

(2017) 01 MAD CK 0057

MADRAS HIGH COURT

Case No: 8482 of 2010 and M P (MD) Nos 1 and 2 of 2010

A.T.Jacob, & Ors.

APPELLANT

Vs

State of Tamil Nadu
rep. by the Sub
Inspector of Police, &
Anr.

RESPONDENT

Date of Decision: Jan. 25, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 482, Section 196(1) - Saving of inherent powers of High Court - Prosecution for offences against the State and for criminal conspiracy to commit such

Hon'ble Judges: P.Kalaiyarasan

Bench: SINGLE BENCH

Advocate: P.Kalaiyarasan

Final Decision: Allowed

Judgement

1. This criminal original petition has been filed under Section 482 of Cr.P.C., paying to call for the records in C.C.No.185 of 2009 on the file of the Judicial Magistrate No.1, Nagercoil and quash the same.

2. It is averred in the petition that the second respondent initially preferred a complaint before the District Crime Branch against the petitioners and a case was registered in crime No.31 of 2007 under Section 153(A) of I.P.C. and after thorough investigation, the investigating agency dropped further action. The second respondent filed a protest petition in the said case. The Judicial Magistrate, by order dated 19.08.2009 took the case on file against the petitioners and three others, who are now no more. As per Section 196(1) of Cr.P.C., no Court shall take cognizance of any

offence punishable under Section 153(A) of I.P.C., except with the previous sanction of the Central or of the State Government. But, the Judicial

Magistrate has taken cognizance of the alleged offence under Section 153(A) of I.P.C. in C.C.No.185 of 2009. Even if the averments in the

complaint are taken to be true, no offence is made out and therefore, the proceedings in the above C.C.No.185 of 2009 is liable to be quashed.

3. Though notice has been served on the second respondent, he has not appeared.

4. The learned counsel for the petitioners contends that the cognizance taken by the Judicial Magistrate without sanction of the Government under

Section 196(1) of Cr.P.C. is not sustainable and on that ground alone, the proceedings is liable to be quashed.

4.1.The learned Government Advocate (crl. Side) submits that first respondent is only a formal party and the CC.No.185 of 2009 has been taken

on file by the Judicial Magistrate on protest petition filed by R2.

5. The learned counsel for the petitioner has cited two judgments of the Hon"ble Supreme Court viz., (i) R.P.Kapur Vs. State of Punjab reported

in AIR 1960 Supreme Court 866 and (ii) State of Haryana and others Vs. Bhajan Lal and others reported in 1992 Supp (1) Supreme Court

Cases 335. In the first citation, it has been held as follows:

Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are:

(i)Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of

the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

In the another citation, the Hon"ble Supreme Court has held as follows:

The order of the High Court quashing the first information report, viewed from any angle, cannot be sustained both on the question

of law and facts. Consequently, that part of the judgment of the High Court quashing the first information report is set aside.

The following categories of cases can be stated by way of the illustration wherein the extraordinary power under Article 226 of the

inherent powers under Section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of process of any court or

otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

.....

6. Where there is an express legal bar engrafted in any of the provisions of the Code of the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

6. This Court perused the order of the Judicial Magistrate dated 19.08.2009. As per the order, the Judicial Magistrate took cognizance of the offence under Section 153(A) of I.P.C. by taking the complaint dated 16.07.2007 on his file and ordered to issue summons to all the petitioners.

However, the recitals of the complaint or the order of the Judicial Magistrate do not disclose about the existence of any prior sanction of either

Central or of State Government as enshrined under Section 196(1) of Cr.P.C. As per the above section, for taking cognizance of the offence

under Section 153(A) of I.P.C., previous sanction of the Central Government or of the State Government is a must. Absence of the requisite

sanction is suffice to quash the proceedings in the above calendar case as against the petitioners.

7. Therefore, this Court, by invoking inherent jurisdiction under Section 482 of Cr.P.C. quash the proceedings in C.C.No.185 of 2009 on the file of the Court of the Judicial Magistrate No.1, Nagercoil against the petitioners.

8. Accordingly, this criminal original petition is allowed.

Consequently, connected miscellaneous petitions are closed.