



Crl.R.C.No.1571 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 30.11.2023	Orders Pronounced On 14.03.2024
----------------------------------	------------------------------------

Crl.R.C.No.1571 of 2022
and Crl.M.P.Nos.18936 of 2022
& 5088 of 2023

1.V.Pandi
2.M.Shivakumaran
3.P.Ramasamy
4.S.Parthasarathy

... Petitioners

Vs.

S.Duraisamy
General Secretary,
Coimbatore Periyar District Dravida
Panchalai Tozhilalar Munnetra Sangam,
Registered No.2658 at
No.69, Tatabad 3rd Street,
Coimbatore – 641 012.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records in C.C.No.465 of 2010 in the file of the learned Judicial Magistrate No.II, Coimbatore and set aside the order in Crl.M.P.No.24187 of 2021 dated 07.09.2022.



Crl.R.C.No.1571 of 2022

For Petitioner : Mr.N.R.Elango
Senior Counsel
for Mr.A.S.Aswin Prasanna

For Respondent : Mr.V.Prakash
Senior Counsel
for Mr.G.Ramapriya

ORDER

The petitioners/accused in C.C.No.465 of 2010 facing trial for the offence under Sections 381, 408, 447 and 120(B) Cr.P.C. filed a discharge petition in Crl.M.P.No.24187 of 2021 before the learned Judicial Magistrate No.II, Coimbatore. The Trial Court dismissed the same by order dated 07.09.2022. Against which, the present revision petition is filed.

2.The contention of the learned senior counsel for the petitioners is that an intra-party dispute in a labour union, given criminal colour and a false complaint filed by the respondent. He would submit that the Trial Court erred in appreciating the fact and failed to look into the fact that civil suit is pending between the parties. The Civil Court granted an order of



Crl.R.C.No.1571 of 2022

injunction in favour of the petitioners in I.A.No.136 of 2010 in O.S.No.186 of 2010 on the date of the alleged incident. The case projected against the petitioners is that on 27.03.2010, the petitioners entered the office of the Coimbatore Periyar District Dravida Panchalai Tozhilalar Munnetra Sangam at Tatabad, Coimbatore, opened the Almirah and taken away the documents and registers from the office. The respondent lodged a complaint to the jurisdictional police which was not entertained and thereafter, a private complaint filed. The Trial Court recorded sworn statement of respondent, one Thiagarajan and Kaliappan, though not cited as witness in the complaint, examined as P.W.1 to P.W.3 and marked documents Ex.P1 to Ex.P21. The Trial Court failed to consider that the respondent filed the private complaint just a day before the proceedings under Section 145 Cr.P.C., initiated by the RDO to circumvent the RDO proceedings and to gain muster for the civil suits, private complaint filed. On the entire reading of the complaint taken as a whole would show that no offence committed by the petitioners and the act of the respondent filing the above complaint is an act of political vendetta with malafide intention. He would further submit that the allegation that the petitioner forged the signature of the respondent



CrI.R.C.No.1571 of 2022

in the notice dated 06.03.2010 is baseless, the disputed signature not subjected to any forensic examination. The ingredients of offence of criminal trespass and theft alleging that the petitioners entered the office building would not sustain. The petitioners were elected on 24.03.2010 as office bearers of the Sangam and they also obtained an order of interim injunction in the Civil Court in favour of them. In view of the same, there is no offence made out.

3.The learned senior counsel further submitted that the evidence of P.W.1 before the Trial Court is that on 27.03.2010 at about 7.30 p.m., the petitioners along 50 unidentified persons, entered the office of the Sangam, committed the offence, the complainant preferred a complaint to the Assistant Commissioner of Police alleging petitioners, stolen the documents followed by another complaint to the Rathinapuri Police and complaint to the Commissioner of Police, Coimbatore on 01.04.2010. These complaints marked as E.P9, Ex.P10 and Ex.P13. The complainant admitted that a civil suit in O.S.No.186 of 2010 filed by the petitioner which is marked as Ex.P5 with other documents marked as Ex.P6 to Ex.P8. Further, the complainant



WEB COPY

admits that he received the RDO notice dated 30.03.2010 which is marked as Ex.P12. Further, the complainant himself admits that he filed a suit in O.S.228 of 2010 against the petitioners. Both the civil suits, O.S.No.186 of 2010 which got re-numbered as O.S.No.615 of 2010 and O.S.No.228 of 2010 tried together and judgment was delivered and the judgments of the Civil Court marked as Ex.P19 to Ex.P21. Further, the list of missing documents from the Union Office marked as Ex.P14, an Official Receiver was appointed as per Ex.P17. Further, the evidence of P.W.1 is that P.W.2/Thiyagarajan informed about the occurrence. P.W.2 deposed that he was informed about the occurrence at about 6.00 p.m. On 27.03.2010 and he came to the Union Office and when he entered to enter the Union Office, the petitioners and 50 others prevented him from entering the Union Office and threatened him at 7.30 p.m., P.W.1 and others came there, they were also prevented from entering the office. Further, P.W.2 states that the documents of the Union were taken in a car and thereafter P.W.1 lodged the complaint. The evidence of P.W.3 is that on 27.03.2010 at about 3.00 p.m., he came to the Union Office and at 5.30 p.m., P.W.2 called him and informed about the incident which clearly proves contradiction of statements of the witnesses.



Ex.P8 is the complaint lodged by the 4th petitioner against P.W.1 and P.W.2 on 25.03.2020 and C.S.R. also assigned. Further on 27.03.2010, a suit in O.S.No.186 of 2010 was filed by the petitioners against P.W.1 to P.W.3 and obtained an order of injunction against them.

4.The learned senior counsel further submits, referring to Ex.P8, Ex.P9, Ex.P10 and Ex.P5, an FIR was registered in Crime No.801 of 2010 dated 27.03.2010 by the Rathinapuri Police Station which was referred to the Revenue Divisional Officer for enquiry under Section 145 Cr.P.C. and the RDO sent notice dated 30.03.2010 to both the petitioners as well as the respondent for enquiry to be held on 16.04.2010. Instead of appearing before the RDO for enquiry, the respondent preferred a complaint to the Commissioner of Police and hurriedly filed the above complaint in C.C.No.465 of 2010 on 12.04.2010. The above complaint filed, only to evade the process of judicial proceedings. He further submitted that there are election dispute suits, appeals and second appeals pending before the Civil Courts, this Court and the Apex Court between the period 27.03.2010 and 25.11.2019. As per the order dated 25.11.2019, the Apex Court



CrI.R.C.No.1571 of 2022

recorded that the ensuing elections will be held appropriately and in accordance with the rules and regulations and it is open for the Registrar of Trade Unions in the District to appoint appropriate person to oversee the elections. As per the common judgment in O.S.No.228 of 2010 and O.S.No.615 of 2010, which is marked as Ex.P19, it is for the respondent/complainant to execute the decree and the judgment only through Civil Court and not to use the Criminal Court to gain steam, force in execution of the civil court orders. The exhibits marked by the respondent Ex.P1 to Ex.P21 would prove that an intra-union dispute given a criminal colour, with a malafide and the above complaint is proceeding against them. He further referring to the adjudication of the Trial Court dated 20.04.2010, submitted that it is recorded that “With regard to the above facts alleged in the complaint it reveals that there is a civil suit is pending before the Court and the documents said to have been forged by the accused have been filed in the said suit. When such being the case this Court has no jurisdiction to take the cognizance of the above offences as per Section 195 of the Cr.P.C.”.



WEB COPY

5.The learned senior referred to the decision of the Apex Court in the case of ***Basir-Ul-Huq and others*** reported in ***[1953] 1 SCC 637*** and submitted that merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it. This principle has been reiterated by the Apex Court in the case of ***Kailash Mangal vs. Ramesh Chand [Dead] Through Legal representatives*** reported in ***[2015] 15 SCC 729***. He would further submit that though the petitioners filed quash petitions before this Court in Crl.O.P.Nos.14895/2011 and 23920/2010 and this Court by order dated 22.03.2019 dismissed the same, would not prohibit the petitioners filing the discharge petition and the Trial Court in the impugned order without considering the submissions and merits of the case merely referred to the dismissal of the above two quash petitions, which is not proper. Hence, he prayed for setting aside the impugned order.



CrI.R.C.No.1571 of 2022

WEB COPY

6.The learned senior counsel appearing for the respondent submitted that the respondent filed a complaint before the Trial Court on 12.04.2010 for the offence under Sections 381, 408, 447 and 120(B) IPC. The Coimbatore Periyar District Dravida Panchalai Tozhilalar Munnetra Sangam at Tatabad, Coimbatore, owns a prime property in the name of the Sangam. The respondent is the elected General Secretary of the Sangam and discharging his duties. The petitioners fabricated and forged document as if a circular was issued on 06.03.2010 based on which a meeting was held on 24.03.2010 and four resolutions said to have been passed. Based on these fabricated documents, a civil suit in O.S.No.186 of 2010 was filed before the Sub Court, Coimbatore by the petitioners and this suit was subsequently transferred and re-numbered as O.S.No.615 of 2010 before the First Additional District Court, Coimbatore. Based on the forged documents, an order of injunction was obtained in I.A.No.136 of 2010. The accused including the second accused, who is no more, entered the office of the Union on 27.03.2010 and committed the offence of trespass, theft and criminal intimidation. The order of injunction in I.A.No.136 of 2010 in



O.S.No.186 of 2010 was obtained on the false claim by the accused as they were duly elected office bearers and the respondent and other office bearers of the Union were interfering with their functioning as office bearers. Later the suit filed by the petitioners dismissed and the suit of the respondent in O.S.No.228 of 2010 was decreed by common judgment and decree dated 25.03.2014. Against which, appeal suits were filed in A.S.Nos.369 and 370 of 2014 and the same were also dismissed on 27.06.2017 concurring with the finding of the Trial Court, holding that no election was held on 24.03.2010. Against which, SLP was filed before the Apex Court in SLP.No.4874 of 2018 which also got dismissed on 25.11.2019. The petitioners earlier filed quash petitions before this Court to quash the complaint before this Court in Crl.O.P.Nos.14895/2011 and 23920/2010 which were dismissed on 22.03.2019.

7.The learned senior counsel would submit that the claim of the petitioners is that they entered the office of the Union based on the injunction order in I.A.No.136 of 2010 and the Trial Court taking cognizance on the complaint is not sustainable and acceptable. The



WEB COPY

petitioners claim of immunity based on the order of the Civil Court no more exist. In fact, this Court in A.S.Nos.369 and 370 of 2014 had categorically held that no election was held on 24.03.2010 which is the basis and the defence of the petitioners, as if they were elected office bears of the Union and they entering the office on 27.03.2010 cannot be termed as trespass and handling of Almirah, union documents, registers, etc. cannot be termed as theft. He would further submit that the grounds raised by the petitioners are nothing but repetition of the very same grounds which was raised in the quash petitions which this Court had rejected. He further submitted that the main thrust of the petitioners is that they are newly elected office bearers armed with an injunction order in I.A.No.136 of 2010 and their action cannot be termed committing of criminal acts no more exists in view of the civil court findings which was confirmed by the Apex Court. He would further submit that in the earlier quash petitions, the civil court proceedings and the outcome of the same discussed, considered and thereafter only, the quash petitions dismissed finding that no case is made out by the petitioners. He further submitted that the respondent/complainant is now aged about 91 years, the occurrence is of the year 2010 and for the past 14



WEB COPY

years, the petitioners by filing one petition or after and also referring to civil court proceedings, stalled the trial of the above case. He would submit that the petitioners earlier challenged the union election dated 24.12.2019, the respondent and others elected as office bearers which was conducted in the presence of officials and Registrar of Trade Union in accordance with the Apex Court order in SLP.No.4874 of 2018 dated 25.11.2019. He further submitted that the contention of the learned senior counsel for the petitioner raising a point citing Section 195 Cr.P.C. cannot be considered, it was not raised before the Trial Court. In any event, the contention will not hold water in the facts and circumstances of the case.

8.Further, the Apex Court in the case of ***Basir-Ul-Huq*** held that when a distinct offence has been committed in the same transaction, such defence cannot be made if the evidence is sufficient to show that the petitioner had committed the offence for which he is charged. He further submitted that the Constitutional Bench of this Court in the case of ***Iqbal Singh Marwah vs. Meenakshi Marwah*** reported in ***[2005] 4 SCC 370*** held that the protection engrafted under Section 195(1)(b)(ii) Cr.P.C. would be attracted



WEB COPY

only when the offence enumerated in the said provision has been committed with respect to the document after it had been produced or given in proceedings in any Court i.e., during the time when the document is in custodia legis. He further submitted that the Trial Court had not merely referred to the earlier dismissal of the quash petitions, it had also considered all other aspects, finding that the evidence of P.W.1 to P.W.3 and the documents marked Ex.P1 to Ex.P21 makes out a case for framing charges against the accused and to proceed against the accused, rightly dismissed the discharge petition. Hence, he prayed for dismissal of this petition with a direction to complete the trial as expeditiously as possible considering the fact that the trial is kept pending for the past 14 years and the respondent/complainant is aged about 91 years.

9.Considering the submissions and on perusal of the materials, it is seen that the entire case rests on the occurrence dated 27.03.2010 on which date the petitioners herein along with 50 persons said to have entered the Union Office by force, opened the Almirah and taken away the documents and registers, in a car witnessed by P.W.1 to P.W.3, who had resisted the



Crl.R.C.No.1571 of 2022

same and they were threatened. The contentions of the petitioners is that they were armed with injunction order passed by the Civil Court in I.A.No.136 of 2010 in O.S.No.186 of 2010. The respondent lodged a complaint to the jurisdictional Assistant Commissioner of Police, Rathinapuri Police Station and thereafter to Commissioner of Police, Coimbatore, but no action taken. The petitioners lodged a complaint against the respondent. It is submitted that at the instance of Rathinapuri Police Station, the RDO initiated proceedings under Section 145 Cr.P.C. and to circumvent the same, the respondent rushed and filed the above complaint is not sustainable, the respondent have invoked the legal procedure and remedy available. It is seen that the civil suits attained finality reaching upto the Apex Court and it is held no election held on 24.03.2010 which is the basis on which the petitioners claim a right as if General Body Meeting and resolutions passed in their favour and they filed a civil suit, obtained an order of injunction. After the dismissal of the civil suit filed by the petitioners, they cannot now take such a defence.

10.The learned senior counsel appearing for the petitioners referred to



CrI.R.C.No.1571 of 2022

the suit in O.S.No.1204 of 2020 filed by Parthasarathy and four others including the petitioners 1 and 3 herein as plaintiffs 2 and 3 wherein the Additional Registrar of Trade Union cum Joint Commissioner of Labour and Coimbatore Periyar District Dravida Panchalai Tozhilalar Munnetra Sangam represented by its General Secretary, were arrayed as defendants 1 to 3 along with 23 others. This civil suit is to declare the election which was conducted on 24.12.2019 by the Sangam as null and void and to consider the 'E' Forms filed by the plaintiffs during the accounting year 2017 which has got nothing to do with the issue in the criminal case which pertains to the incident happened on 27.03.2010. Further the petitioners' contention is that in this case Section 195 Cr.P.C. is involved and hence, the Trial Court taking cognizance of C.C.No.465 of 2010 is to be rejected. This contention merits no consideration and it is to be rejected in limine. The Apex Court in the case of ***Iqbal Singh Marwah*** held that protection engrafted under Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offence enumerated in the said provision has been committed with respect to the document after it had been produced or given in proceedings in any Court i.e., during the time when the document is in ***custodia legis***.



But in this case it is not so. With regard to the pendency of the civil suits as discussed earlier, it has reached the Apex Court and the petitioners' civil suit rejected. In cases instituted otherwise on a police report as per Chapter XIX is that, there is ground for presuming that the accused has committed the offence triable under this Chapter, which such Magistrate is competent to try shall frame in writing a charge against the accused which is not in dispute. In this case, the Trial Court on the evidence, materials and documents found that there are grounds for presuming that the accused had committed offence and framed charges. The discharge petition considered in detail referring to the materials and thereafter, discharge petition dismissed. At the stage of discharge, it is only the statement and materials to be considered which the Trial Court had rightly considered. In view of the same, this Court finds no reason to interfere with the order of the Trial Court.

11. Accordingly, the Criminal Revision Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.



CrI.R.C.No.1571 of 2022

WEB COPY

12.Considering the fact that the respondent/complainant is aged about 91 years and he filed the complaint in the year 2010 and the case just reached the stage of charge framing in the year 2021 and now this Court having dismissed the revision petition, the Trial Court is directed to proceed with the trial giving priority considering the length of pendency of the case and the age of the complainant without giving long adjournments, to complete the trial preferably within a period of four months from the date of receipt of a copy of this order.

14.03.2024

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

cse

To

The Judicial Magistrate No.II,
Coimbatore.



WEB COPY



Crl.R.C.No.1571 of 2022

M.NIRMAL KUMAR, J.

cse

Pre-delivery order made in

Crl.R.C.No.1571 of 2022

14.03.2024