



Crl.O.P.(MD)No.9912 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.9912 of 2021
and Crl.M.P.(MD) Nos.5039 and 5040 of 2021

1.S.Janarthanan
2.R.Karthikeyan
3.K.Kathir
4.S.Saravanakumar

... Petitioners/
Accused Nos.1 to 5

Vs.

R.Suresh Babu

... Respondent /
Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the private complaint in C.C.No.185 of 2019 on the file of the learned Judicial Magistrate, Palani and quash the same as illegal as against the petitioners are concerned.

For Petitioners : Mr.J.Jeyakumaran

For Respondent : Mr.V.Muthukamatchi



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ORDER

This petition has been filed to quash the proceedings in C.C.No.185 of 2019 pending on the file of the learned Judicial Magistrate, Palani.

2. Heard Mr.J.Jeyakumaran, learned counsel for the petitioner and Mr.V.Muthukamatchi, learned counsel appearing for the respondent.

3.The respondent, initially gave a complaint before the District Crime Branch, Dindigul and based on the same, an FIR came to be registered in Crime No.2 of 2017 as against six persons. The allegation made against the accused persons is that in the deed of dissolution, it was shown as if the first petitioner's son had left the partnership firm on 01.05.2013 and whereas, the actual date must have been mentioned as 29.05.2014. The case was investigated and ultimately, a closure report was filed as action dropped before the Judicial Magistrate No.II, Dindigul.



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4.The respondent filed a protest petition in Crl.M.P.No.7336 of 2018. The said petition was closed by granting liberty to the respondent to file a private complaint and work out his remedies. Accordingly, a private complaint was filed before the Court below and the Court below has taken cognizance of the private complaint and issued process as against six accused persons. Questioning the same, A1 to A5 have filed the present criminal original petition.

5.The main issue that has to be taken into consideration is as to whether the Court below was right in taking cognizance of the private complaint even without considering the closure report filed by the police and the materials that were collected by the police while filing the closure report.

6.The above issue is no longer *res integra* and it is covered by the judgment of this Court in ***Narayanamma & Others. Vs. Chikka Venkateshaiah***, reported in ***2019 (2) L.W (Crl.) 522***. Reference can also be made to the judgment in ***Alaguthangamani Vs. Saravanan***, reported



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in **2022 (4) MLJ (Crl.) 156**. This Court in no uncertain terms held that the Court has to necessarily apply its mind on the closure report filed by the police and the statements that were recorded by the police in the course of investigation and which was filed along with the closure report.

7. There is no bar in the respondent filing a private complaint on the same set of facts after the police filed a referred charge sheet. However, while entertaining the private complaint, the Magistrate has to necessarily apply his mind on the closure report and the materials that were filed along with the closure report by the police. If the same is not done, the very taking of cognizance of the private complaint becomes illegal.

8. In the light of the above discussions, the cognizance taken by the learned Judicial Magistrate, Palani, is hereby set aside. The matter is remitted back to the file of the Judicial Magistrate, Palani and the learned Judicial Magistrate is directed to call for the closure report and the documents filed along with the closure report in Crime No.2 of 2017 on the file of the District Crime Branch, Dindigul and thereafter, deal



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with the complaint filed by the respondent and take a decision on the complaint filed by the respondent in line with the judgment referred supra.

9.In the result, this Criminal Original Petition is allowed.

Consequently, connected miscellaneous petitions are closed.

06.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

To

- 1.The Judicial Magistrate, Palani.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

PKN

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