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Crl.O.P.Nos.12377, 17991 of 2018 & 11673 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.12377, 17991 of 2018 & 11673 of 2019
and Crl.M.P.Nos. 6592, 9391 of 2018 & 6036 of 2019

Buvaneswari

...Petitioner in Crl.O.P.
No.12377 of 2018

1. Kalyanakumar
2. V.Rajkumar
3. B.Somasundari
4. Vijayagurusamy
5. Raymond
6. R.Krishnamoorthy
7. Karuppasamy

...Petitioners in Crl.O.P.
No.17991 of 2018

Asokan

...Petitioner in Crl.O.P.
No.11673 of 2019

Vs.

N.Kumar

... Respondent in all
Crl.O.Ps.

Common Prayer: Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the private complaint in C.C.No.115 of 2017 on the file of the learned Judicial Magistrate, Vaniyampadi and quash the same as illegal.



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For Petitioners in
Crl.O.P.Nos.12377
& 17991/2018 : Mr.C.Mayilvahana Rajendran
For petitioner in
Crl.O.P.No.11673/2019 : Mr. Sugumar R. Rajulu

For Respondent in all
Crl.O.Ps. : Mr.K.Thiruvengadam

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.No.115 of 2017 on the file of the learned Judicial Magistrate, Vaniyampadi, thereby taken cognizance for the offences under Sections 465, 467, 468, 471 of IPC, as against the petitioners.

2. The case of the prosecution is that the petitioners are arrayed as accused 1 to 8 and 10 in the private complaint lodged by the respondent. The respondent filed the private complaint alleging that he had purchased a vehicle bearing registration No.TN59AC7024 from the 12th accused, in the year 2015. The 12th accused appeared before the Motor Vehicle Inspector and produced all the relevant documents of the vehicle. The defacto complainant had paid road tax periodically. However, he was not issued with the registration certificate from the Regional Transport Office, Vaniyampadi, by the Regional Transport



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Office, Madurai. Therefore, the respondent was not able to operate his vehicle and he incurred heavy loss. On receipt of the said complaint and after recording the sworn statement from the defacto complainant, the trial Court had taken cognizance for the offence under Sections 465, 467, 468, 471 of IPC.

3. Heard the learned counsel appearing on either side and perused the material placed before this Court.

4. All the petitioners herein are the officials of the Regional Transport Office, Vaniyampadi and Regional Transport Office, Madurai. It is seen that the defacto complainant is the resident of Vaniyampadi and he intended to purchase a Swarraj Mazda FCS Chasis vehicle bearing registration No. TN59AC7024 from the 12th accused, who is the resident of Madurai. The said vehicle was registered with the office of the Regional Transport Office, Madurai. The said vehicle was issued with permit in P.C.No.278/TN59/CC/2016. Believing the said permit, the defacto complainant paid an advance of Rs.1,80,000/- and for remaining amount, he approached a private financier for loan. The 12th accused also signed in the transfer of ownership form and the vehicle was registered in



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the name of the petitioner. On the strength of the registration, the petitioner also paid road tax. However, the registration certificate was not sent to the office of the Regional Transport Office, Vaniyambadi.

5. On perusal of the order dated 21.03.2017, passed by the Registering Authority Madurai (North) revealed that the permit issued for the said vehicle was lapsed as on 15.07.2011 without renewal. However, erroneously tax in respect of the said vehicle was accepted upto 31.03.2015 and fitness certificate was also renewed upto 31.03.2016. In the mean while, they received application from the defacto complainant to transfer of permit entries in the permit. On verification, the authority concerned found some bogus entries and fake permit were prepared by some culprits.

6. The following irregular transactions were made in the registration certificate and permit are found to be bogus one:-

(i) Alteration entries from EIV to Maxi-Cab by reducing seating capacity from 21 in all to 13 in all are bogus entries without any basic records mentioning R.No.16309/B1/2015 which relates to an unrelated subject.



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(ii) Transfer of Ownership from the name of "The Secretary,

Kamarajar Middle School, Sholavanthan, Madurai, to the name of Thiru.S.Sundarajan, S/o.M.M.S. Subramanian, Sri Meenatchi Garden, Plot No.6, Nagaiah samy Nagar, G.R.Nagar, Madurai -7, is a forged entry without any basic records.

(iii) Maxi-Cab Permit issued in PC No:278/TN59/CC/2016 (from 11.03.2015 to 10.03.2020) in the name of Thiru.S.Sundarajan, Madurai 7 in R.No.8075/A3/2015 is ascertained that it is a fake permit by forged the signature of Regional Transport Office, Madurai(North).

(iv) Proceedings of the Regional Transport Office, Madurai (N) in R.No.16640/A3/2015 dated 23.06.2015 allowing transfer of permit of the school bus TN59AC 7024 from the name of S.Sundararajan to N.Kumar of Vaniyampadi is also found to be a fake one.

7. Without knowing these facts, the defacto complainant availed loan and made hire purchase agreement with the private financier. As per Section 55(5) of the Motor Vehicle Act, 1988, if a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were or by representation of facts, which were false if any material particular shall



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cancel the registration. Accordingly, the Registering Authority cancelled the endorsement/permits issued in favour of the defacto complainant. It was also duly informed to the Regional Transport Office, Vaniyampadi by the communication dated 18.05.2017.

8. Accordingly, the Registering Authority cancelled the registration in favour of the defacto complainant. Therefore, there was no manipulation of records or no cheating done by the petitioners. Unfortunately, the trial Court without considering the above facts and circumstances mechanically had taken cognizance and issued summons.

9. That apart, all the petitioners are government officials and alleged occurrence said to have been taken place while they were discharging their official duty. Therefore, before taking cognizance, the defacto complainant ought to have obtained sanction for prosecution from the competent authority as contemplated under Section 197 of Cr.P.C. Admittedly, in the case on hand, no sanction was occurred by the competent authority to prosecute the petitioners herein. Therefore, the entire proceeding initiated as against the petitioners cannot be sustained and liable to be quashed.



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10. Some of the petitioners are having office at Madurai. Even then, the trial Court viz., the learned Judicial Magistrate, Vaniyambadi, had taken cognizance without following the procedure as contemplated under Section 202 of Cr.P.C. It is relevant to extract the provision under Section 202 of Cr.P.C., as follows:-

“202. Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.



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(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”

11. Thus it is clear that while taking cognizance, the trial Court should postpone the issue of process against the accused. However, the accused are residing at the place beyond the area of the trial Court jurisdiction. The trial Court shall postpone the issue of summon against the accused and the trial Court either enquire into the case itself or direct an investigation to be made by a police officer or by such other person as it thought fit for the purpose of deciding whether or not there is sufficient ground for proceeding.

12. In the case on hand, admittedly the trial Court immediately



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after recording the sworn statement, without even conducting any enquiry, straight away issued summons to the persons who residing outside the jurisdiction of the trial Court. In this regard, it is relevant to rely upon the judgement of the Hon'ble Supreme Court of India in a case of **Aroon Poorie vs. Jayakumar Hiremath** made in **Criminal Appeal No. 843 of 2016** with No. 847 of 2016 **dated 05.09.2016**. The relevant portion is extracted hereunder:

“2. The above apart, from the materials on record it appears that the accused appellants in the present appeals have and maintain residence beyond the local jurisdiction of the learned trial Court. Under the provisions of Section 202(1) Cr.P.C. it was, therefore, mandatory for the learned Magistrate to hold an inquiry either by himself or direct an investigation by the Police prior to the issuance of process. Admittedly, the same had not been done. If the aforesaid mandatory provisions of Section 202(1) Cr.P.C. had not been followed, the learned trial Court would not have the jurisdiction to issue process/summons as has been done.”

Admittedly, the trial Court had not chosen to conduct any enquiry either by itself or by any police officer prior to issuance of process. Therefore, the entire proceeding is vitiated, since the trial Court failed to follow the procedure laid down under Section 202 of Cr.P.C., while taking



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cognizance as against the persons, who reside outside the jurisdiction of the trial Court.

13. In view of the above discussions, the complaint lodged by the respondent cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the impugned proceedings in C.C.No.115 of 2017 on the file of the learned Judicial Magistrate, Vaniyampadi, is hereby quashed as against the petitioners alone. The trial Court is directed to proceed with the trial as against the other accused persons in accordance with law.

14. With the above directions, all the Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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1. The Judicial Magistrate,
Vaniyampadi.



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G.K.ILANTHIRAIYAN. J.

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