



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2021

Delivered on : 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)No.16931 of 2019

and

Crl.M.P. (MD)No.10034 of 2019

V.Kamala Rani

(wrongly mentioned in private complaint
as Kamala @ Nurse Kamala)

... Petitioner/ Accused No.3

vs.

J.Selva Rani

... Respondent/ Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to private complaint in C.C.No.222 of 2018 on the file of the learned Judicial Magistrate Court No.1, Dindigul District and quash the same as illegal as against the petitioner alone.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondent

: Mr.M.Bazeerdheen

for Mr.R.Karunanidhi

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in C.C.No.222 of 2018 pending on the file of the Judicial Magistrate Court No.1, Dindigul and quash the same as against the petitioner.

2.The petitioner is the third accused in C.C.No.222 of 2018 on the file of the Judicial Magistrate Court No.1, Dindigul.

3.The respondent has filed a private complaint under Section 200 Cr.P.C. against three accused including the petitioner herein and the learned Magistrate has taken cognizance of the case in C.C.No.222 of 2018 for the alleged offences under Sections 120(B) r/w 177, 179, 181, 182, 197, 198, 200, 465, 466, 468, 471 and 507 IPC r/w Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Sections 23(1)(b) & 3 of the Registration of Births and Deaths Act, 1969.

4.The respondent has lodged a complaint against the Hospital Management, Dr.J.Amala Devi, who is running the hospital and Nurse Kamala/the petitioner herein.

5.The case of the complainant is that at her request the

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petitioner/third accused brought the complainant to the first accused hospital for abortion, that the petitioner and the second accused had advised the complainant not to abort her child and after delivery they will help her in all the way and including treatment to her mentally challenged third child, that since the complainant and her husband had refused to accept the words of the petitioner and the second accused and had pressed them for abortion, she was informed that it will be dangerous to her life if abortion is done at that time, that thereafter, the complainant gave birth to a female child on 09.02.2014 in the first accused hospital, that the petitioner and the second accused had directed the complainant to pay Rs.18,000/- towards medical expenses, that the complainant's request to give one week time was not accepted and pushed her out of hospital premises, that when the complainant had visited the hospital with required amount, they have informed that her child was sold to some other third party and that when the same was questioned by the complainant, they had abused her and threatened with dire consequences.

6.It is the further case of the complainant that she was shocked and surprised to know that the second accused had signed in the birth certificate along with the adopted parents and obtained the birth certificate and that therefore, the complainant was constrained to lodge a police complaint and since the same was of no avail, she was forced to file the private complaint.

7.The learned counsel for the petitioner would submit that no prosecution for an offence punishable under the Registration of Births and Deaths Act shall be instituted except by an officer authorised by the Chief Registrar or special order in this behalf, that the respondent has preferred the above complaint after four years from the date of cause of action, that the petitioner is innocent and she had not committed any offence and she has been falsely implicated in the above case and that the same is a clear case of abuse of process of law.

8.The learned counsel for the petitioner would further submit that the second accused Dr.J.Amala Devi has filed a criminal original petition in Crl.O.P.(MD)No.11756 of 2019 under Section 482 Cr.P.C., to call for the records in C.C.No.222 of 2018 and quash the same as against her and that this Court has passed an order dated 27.09.2019 quashing the proceedings as against the second accused and that since the proceedings as against the main accused has already been quashed by this Court and since the petitioner being a nurse in the hospital of the second accused, she is entitled to get similar order. To put it in short, the learned counsel for the petitioner would submit that the present case is covered by the judgment passed in Crl.O.P.(MD)No.11756 of 2019 dated 27.09.2019.

9.As rightly pointed out by the learned counsel for the



petitioner, the learned Judge of this Court in Crl.O.P.(MD)No.11756 of 2019 has dealt with all the aspects of this case and came to the conclusion that the entire complaint is nothing but clear abuse of process of law and as such, the second accused need not undergo for ordeal of the trial. It is necessary to refer the following passages of the order passed in Crl.O.P.(MD)No.11756 of 2019,

"7.This petition has been filed to quash the private complaint by the petitioner, who arraigned as A2 in C.C.No.222 of 2018 on the file of the learned Judicial Magistrate No.1, Dindigul, having been taken cognizance for the offence under Sections 120(B), r/w 177, 179, 181, 182, 197, 198, 200, 465, 466, 468, 471, 507 of I.P.C. r/w Section 26 of Juvenile Justice Act (Care and Protection of Children) Act, 2000 and Sections 23(1)(b) & 3 of the Registration of Birth and Death Act, 1969.

8.The crux of the complaint is that the respondent admitted to the hospital belonging to the petitioner for her delivery of 4th child and since she was not able to be pay the fees, she was sent out from the hospital by keeping the child in their custody and utilising this circumstance, they also fabricated the false documents as if one Gunsekaran and Lakshmi are the biological parents and sold out the child to them for a sum of Rs.5 lakhs. When the respondent went to hospital with money, she came to understand that her child has already been sold out. Thereafter, on the complaint, the child was again handed over to the respondent. But, the police officials failed to register any case as against the petitioner and other accused persons.

9.On the complaint lodged by the respondent before the Dindigul West Town Police Station, they conducted enquiry and found that the child born to the respondent was handed over by her to one Gunasekaran and Lakshmi and thereafter, she wanted back her child and as such, her child was handed over to her by the police officials. Further, when the respondent made so many allegations as against the accused persons 1 to 3, she failed to implead the persons, who alleged to have purchased her child.

10.It is seen from the complaint that though all along she made allegations as against them, she did not implead them as accused for the reasons best known to her. It is relevant to extract the offence under Section 25 of the Registration of the Births and Deaths Act, 1969:



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"25.Sanction for prosecution .- No prosecution for an offence punishable under this Act shall be instituted except by an officer authorised by the Chief Registrar by general or special order in this behalf."

11.As per the above section, no prosecution for an offence punishment under this Act shall be instituted except by an officer authorises by the Chief Registrar. In the case on hand, the respondent lodged private complaint for the offence under Sections 23(1)(b) & 3 of the Registration of Births and Deaths Act, 1969. Therefore, the petitioner is not a competent person to prosecute the petitioner under the above said Act.

12.Insofar as the offences under Sections 177 to 182 of I.P.C. are concerned, the complaint can be instituted only by the public servant. Except the public servant, no Court shall take cognizance for this offence. It is also relevant to extract Section 195 of Cr.P.C., which 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 -

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



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(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."

13. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in Criminal Appeal No.211 of 2019 dated 04.02.2019 in the case of **Sh.Narendra Kumar Srivastava Vs. The State of Bihar & Ors**, where, the Hon'ble Apex Court has held as follows:

"20. As already mentioned, clauses under Section 195(1)(b) of the Cr.P.C. i.e. subsection 195(1)(b)(i) and sub-section 195(1)(b)(ii) cater to separate offences. Though Section 340 of the Cr.P.C. is a generic section for offences committed under Section 195(1)(b), the same has different and exclusive application to clauses (i) and (ii) of Section 195(1)(b) of the Cr.P.C.

21. In *Sachida Nand Singh* (supra) relied on by the learned counsel for the appellant, this Court was considering the question as to whether the bar contained in Section 195(1)(b)(ii) of the Cr.P.C. is applicable to a case where forgery of the document was committed before the document was produced in a court. It was held:

"6. A reading of the clause reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. There is no dispute before us that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. There is also no dispute that if forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person. If so, will its prosecution in a court make all the difference?



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23. The sequitur of the above discussion is that the bar contained in Section 195(1) (b)

(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court. Accordingly we dismiss this appeal."

22. In Sachida Nand Singh (supra), this Court had dealt with Section 195(1) (b) (ii) of the Cr.P.C unlike the present case which is covered by the preceding clause of the Section. The category of offences which fall under Section 195(1) (b) (i) of the Cr.P.C. refer to the offence of giving false evidence and offences against public justice which is distinctly different from those offences under Section 195(1) (b) (ii) of Cr.P.C, where a dispute could arise whether the offence of forging a document was committed outside the court or when it was in the custody of the court. Hence, this decision has no application to the facts of the present case.

23. The case in hand squarely falls within the category of cases falling under Section 195(1) (b) (i) of the Cr.P.C. as the offence is punishable under Section 193 of the IPC. Therefore, the Magistrate has erred in taking cognizance of the offence on the basis of a private complaint. The High Court, in our view, has rightly set aside the order of the Magistrate. However, having regard to the facts and circumstances of the case, we deem it proper to set aside the costs imposed by the High Court."

14. The object of the above section is to protect person from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill-will or frivolity of disposition at the instance of private individuals for the offences specified therein. Therefore, it is mandatory that the Court has no jurisdiction to take cognizance of any of the offence mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the



15.Perusal of the said decision along with the facts and circumstances of the case, the above said decision is squarely applies to the case on hand and the respondent has no competence to prosecute the petitioner for the offences under Sections 177, 179, 181, 182, 197, 198 and 200 of I.P.C.

16.At the same time, the other offences under Sections 465, 468 and 471 of I.P.C. are concerned, they are with related to document produced or given in evidence in a proceedings in any Court as per the procedure contemplated under Section 195 of Cr.P.C. Therefore, the present complaint has no legs to stand further and the same is liable to quashed.

17.Insofar as the offence under Section 507 of I.P.C. is concerned, the alleged birth certificate has been fabricated in the year 2014, whereas, the present complaint has been lodged only in the year 2018. The punishment for the said offence may extend to two years. Therefore, the complaint should have been lodged within a period of three years, whereas, the present complaint is lodged after four years and as such, it is directly hit under Section 468 of Cr.P.C. and this complaint is barred by limitation.

18.It is also seen that even as per the case of the respondent, she was admitted in the hospital and gave birth to a female child. Thereafter, she was discharged from the hospital and went to her house for the reason that she was directed to pay a sum of Rs.18,000/- towards medical expenses. No prudent women left the new born child with the hospital for a period of one week. Therefore, only at the instance of the respondent, the child was handed over to one Gunasekaran and Lakshmi and thereafter, since the respondent wanted to return back her child, the child also handed over to her by the police officials. Even then, the said Gunasekaran and Lakshmi are not impleaded as accused in the complaint lodged by the respondent. Hence, the intention of the respondent is that if the said persons are impleaded as accused, the entire truth will come out and as such, cleverly and conveniently, she omitted them to implead as accused. Therefore, the entire complaint is nothing but clear abuse of process of law and as such, the petitioner need not undergo for ordeal of the trial."



10.In the case on hand, the main allegation against the present petitioner is that she gave money to the complainant and asked her not to ask about the whereabouts of her child and they would take care of her mentally challenged child.

11.The learned counsel for the petitioner would submit that the complainant herself gave her child to the third party and aided the second accused to enter the name of the adopted parents Gunasekaran and Lakshmi and that the petitioner has nothing to do with the above case of the complainant.

12.As rightly contended by the learned counsel for the petitioner, serious allegations were made only against the second accused. Admittedly, the respondent has not implicated the adopted parents in her complaint and she has not offered any explanation for the same.

13.As already pointed out, the learned Judge has specifically held that since the complaint has been lodged after four years, the same is clearly hit under Section 468 Cr.P.C. and the complaint is barred by limitation.

14.As already pointed out, since the proceedings as against the second accused has been quashed by this Court and that since the petitioner being a nurse working under the second accused and stands on similar footing, the above judgment, can be made applicable to the case on hand.

15.As rightly concluded by the learned Judge, the entire complaint is nothing but abuse of process of law and as such, directing the petitioner to face the trial is not warranted. Hence, this Court concludes that the proceeding in C.C.No.222 of 2018 against the petitioner is liable to be quashed.

16.In the result, this criminal original petition is allowed and the proceeding in C.C.No.222 of 2018 on the file of the learned Judicial Magistrate Court No.1, Dindigul is quashed as against the petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-

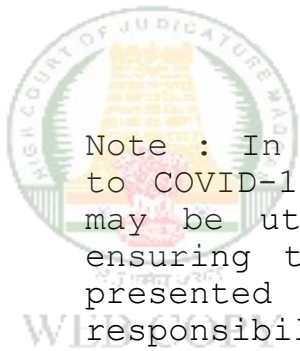
Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

CSM



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.1,
Dindigul.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-3868[F] dated 03/02/2022

CrI.O.P.(MD)No.16931 of 2019
and
CrI.M.P.(MD)No.10034 of 2019
01.02.2022

SVS (CO)
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