



THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.16546 of 2019
and
Crl.MP(MD)No.9820 of 2019

1.Palanikumar
2.Sangaiah
3.Mookaiah
4.Mathialagan

: Petitioners/A1, A2, A3 and A5

Vs.

M.Devarajan : Respondent/Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the case in STC No.5624 of 2019 on the file of the Judicial Magistrate No.6, Madurai and quash the same.

For Petitioners : M/s.C.Arockiaselvi

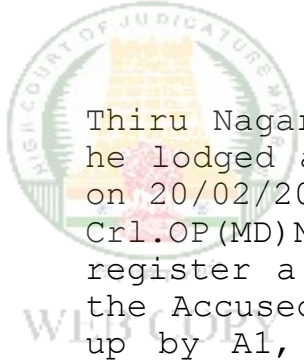
For Respondent : Mr.T.K.Gopalan

O R D E R

The petition has been filed seeking quashment of the case in STC No.5624 of 2019 on the file of the Judicial Magistrate No.6, Madurai.

2.The case of the respondent in brief:-

He lodged a private complaint with the following allegations:- He purchased the property, which lies on the eastern side of his house, from one Murugan and others, on 23/08/2007 situated in survey No.166/1 measuring about 3 cents and 207-3/4 sq. feet. He is in possession and enjoyment of the property. The 2nd accused wanted to purchase the above said property. Since he purchased, they entertained grudge. The 5th accused was residing in the opposite side and he was rearing dogs and those dogs created some sort of nuisance. When that was informed to the house owner, the 5th accused was directed to vacate the house and accordingly, he vacated the house. On 17/02/2013, the accused 1 and 2 damaged the boundary stones and fencing. When that was resisted, he was criminally intimidated. So, he lodged a complaint on 20/02/2013 before the



Thiru Nagar Police Station. Since no proper enquiry was undertaken, he lodged a complaint before the Superintendent of Police, Madurai, on 20/02/2013. Even after that, there was no proper action, he filed CrI.OP(MD)No.21228 of 2013 before this court seeking a direction to register a case. That was allowed by this court and it was sent to the Accused 1 and 2. So to wreck vengeance, the 3rd accused was set up by A1, A2, A4 and A5 to lodge a false complaint, as if the complainant and his wife and son committed the offences under sections 294(b), 323 IPC and section 3(1)(x) of SC/ST (POA) Act. Based upon which, the complaint was taken cognizance in Special SC No.97 of 2015 and they were acquitted by the III Additional District Court, Madurai, on 25/09/2017. That prosecution has been lodged maliciously with an intention to defame the complainant and his family members and to tarnish their image in the society. The accused are liable to be punished under section 211 IPC.

3. Seeking quashment of the criminal proceedings, A1, A2, A3 and A5 have preferred this petition on the ground that the private complaint is barred under section 195 Cr.P.C against the first petitioner. The other witnesses and accused persons have given evidence before the trial court with true facts. Only by giving benefit of doubt, the case was acquitted. That case was properly investigated and final report was also filed.

4. Heard both sides.

5. This petition has been filed on two grounds. The first petitioner was working as Inspector of Police in the Tamil Nadu Police. So, sanction under section 197 Cr.P.C is required for prosecuting him. Another ground is that section 195(1)(b) Cr.P.C bars filing of the private complaint for the offence punishable under section 211 IPC.

6. Now let us straightaway go to the provision of section 211 IPC, which reads as follows:-

"211. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, 1[imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."



7. Here, the ground on which the private complaint has been filed is that it was a total malicious prosecution on their part in lodging the prosecution in Special SC No.97 of 2015, which ended in acquittal. In that case, an observation, that was made by the trial court has been stated in the complaint. We need not go into the correctness of the finding that has been rendered by the trial court, while disposing the criminal case.

8. The attempt that was made by the complainant to file criminal appeal with a delay in preferring the appeal against the judgment of acquittal in the above said Special SC No.97 of 2015 did not succeed. That was dismissed by this court in CrI.MP(MD)No.9602 of 2019 in CrI.A(MD)SR No.32324 of 2019, dated 19/02/2020. The learned counsel appearing for the respondent would submit that the accused persons have been acquitted not due to absolute lack of evidence or absolute falsify of the prosecution, but they have been given benefit of doubt. The ingredients of section 211 IPC does not attract. Because absolutely, there was no intention on the part of the petitioners in lodging the prosecution maliciously or knowingly fully well that the charge is not true. We need not concentrate much on this issue, which was decided by the trial court. Section 195(1)(b) Cr.P.C clearly bars the prosecution under section 211 IPC, otherwise than a complaint by the concerned court. Here absolutely, no steps have been taken by the respondent to approach the concerned court to lodge a complaint under section 195(1)(b) Cr.P.C. Without resorting to, such a private complaint has been filed, which is clearly barred by the above said provision. On the sole ground, I am of the considered view that the entire prosecution is liable to be quashed.

9. But however, the learned counsel appearing for the respondent would submit that criminal proceedings have been initiated against the first accused and others by procuring the complainant, who is no way connected with the issue. This is the clear observation that has been made by the trial court, while disposing the case. According to him, it is clear case of malicious prosecution. But even though, the contention on the part of the learned counsel appearing for the respondent may or may not be true, as mentioned earlier, he ought to have taken steps as per law. Having failed to follow the procedures, the criminal prosecution will amount to nothing, but abuse of process of court. So the contention on the part of the respondent is rejected and accordingly, the prosecution is liable to be quashed.

10. Even though various judgments have been cited by the learned counsel appearing for the petitioners to sustain his argument, in view of the clear bar, I am not referring to the judgments that were cited by the learned counsel appearing for the petitioners.

11. In the result, this criminal original petition is **allowed**. The case in STC No.5624 of 2019 on the file of the Judicial



Magistrate No.6, Madurai is hereby quashed against the petitioners.
Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

WEB COPY

/ /2022

Sub Assistant Registrar(CS)

er

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate No.6,
Madurai.

+1 CC to M/s.T.K. GOPALAN, Advocate (SR-22579[F] dated 29/04/2022)

Cr1.OP(MD)No.16546 of 2019
29.04.2022

MGJ(10.06.2022) 4P 3C