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Crl.O.P.No.1071 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.1071 of 2025
and Crl.M.P.Nos.601 & 602 of 2025

R.Krishnamurthy @ Kastooriraja

... Petitioner

Vs.

M.Gagan Bothra

... Respondent

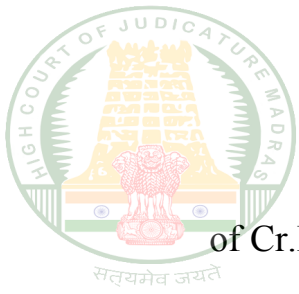
PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in S.T.C.No.2626 of 2024 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.S.Haja Mohideen Gisthi

For Respondent : Mr.Gagan Bothra
Respondent in person

ORDER

This Criminal Original Petition has been filed to quash the proceedings in the S.T.C.No.2626 of 2024 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai, thereby taken cognizance for the offences punishable under Section 211 of IPC r/w. 357



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of Cr.P.C., as against the petitioner.

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2. The petitioner is an accused in the complaint lodged by the respondent in S.T.C.No.2626 of 2024 for the offences punishable under Section 211 of IPC, alleging that the petitioner had borrowed a sum of Rs.65,00,000/- from the respondent's father and in order to repay the same, the petitioner had issued cheques, which got dishonoured. Therefore, the respondent's father initiated two criminal proceedings under Section 138 of the Negotiable Instruments Act in C.C.Nos.411 & 473 of 2013 on the file of the Fast Track Court-IV, George Town, Chennai and also filed suit in C.S.No.459 of 2015 for recovery of money. The said proceedings were ended in acquittal and aggrieved by the same, the respondent's father preferred appeals before this Court in Crl.A.Nos.329 & 330 of 2015 and the same were also dismissed.

3. Meanwhile, the petitioner also preferred a private complaint in C.C.No.332 of 2015 before the learned VIII Metropolitan Magistrate, George Town, Chennai, against the respondent and his father, alleging that they misused the blank signed cheques issued by the petitioner at the time of borrowing the loan from the respondent's father. Immediately, the



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respondent and his father approached this Court in Crl.O.P.No.10460 of 2015 and this Court by an order dated 25.01.2023 quashed the proceedings in C.C.No.332 of 2015. Thereafter, the respondent lodged the present complaint alleging that the petitioner had caused mental stress and agony and also seeking compensation to the tune of rupees one crore and the same was taken cognizance by the trial Court in S.T.C.No.2626 of 2024, for the offence punishable under Section 211 of IPC r/w 354 of Cr.P.C. After having been taken cognizance, the trial Court issued summon to the petitioner.

4. The learned counsel appearing for the petitioner submitted that trial Court ought not have taken cognizance on the complaint lodged by the respondent for the offence punishable under Section 211 of IPC. The trial Court is barred by law to take cognizance for the offence punishable under Section 211 of IPC on the private complaint. Section 195(1)(b) of the Cr.P.C., is very clear that it is only for the Court or the officer of the Court to give complaint under Section 211 of IPC and no private complaint should have been entertained by the learned Magistrate. In support of his contention, he relied upon the following judgements :-

(i) 1967 AIR – M.L.Sethi Vs R.P.Kapur & anr



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(ii) AIR 2000 SC 168 – M.S.Ahalwat Vs. State of Haryana & anr

(iii) 2000 CRI LJ 4774 – Subhash Ramchandra Druge Vs.

Deepak Annasaheb Gar & anr.

(iv) Crl.O.P.No.30234 of 2006 dated 14.08.2009 –

S.Arulanandam Vs. A.Kalaiselvan

(v) Crl.R.C.No.807 of 2021 dated 21.02.2022 – S.Sarangapani

Vs. K.P.Chandrasekaran

(vi) Crl.O.P.No.21711 of 2016 dated 16.03.2022 – B.Gajendran

Vs. Arunachalam

(v) (2010)9 SCC 567 – C.Muniappan Vs. State of Tamil Nadu.

5. The respondent appeared before this Court as party-in-person and submitted that Section 195 of Cr.P.C., does not apply to the case on hand. Section 195 of Cr.P.C., deals with prosecution for contempt of unlawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. In the case on hand, the respondent is a private person and he lodged complaint and as such, the trial Court has rightly taken cognizance and issued summon to the petitioner. Therefore, the provision under Section 195 of Cr.P.C., does not apply to the case on hand.

6. Heard bothsides and perused the materials placed before this Court.



7. It is relevant to extract the provision under Section 195 of Cr.P.C., as follows :-

“(1) No Court shall take cognizance—

(a) (i) of 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 section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both 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



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the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.”

Thus it is clear that no court can take cognizance, except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise, and no private individual can invoke the provision under Section 200 of Cr.P.C., for the offence punishable under Section 211 of IPC. Therefore, the trial Court has erroneously invoked its jurisdiction in taking cognizance on the private complaint filed under Section 200 of Cr.P.C., for the offence punishable under Section 211 of IPC.

8. Further Chapter XI of IPC deals with false evidence and offence against public justice and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceedings. Section 195 of Cr.P.C., provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC or to an offence relating to documents actually used in a Court, private prosecutions are barred absolutely and only the Court in relation to which the offence was committed may initiate proceedings.



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Therefore, the provision under Section 195 of Cr.P.C., are mandatory and no Court has jurisdiction to take cognizance of any of the offences mentioned under Section 211 of IPC, unless there is a complaint in writing as required under Section 195 of Cr.P.C. It is settled law that every incorrect or false statement does not make it incumbent upon the Court to order prosecution only in the larger interest of the administration of justice.

9. Further Section 340 of Cr.P.C., prescribes the procedure as to how a complaint may be preferred under Section 195 of Cr.P.C. While under Section 195 Cr.P.C., it is open to the Court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 Cr.P.C., prescribed the procedure as to how that complaint may be preferred. Therefore, there is a bar under Section 195(1)(b) of C.P.C., for the trial Court to take cognizance on the private complaint filed under Section 200 of Cr.P.C., for the offence punishable under Section 211 of IPC.

10. In view of the above discussions, the entire proceedings in S.T.C.No.2626 of 2024 cannot be sustained and liable to be quashed.



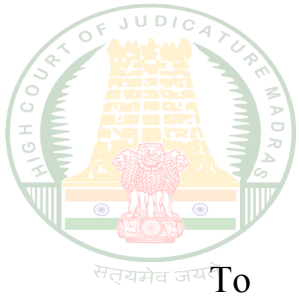
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Accordingly, the impugned proceeding in S.T.C.No.2626 of 2024 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai, is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are also closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To
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1. The VIII Metropolitan Magistrate,
George Town, Chennai,



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