of 2022 for the offences punishable under Section 193 IPC and ordered for summon to the accused person. Even though the case has been filed against the two persons, the case has been taken on file against this petitioner alone.

7. With regard to punishment for giving false evidence in the judicial proceedings, the procedure is well established and well settled. In this regard, the principle stated under Section 195 Cr.P.C is very clear and the provision runs 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, 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 section 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), 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 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

8.A reading of the abovesaid provision, cleared the legal position that private prosecution are barred absolutely and only the Court, in relation to which the offence was committed, may initiate proceedings. The complainant, who is animated by a sense of personal grievance, cannot be allowed to take personal revenge. Further, this legal position is considered by the Hon'ble Supreme Court as well as this Court in the judgment of ***M.S.Ahlawat Vs. State of Haryana and Ors*** reported in ***MANU/SC/0687/1999*** and ***K.Ramaswami Aiyangar Vs. K.V.Panduranga Mudaliar*** reported in ***MANI/TN/0217/1937***.



9.The 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.

The relevant portion of the judgment of the Hon'ble Supreme Court in *M.S.Ahlawat Vs. State of Haryana and Ors* reported in *MANU/SC/0687/1999* is as follows;

“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 requires the Court to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice. Section 340 Cr.P.C. Prescribes the procedure as to how a complaint may be preferred under Section 195 Cr.P.C. 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.”



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WEB COPY 10. In view of the abovesaid principles of law, the private complaint filed by the complainant before the XVII Metropolitan Magistrate Court, Saidapet, Chennai, is unsustainable and liable to be quashed. Accordingly, the criminal proceedings in C.C.No.2072 of 2022 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
sms
To

07.12.2022

1. The Learned XVII Metropolitan Magistrate Court,
Saidapet, Chennai.
2. The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM ,J.

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Pre-delivery order made in
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