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CrI.O.P.(MD)No.12749 of 2020



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.01.2024

Delivered on : 22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.O.P.(MD)No.12749 of 2020

and

CrI.M.P.(MD).No.5820 of 2020

V.M.Jabarullakhan

... Petitioner/A1

Vs.

1.The Inspector of Police,
Ilayangudi Police Station,
Sivagangai District.
(in Crime No.6 of 2016)

2.P.Jeyamurugan

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in S.T.C.No.301 of 2018 on the file of the learned District Munsif Cum Judicial Magistrate, Ilayangudi and quash the same against the petitioner.

For petitioner : Mr.Isaac Mohanlal,
Senior Counsel
for Mr.T.Palanisamy

For 1stRespondent : Mr.E.Antony Sahaya Prabhakar
Additional Public Prosecutor

For 2nd Respondent : No appearance



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ORDER

The petitioner/Accused No.1 has filed this petition to quash the proceedings in S.T.C.No.301 of 2018 on the file of the learned District Munsif Cum Judicial Magistrate, Ilayangudi.

2. The brief facts of the case is that on 11.01.2016, at about 5.40 p.m, while pronouncing the judgment in S.T.C.No.91 of 2015 on the file of the learned Judicial Magistrate, Ilayangudi, the petitioner and A2 escaped from the Court premises. Thereafter, the second respondent/Junior Assistant, Judicial Magistrate Court, Ilayangudi, Sivagangai District, gave a complaint before the first respondent. On receipt of the complaint, the first respondent has registered a case against the petitioner and A2 in Crime No.6 of 2016, on 11.01.2016, for the offences under Sections 180, 188 and 225(b) of IPC. After completion of investigation, the first respondent has filed a final report and the same was taken on file in S.T.C.No.301 of 2018 by the learned Judicial Magistrate, Ilayangudi. To quash the same, the present petition has been filed.



3.Mr.Issac Mohanlal, learned Senior Counsel made the following submissions:

3.1.The petitioner is aged about more than 70 years and the investigating agency filed a final report without any incriminating materials to constitute the offence under Sections 180, 188 and 225(b) of IPC. As per Section 195 of Cr.P.C, the police officer has no jurisdiction to register the FIR under Sections 180 and 188 Cr.P.C. The learned Senior Counsel placed reliance the following judgments of the Hon'ble Supreme Court, in the case of ***Daulat Ram Vs. State of Punjab***, reported in ***AIR 1962 SC 1206***, in the case of ***CBI Vs.Indra Bhushan Singh*** reported in ***(2014) 12 SCC 100***, in the case of ***Sudalaimadam and another, Vs. State*** reported in ***1985 CrI.L.J 1310*** and in the case of ***State of Maharashtra Vs. Sharadchandra Vinayak Dongre*** reported in ***(1995) 1 SCC 42***, wherein, it is stated that taking cognizance without complaint as enunciated under Section 195 Cr.P.C., is not legally valid. In this case, the offence under Section 225(b) of IPC is not made out and he specifically submitted that the petitioner may come under Section 225(b) of IPC if he “*escapes or attempts to escape from any custody in which he is lawfully detained*” In this case, the petitioner is neither under legally detained nor in the custody of the Court. Hence, the registration of the FIR in Crime No.6 of 2016, for the offence under Section 225(b) is



without any ingredients to constitute the offence. In the said circumstances, this Court may be pleased to quash the proceedings initiated against the petitioner in S.T.C.No.301 of 2018.

4.The learned Additional Public Prosecutor would submit that at the time of pronouncing the judgment in S.T.C.No.91 of 2015 on the file of the learned Judicial Magistrate, Ilayangudi, the petitioner escaped from the Court premises. Hence, the offence under Section 225(b) of IPC is made out. He would further submit that as per Section 225(b) of IPC, when the cognizable and non cognizable offence is made out, the police officer has jurisdiction to register the case and investigate the matter. Even though the notice was served to the second respondent/defacto complainant, he has not appeared before the Court either in person or through counsel.

5.This Court has considered the submission made on either side and perused record and also the impugned order and the precedents relied upon them

6.The petitioner is the secretary of Dr.Zakir Hussain college Association. He is aged about more than 70 years. His rival group made



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a complaint under Sections 499 and 500 of IPC before the learned Judicial Magistrate in S.T.C.No.91 of 2015. The said case was posted for pronouncing of judgment for three days later. On the date of delivery of judgment ie., 11.01.2016 at 5.40 p.m., the petitioner is said to have escaped from the Court premises, in order to avoid the arrest and for payment of fine amount of Rs.10,000/-. For the alleged occurrence, the Junior Assistant attached to the Judicial Magistrate Court, has made a complaint before the respondent Police on 11.01.2016 at 22.00pm. On receipt of the complaint, the respondent Police registered a case for the offence under Sections 180, 188 and 225(b) of IPC. It is well settled principle that before taking cognizance under Sections 180 and 188 of IPC, the procedure contemplated under Section 195 of Cr.P.C., has to be followed. In this case, admittedly, no such procedure was followed. Hence, as rightly pointed out by the learned Senior Counsel cognizance taken under Sections 180 and 188 of IPC on the basis of the FIR is not legally maintainable. Hence, the proceedings under Sections 180 and 188 of IPC is hereby liable to be quashed.

7. The proceedings under Section 225(b) of IPC is concerned, in the considered opinion of this Court, the Section 225(b) of IPC is not applicable to the present case. To appreciate the contention of the learned



Senior Counsel, it is relevant to extract Section 225(b) of IPC, which reads as follows;

225(b).Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.

Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

8. According to the learned Senior Counsel, the petitioner case may come under the second part namely “*escapes or attempts to escape from any custody in which he is lawfully detained*” For that, there is no custody of the petitioner before the court. Further, he was not legally detained. As per Section 353 of Cr.P.C., when the accused is absent, it is open to the Court to pass judgment and make a steps to arrest the accused and confine to undergo sentence imposed by the Court. In this case, as



rightly pointed out by the learned Senior Counsel, the petitioner is neither in the custody of the Court nor was he legally detained and he escaped from the Court premises. Hence this Court inclines to accept the argument of Senior Counsel that the offence under Section 225(b) of IPC is not made out. Hence, the petitioner's case has clearly come under the following parameter laid down by the Honorable supreme Court in the case of **Amit Kapoor v. Ramesh Chander** reported in **(2012) 9 SCC 460** to quash the proceedings.

27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:



27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.



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9. Accordingly, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.301 of 2018 on the file of the learned District Munsif Cum Judicial Magistrate, Ilayangudi, is hereby quashed. Consequently, the connected criminal miscellaneous petition is closed.

22.02.2024

NCC : Yes / No
Index : Yes/No
Internet : Yes/No
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To

1. The learned District Munsif Cum-Judicial Magistrate,
Ilayangudi.
2. The Inspector of Police,
Ilanyangudi Police Station,
Sivagangai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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