

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.05.2012

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THE HONOURABLE MR.JUSTICE T. MATHIVANAN

Crl.OP No.12103 of 2012

G.G. Ramesh .. Petitioner

Vs

1. State rep. By
Inspector of Police,
Vellore North Police Station,
Vellore District

2. Mohamed Shereef .. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.339 of 2012 on the file of first respondent herein and quash the same.

For Petitioner : Mr.R.Sankarasubbu

For 1st Respondent : Mr.A.N.Thambidurai
Additional Public Prosecutor

For 2nd Respondent : Party-in-person

O R D E R

Seeking the relief of quashing the criminal proceedings in respect of the case in Crime No.339 of 2012 as against the petitioner, this petition has been filed after invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C.

2. The petitioner is at present in prison. The 2nd respondent herein is the complainant and he is also present before this court. He has filed an affidavit saying that he came to know through the newspaper, as if he had given a complaint against the petitioner and others and on the basis of his complaint a case in Crime No.339 of 2012 under Sections 341 and 307 IPC has been registered against the petitioner and others. Now, he has submitted that he was just called to the police station and asked to sign a paper and in the later stage, his signature was utilised to fabricate a complaint

as against this petitioner for which he may not be held responsible. He has also submitted that without getting influence from outside, he has voluntarily that too on his own volition come forward with an affidavit saying that he did not want to prosecute against the petitioner and therefore he has no objection to quash the criminal proceedings as against this petitioner.

3. It is significant to note here that the penal provision under Section 307 IPC, is a non-compoundable offence.

4. In this connection, Mr.A.N.Thambidurai, learned Additional Public Prosecutor has vehemently argued that even though the second respondent, who is the complainant has come forward with an affidavit saying that he had no objection to quash the criminal proceedings against the petitioner, since the offence under Section 307 IPC is a non-compoundable offence, the case in Crime No.339 of 2012 cannot be quashed.

5. He has also stated that the petitioner has been detained under Act 14 of 1682 and considering this aspect he would submit that the inherent jurisdiction of this Court under Section 482 Cr.P.C., cannot be pressed into service to quash the criminal proceedings.

6. No doubt, the offence under Section 307 IPC, is a non-compoundable offence. As contemplated under Sub-Section (9) of Section 320 Cr.P.C., excepting the offences under IPC specified under Column No.I and II next following to Section 320(1)&(2), no other offence shall be compounded. In this regard severl juridical pronouncements are there saying that depending upon the nature and the circumstances of the case even in respect of a non-compoundable offence the parties may be permitted to compound the offence after invoking the inherent jurisdiction of the Highcourt under Section 482 Cr.P.C.,

To add more support to his view it may be appropriate to extract the proviso to sub sec.6 and 8 of Section 320 Cr.P.C.

Sub Section 6 reads as follows:-

"A High court or court of session acting in this exercise of its powers of Revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this Section.

Sub Section 8 reads as follows:-

The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

7. In Babur Ali Sardar Vs.Kalachand Bepari, reported in (1939) 1 Cal 567, it is held that:-

"The High Court may allow the parties to a criminal case to compromise their disputes, even when such compromise is effected after the date of the final disposal of the case by the inferior court competent to try it. It is not competent for the High Court to allow a compromise to be recorded unless the aggrieved person is actually before the High Court and has expressly recorded his consent to a compromise being recorded. The High Court will not ordinarily allow the compromise of an offence to be recorded under this sub section unless some attempt towards compounding the offence was made before the trial court passed orders in this case."

8. Insofar as this case is concerned, the second respondent, who is the aggrieved person, stands before this Court and filed an affidavit saying that he was consented to get the case compounded and also to quash the criminal proceedings as against the petitioner.

9. It is also pertinent to note here that even if the criminal case in Crime No.339 of 2012 is allowed to continue, the chances of conviction would be bleak as the complainant, who is the second respondent herein, himself has come forward to say that he has no objection to quash the criminal proceedings.

10. The learned Additional Public Prosecutor has raised his objection on the ground that the petitioner has been detained under Act 14 of 1982 and still the order of detention has not been revoked or quashed by the competent Court.

11. In this connection, this Court would like to place it on record that the order of detention in respect of the petitioner under Act 14 of 1982 may not be a bar to consider the request of the petitioner as well as the second respondent. In order to secure the ends of justice and to prevent the abuse of process of court, this Court is inclined to allow this petition.

12. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in the case in Crime No.339 of 2012, on the file of the first respondent police as against this petitioner is quashed. Consequently, connected Miscellaneous Petition is closed.

ssd vga krk