



Crl.O.P.No.1834 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.1834 of 2023

S.Elred Kumar

... Petitioner

Vs.

M/s.City Union Bank Ltd.,
Represented by its Chief Manager,
C.Venkatraman,
No.706, Ashok Nagar,
Chennai.

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to pass a direction Debt Recovery Tribunal II, Chennai to initiate criminal prosecution under Section 195(1)(b) r/w 340(1) Cr.P.C against the respondent for producing false evidence under Section 192 and 193 IPC in O.A.No.33 of 2014 on the file of Debt Recovery Tribunal II, Chennai.

For Petitioner : Mr.K.P.S.Palanivelrajan

ORDER

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This Criminal Original Petition has been filed for directing the Debt Recovery Tribunal II, Chennai to initiate criminal prosecution under Section 195(1)(b) r/w 340(1) Cr.P.C against the respondent for producing false evidence under Section 192 and 193 IPC in O.A.No.33 of 2014, on the file of Debt Recovery Tribunal II, Chennai.

2. The learned counsel for the petitioner submitted that the petitioner purchased a property from one Shanmugam on 27.08.2004 and is in possession of all the documents in connection with the property. City Union Bank filed OA.No.33 of 2014 on the file of the Debt Recovery Tribunal-I at Chennai for recovery of money against M/s.Esvee Card and four others including the petitioner. City Union Bank claimed that the documents, which are in possession and custody of the petitioner, are in possession of the City Union Bank. However, when the matter came to be disposed, learned Presiding Officer of Debt Recovery Tribunal-II, Chennai observed that the documents are not in possession of City Union Bank. Therefore, the petitioner has filed this petition seeking a direction to



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the Debt Recovery Tribunal II, Chennai to initiate criminal prosecution under Section 195(1)(b) r/w 340(1) Cr.P.C against the respondent for producing false evidence under Section 192 and 193 IPC in O.A.No.33 of 2014 on the file of Debt Recovery Tribunal II, Chennai.

3. Heard the submissions of the learned counsel for the petitioner. Perused the records.

4. This Court, on going through Section 195 CrPC finds that, if any offence punishable under any of the Section namely, sections 193 to 196, is committed in, or in relation to, any proceeding in any court, no Court shall take cognizance of the offence, except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.

5. For better understanding, relevant portion of Section 195 CrPC is as



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follows,

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“(1) No court shall take cognizance-

(a)

(i) If 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 sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive)



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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.”

6. It is clear that, the complaint should be given only by the Court or by such officer of the Court, as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate. Thus, in the case before hand, only the Presiding Officer of Debt Recovery Tribunal-II, Chennai or the



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person authorized by him can alone give a complaint in this regard.

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7. With regard to the procedural aspect, Section 340 CrPC deals with how the complaint should be proceeded,

“340. Procedure in cases mentioned in section 195.

(1) When upon an application made to it in this behalf or otherwise any court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) Record a finding to that effect;

(b) Make a complaint thereof in writing;

(c) Send it to a Magistrate of the first class



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having jurisdiction;

(d) Take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) Bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed, -

(a) Where the court making the complaint is a High Court, by such officer of the court as the



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court may appoint;

(b) In any other case, by the presiding officer of the court.

(4) In this section, “court” has the same meaning as in section 195.”

8. As per Section 340 Cr.P.C, the Court should form an opinion that, it is expedient in the interest of justice that, an enquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195 Cr.P.C. There should be a preliminary inquiry before framing of such an opinion. Only then, it should record a finding to that effect and make a complaint thereof in writing and send it to a learned Magistrate of the 1st class having jurisdiction. It is not required that, in every other case of allegation of commission of offence mentioned under Section 195 (1) (b) Cr.P.C., a complaint should be given.

9. In the case before hand, petitioner without approaching the Presiding Officer of Debt Recovery Tribunal-II for the alleged commission of offence under Section 192 and 193 IPC straight away approached this Court for the relief of initiating criminal prosecution under Section 195(1)(b) r/w 340(1) Cr.P.C against



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the respondent for producing false evidence, which is against the law.

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10. Therefore, this Criminal Original Petition is dismissed.

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Internet : Yes / No

Index : Yes

Speaking/Non speaking order
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To

1. The Debt Recovery Tribunal II,
Chennai.
- 2.M/s.City Union Bank Ltd.,
Represented by its Chief Manager,
C.Venkatraman,
No.706, Ashok Nagar,
Chennai.
- 3.The Public Prosecutor
Madras High Court.

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G.CHANDRASEKHARAN,J.

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