



Crl.O.P(MD).No.1411 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 05.07.2023

Delivered On : 19.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.1411 of 2020

1.Rosariammal

2.Srilraj

3.Kennedy

...Petitioners

Vs

1.State rep. by

The Inspector of Police,
Anna Nagar Police Station,
Madurai City.
(In Crime No.655 of 2019)

2.Vijayalakshmi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the First Information report in FIR in Crime No.655 of 2019 on the file of the first respondent and quash the same in respect of the petitioners as illegal.

For Petitioners

: Mr.C.Mayil Vahana Rajendran

For 1st Respondent

: Mr.R.M.Anbunithi

Government Advocate (Crl. Side)

For 2nd Respondent

: Mr.R.Gandhi, Senior Counsel



Crl.O.P(MD).No.1411 of 2020

ORDER

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2.According to the petitioners, one Sivakumar son of Anandappan has filed a complaint before the first respondent in Crime No.24 of 2018 for the offences under Sections 406 and 420 of IPC against one Shopia and she was arrested and then released on bail and sureties were also produced before the learned Judicial Magistrate No.I, Madurai. In the meantime, the second respondent herein filed a petition before the Judicial Magistrate No.I alleging that the accused nos.1 to 3 in the said crime number created forged documents and produced the sureties before the learned Judicial Magistrate No.I, Madurai for releasing the accused in Crl.M.P.No.4300 of 2018. Then the second respondent herein has filed a petition before the learned Judicial Magistrate No.I for taking cognizance as against the accused therein for the said forgery committed by them. But the said complaint was returned by the learned Judicial Magistrate No.I, Madurai. Then the second respondent herein has filed a petition before this Court in Crl.O.P.(MD)No.19276 of 2018 and this Court disposed of the application by an order dated 15.11.2018, by directing the second respondent herein to re-submit the petition by quoting Section 340 r/w. 195 of Cr.P.C.



CrI.O.P(MD).No.1411 of 2020

WEB COPY

3. Pursuant to the order passed by this Court, the second respondent herein namely Vijaya represented the same before the learned Judicial Magistrate No.I, Madurai and the same was taken on file in Cr.M.P.No.601 of 2019 and initiated proceedings contemplated under Section 340 of Cr.P.C., and the sworn statement of the second respondent and Village Administrative Officer were recorded and that the same was forwarded to the learned Judicial Magistrate No.VI, Madurai to take action and the Head Clerk of the learned Judicial Magistrate No.I was authorized to file the complaint before the learned Judicial Magistrate No.VI. The learned Judicial Magistrate No.VI, Madurai has issued summons to these petitioners to appear before him on 11.06.2019. The learned Judicial Magistrate No.VI, Madurai ought to have taken complaint on its file and proceed with the case under Section 195 Cr.P.C., but the learned Magistrate No.VI forwarded the affidavit filed by the second respondent to first respondent police with an endorsement to register the FIR. Based on which, the first respondent registered the FIR in Crime No. 655 of 2019 under Sections 120(B), 193, 419, 420, 467, 468 and 471 of IPC against the petitioners and others. Instead of taking complaint on its file, the learned Judicial Magistrate No.VI forwarded the affidavit to the first respondent and FIR could not be registered by the first respondent for the offence committed under Section 193 of IPC, since a bar under Section 195(i)



Crl.O.P(MD).No.1411 of 2020

(b) of Cr.P.C. As per Section 195 Cr.P.C., private complaint alone can be filed but registering the FIR is not permitted under law. Therefore, FIR registered by the first respondent police is abuse of process of law and the same is liable to be quashed.

4.The learned counsel appearing for the petitioners contended that in order to prosecute for the offence under Section 193 of I.P.C., the procedure under Section 195(1)(b) of Cr.P.C., has to be followed. In this case, the second respondent has filed a petition before the Judicial Magistrate No.I Court where the alleged offence was committed. Beside the learned Magistrate has recorded the statement of two witnesses and then send the case papers to the learned Judicial Magistrate No.VI to take action as per law. The learned Judicial Magistrate No.VI without following the private complaint procedures directly sent the same to the respondent police and the police also registered the FIR in Crime No.655 of 2019 under Sections 120(B), 193, 419, 420, 467, 468 and 471 of IPC. The learned Judicial Magistrate No.VI ought to have taken on file by taking cognizance by itself but the learned Judicial Magistrate No.VI cannot forward the same to the police for registering FIR. Therefore, the said act is procedural violation and the same is vitiated entire proceedings. Therefore, the said FIR in Crime No.655 of 2019 on the file of the first respondent is liable to be quashed.



CrI.O.P(MD).No.1411 of 2020

WEB COPY 5.No counter was filed by the respondents.

6.The learned counsel appearing for the second respondent would contend that as per Section 340 r/w. 195(1)(b) of Cr.P.C., the concerned Magistrate Court has to take the complaint on its file. But in this case, as per the complaint, the offence under Section 193 of I.P.C., alone is not involved. Along with Section 193 of IPC, other IPC offences are also involved in this case. The learned Judicial Magistrate No.VI, forwarded the same to the second respondent herein since the offences are severe in nature and needs elaborate investigation. Therefore, the procedure adopted by the learned Judicial Magistrate No.VI is in accordance with law and thereby, the petition is liable to be dismissed.

7.The learned Additional Public Prosecutor appearing for the first respondent would submit that the second respondent has filed an application before the Judicial Magistrate No.I, Madurai and the learned Judicial Magistrate has recorded the statement of the witnesses and then followed the procedure under Section 340 of Cr.P.C., and thereafter forwarded the case to the learned Judicial Magistrate No.VI for further proceedings and the learned Judicial Magistrate No.VI in turn forwarded the said complaint to the first



Crl.O.P(MD).No.1411 of 2020

respondent police for registering the case. Based on the complaint, the first respondent has registered the FIR in Crime No.655 of 2019 under Sections 120B, 193, 419, 420, 467, 468 and 471 of IPC and the same is now pending.

8.Heard both sides and perused the materials available on records.

9.On perusal of the records, it is observed that according to the second respondent, the petitioners forged the documents and produced the forged documents before the learned Judicial Magistrate Court for releasing the accused in bail. As per the second respondent, the accused have forged the signature of the concerned Village Administrative Officer and created a false documents and produced solvency Certificates before the learned Judicial Magistrate No.I and the accused therein was released on bail based on the forged documents. Hence, the second respondent herein has filed the petition before the learned Judicial Magistrate No.I to take action against the petitioner herein who alleged to have forged the documents before the learned Judicial Magistrate No.I, Madurai. Since the said complaint was returned by the learned Judicial Magistrate No.I, Madurai, the second respondent herein approached this Court and this Court also directed the second respondent to represent the same by quoting the provision under Section 340 r/w. 195 of Cr.P.C. Pursuant to the order of this Court, the said petition was represented



CrI.O.P(MD).No.1411 of 2020

before the learned Judicial Magistrate No.I, and the learned Judicial Magistrate No.I, has taken on file the case in Cr.M.P.No.601 of 2019 and recorded the statement of witnesses. After perusing the records and statements held that it is necessary to make the complaint in writing against the accused to the learned Judicial Magistrate No.VI, Madurai having jurisdiction in this regard for further proceedings and authorised the Head Clerk of the learned Judicial Magistrate No.I, for making the complaint before the learned Judicial Magistrate No.VI, Madurai. The entire records of the case were submitted before the learned Judicial Magistrate No.VI, Madurai. Thereafter, the learned Judicial Magistrate No.VI, has forwarded affidavit filed by the second respondent herein before the learned Judicial Magistrate No.I, Madurai and based on that affidavit, the first respondent have registered the impugned FIR.

10.Now it is relevant to refer the Section 340 of Cr.P.C., which reads as follows:

“(1)When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests 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;



CrI.O.P(MD).No.1411 of 2020

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of 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.”

11. Therefore, from reading of 340 of Cr.P.C., it reveals that the trial Court after making enquiry has to record a finding to that effect, make a complaint in writing and send it to the Magistrate of I Class having jurisdiction. In the case on hand, the learned Magistrate No.I, Madurai has recorded the findings that it is necessary to make complaint in writing against the accused to the learned Judicial Magistrate No.VI, Madurai having jurisdiction in this regard of further proceedings. Further authorised Head Clerk of learned Judicial Magistrate No.VI, for signing the complaint as per Sections 340(1)(b) of Cr.P.C., but there is no record to show that any complaint was made in writing and the same was sent as per Sub Section (1) (c) of 340 to the learned Judicial Magistrate No.VI, Madurai. On careful perusal of the records, it is seen that no records was found to show that the Head Clerk of learned Judicial Magistrate No.I, Madurai made a complaint in writing and the same was sent to learned Judicial Magistrate No.VI. Madurai



CrI.O.P(MD).No.1411 of 2020

as mandated under Section 340(1)(b) and (c) of Cr.P.C. On careful perusal of FIR registered by the first respondent, it shows that the FIR was registered on the basis of affidavit filed by the second respondent in Section 340 of Cr.P.C., proceedings before the learned Judicial Magistrate No.I, Madurai, which was forwarded to the Police by the learned Judicial Magistrate No.VI, Madurai. Therefore, from the records, it is seen that no records have been found to show that the Head Clerk of learned Judicial Magistrate No.I, Madurai made a complaint in writing and the same was sent to the learned Judicial Magistrate No.VI, Madurai. The records shows that the affidavit filed by the second respondent in the proceedings before the learned Judicial Magistrate No.I, was forwarded by the learned Judicial Magistrate No.VI, Madurai to the first respondent Police. As per Sections 195(1)(b) of Cr.P.C., no Court shall take cognizance of the offence, punishable under Section 193 of IPC except the complaint in writing of the Court, or of some other Court to which, the Court is subordinate.

12.Section 195(1)(b) of Cr.P.C., reads as under:

“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...

(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



CrI.O.P(MD).No.1411 of 2020

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.”

13. Therefore, the Court cannot take cognizance for the offence under Section 193 of IPC without complaint in writing by the Court or of some other Court to which the Court is subordinate as per Section 195(1)(b) of Cr.P.C. In the case on hand, there is no record to show that the learned Judicial Magistrate No.I where the offence said to have taken place had made a complaint in writing and the same was forwarded to the learned jurisdictional Judicial Magistrate No.VI. Further the learned Judicial Magistrate No.VI, having jurisdiction to entertain the complaint, has not taken cognizance based on the said complaint. Now the affidavit filed by the second respondent before the learned Judicial Magistrate No.I, only sent to the first respondent through learned Judicial Magistrate No.VI, Madurai and based on the said affidavit, the impugned FIR has been registered.



Crl.O.P(MD).No.1411 of 2020

WEB COPY

14.The learned counsel appearing for the petitioner has submitted the judgments in:

(I)V.Savitha Devi and others v. Dr.S.Kalaikumar reported in 2011 (1) MWN (Cr.) 105;

(ii)V.Lawrence and another v. State reported in 2011 2 L.W. (Crl.) 53;

(iii)N.Amsaveni v. R.Loganathan and another reported in 2019 (3) MWN (Cr.) 194;

(iv)Devarapalli Lakshminarayana Reddy and Others v. V.Narayana Reddy and others reported in 1976 Supreme Court Cases (Crl.) 380;

15.On careful reading of the said judgments, it is clear that Section 195(i)(b)(i) bars the Court from taking cognizance of offences punishable under Section 193 to 196, 199, 200, 205 to 211 and 228 of IPC, when such offence is alleged to have been committed in or in relation to any proceeding in any Court except on the complaint in writing of this Court or some of the Court to which the Court is subordinate and once the Magistrate takes cognizance and embarks upon the procedure embodied in Chapter XV he is not competent to switch back to the pre cognizance stage and avail of Section 156(3) of Cr.P.C.



Crl.O.P(MD).No.1411 of 2020

WEB COPY

16.The learned counsel appearing for the second respondent has relied the judgment in the case of Iqbal Singh Marwah and another v. Meenakshi Marwah and another reported in (2005) 4 Supreme Court Cases 370.

17.On careful reading of the said judgment, it is clear that the bar would be attracted only when the offences enumerated in Section 195(1)(b)(ii) have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court I.e during the time when the document was in custodia legis.

18.In the case on hand the documents were alleged to have forged outside the Court and forged documents were produced before the Court and thereby, Section 193 of IPC was attracted. However, from the said Judgment produced by either side, it is clear that the Court cannot take cognizance under Section 193 of IPC unless satisfying the comply of provision of Section 340 r/w. 195 of Cr.P.C.

19.The main contention of the petitioners is that so far as the offence under Section 193 of IPC is concerned, mandatory provisions under Section 195(1)(b) of Cr.P.C., has not been followed. According to Section 195(1)(b)



CrI.O.P(MD).No.1411 of 2020

of Cr.P.C., the Court cannot take cognizance punishable under Section 193 of

IPC without any written complaint by the Court in which the said occurrence happened or by the subordinate Court. But in this case, the FIR has been registered and cognizance has not been taken and the case is at initial stage and it is for the learned Magistrate to take appropriate decision at the time of taking cognizance of the offence. At the stage of FIR, the contention of the petitioner cannot be looked into and while taking cognizance only the jurisdictional Magistrate Court has to look into the matter. The Judicial Magistrate No.I Court already directed the Head Clerk to give the complaint in writing but the said written complaint has not been produced before this Court. Further the learned Judicial Magistrate No.VI, also without verifying whether written complaint has been made or not, simply forwarded the copy of the affidavit filed before the learned Judicial Magistrate No.I, Madurai to the respondent police. It is for the concerned Magistrates to verify as to whether procedures were followed in accordance with law.

20.The only contention of the petitioner is that the learned Magistrate ought not to have forwarded the complaint to the jurisdictional police and the Judicial Magistrate No.VI Court itself has to take cognizance as complaint case procedure. Thereby, the procedure contemplated under Sections 340 r/w.

195(1)(b) of Cr.P.C., have not been followed by the concerned Magistrate. In



Crl.O.P(MD).No.1411 of 2020

this context, it is relevant to refer the Section 343 of Cr.P.C., for the procedures to be adopted while dealing the cases under Sections 340 and 341 of Cr.P.C.

21. Section 343 of Cr.P.C., reads as follows:

“343. Procedure of Magistrate taking cognizance.

(1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.”

22. Therefore, as per Section 343 of Cr.P.C., the Police report procedure has to be adopted while dealing with the cases under Section 340 and 341 of Cr.P.C., not the private complaint procedure. Therefore, the contention of the petitioner that there is a procedural violation and the same is vitiate the entire proceedings is not acceptable. Though the FIR registered under Section 193 of IPC at the stage of FIR, the petitioner cannot question the same, since the bar



Crl.O.P(MD).No.1411 of 2020

is only for taking cognizance by the Court. That apart the other IPC offences also involved in this case and for those offences, there is no bar for taking cognizance. Now the stage is only initial stage and the petition is not maintainable at this stage. Further it is for the Court concerned to look in to matter at the time of taking cognizance. For the above reasons, this Court cannot invoke its inherent power under Section 482 of Cr.P.C., to quash the proceedings.

23. With the above said observation, this Criminal Original Petition is disposed of.

19.07.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn



Crl.O.P(MD).No.1411 of 2020

P. DHANABAL,J.

Mrn

To

- 1.The Judicial Magistrate No.I, Madurai.
- 2.The Judicial Magistrate No.VI, Madurai.
- 3.The Inspector of Police,
Anna Nagar Police Station,
Madurai City.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P(MD).No.1411 of 2020

19.07.2023