

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/10/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Cr.OP No. 19477 of 2002

Vijayakumar ... Petitioner

-Vs-

Saminatha Chettiar ... Respondent

Petition under Section 482 of Cr.P.C. to call for the records relating to the C.C. No. 259 of 1999 on the file of the Judicial First Class Magistrate, Karikal and quash the same.

The petitioner has filed the above petition to call for the records relating to C.C. No. 259 of 1999 on the file of the Judicial Magistrate, Karikal and quash the same.

2. Heard both sides. The petitioner is the accused. The respondent is the father of the accused. The respondent has filed a case for maintenance in M.C. No. 87 of 1990 for him and his wife. In the said case, the petitioner has filed petitions under Section 317 of Cr.P.C. to dispense with his appearance on the ground of illness. The respondent has filed the private complaint in C.C. No. 259 of 1999 on the file of the Judicial Magistrate, Karaikal to punish the petitioner for the offences under Sections 191 and 193 of IPC as he has filed petitions under Section 317 of Cr.P.C. on various dates falsely alleging the reasons of heart attack and illness for his non-appearance, but he had been attending the bank where he is employed as Assistant Manager on that dates, thereby committed offences. Aggrieved by the said case, this petition under Section 482 of Cr.P.C. has been filed to quash the same.

3. Mr. Rathinam Sivakumar, learned counsel appearing for the petitioner submitted that learned Magistrate has taken the complaint on file without application of mind; that the petitions under Section 317 of Cr.P.C. were filed then and there and the court has taken into consideration the reason stated therein, allowed the same as such the same cannot be assailed by the respondent by way of private complaint; that the respondent has not opposed the petitions filed by the petitioner under Section 317 of Cr.P.C. at any point of time; that the complaint does not satisfy the ingredients of Section 190 and 193 of I.P.C. as he has not let in any false evidence; that the petitioner has paid the entire arrears of maintenance to the respondent and prayed for quashing the private complaint. The learned counsel appearing for the petitioner relied on a decision of this Court reported in 2000 (3) MWN (Cr) 324 (Yasothai Ammal and another Vs. Velayudam) wherein this court held that a complaint in writing should be preferred by a Presiding Officer of the Court or a Presiding Officer, to which that court is subordinate and cognizance of private complaint is barred.

4. The learned counsel appearing for the respondent has submitted that the private complaint is maintainable in law as the petitioner has made false statements; that the arrears of maintenance not paid and in order to drag on the case the petitions under Section 317 of Cr.P.C. were filed with false statements and prayed for the dismissal of the Criminal Original Petition.

5. Now we look into the provisions of Section 191 and 193 of IPC which runs as follows:-  
"191. Of false evidence and offences against public justice:- Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1 – A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2 – A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know. 193. Punishment for false evidence:- Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine: and whoever intentionally gives or fabricates false evidence in another case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1 – A trial before a court-martial is a judicial proceeding

Explanation 2 – An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice."

6. Section 191 of IPC beginning with the words "whoever being legally bound by an oath or by an express provision of law to say truth" do not support the submission that a man, who is bound under law to make an affidavit, can, if he does not make one, deliberately refrain from stating truthfully the facts which are within his knowledge. In a court of law, a person binds himself on oath to state the truth he is bound to state the truth and he cannot be heard to say that he should not have gone into the witness box or should not have made an affidavit and therefore the submission that any false statement which he had made after taking the oath or otherwise is not covered by the words of Section 191 of IPC is not correct.

7. The test to decide whether it is a false evidence or not is that the deponent was under legal obligation to speak the truth that he had made a false statement which he believed to be false, even if inadvertently an oath is not administered. In order to sustain the action for perjury the prosecution must establish three things (i) that the statement was false (ii) that it was known or believed by the accused to be false or not believed to be true and (iii) that such statement was made intentionally. Therefore, the burden is on the prosecution. There can be no offence if the false statement is made without an intention to make it. The question of intention goes to the root of the matter and when the accused has proved that he did not intentionally make any false statement is not liable for action under Section 193 of IPC. The prosecution must not only prove the falsity of the statement beyond or reasonable doubt, but also show that the accused know or believe that it was false or he did not believe it to be true.

8. In this case, the allegation made against the petitioner was that petitions under Section 317 of Cr.P.C. were filed by his counsel on the alleged ground of illness; whereas on the relevant dates, the petitioner had attended the bank where he is employed. Admittedly, in this case, the respondent herein has not opposed the said applications during the relevant period. The court below has entertained the said applications and ordered dispense with the appearance of the petitioner on the said dates. Where the law does not require a person to verify a statement, it will not render him liable for punishment. In this case, admittedly, the statements were made by the counsel for the petitioner and the petitioner has no occasion to verify the statements. No doubt, while making such statement, it is the duty of the petitioner as well as the counsel to furnish truth. In this case, the petitions were admittedly not opposed by the respondent at any point of time and the court below allowed the said petitions and dispensed with the personal appearance of the petitioner herein. When any statement is made based on the information or on behalf of that person cannot be convicted unless it can be

shown that he knew that it was incorrect and that he made deliberately knowing them to be false.

9. While making an allegation in the complaint, it is the bounden duty of the complainant namely the respondent herein to set out in detail about the alleged statement. Mere repetition of Section of I.P.C. is not adequate. The complaint must not be general one but it has to specify the statement alleged to be false, which is apparently missing in the present complaint. Moreover, the respondent herein has not made out a prima facie case to attract the provisions of Section 191 of IPC.

10. Under Section 195 of Cr.P.C., filing of a complaint by a proper person is a condition necessary to take cognisance of an offence punishable under Section 193 of IPC, otherwise the court will have no

jurisdiction to enquire into the case at all. It is only the court any or in relation to whose proceedings the offence is committed or the court to which such court is subordinate within the meaning of Subsection (4) that is competent to make a complaint in respect of offences mentioned in clause (b) of Sub-section (i), (ii) and (iii). Admittedly, in this case, the complainant is an individual and not the court, hence the complaint is unsustainable in law.

11. Before parting with, I feel it is absolutely necessary to observe that whenever the legislature requires a person to tell the truth, he is bound to state the truth and it is no defence to say that he did not go into the witness box or sworn an affidavit.

For the reasons stated above and also considering the facts and circumstances of the case, the complaint preferred by the respondent herein is liable to be quashed and accordingly quashed. With the result, the Criminal Original Petition is allowed. No costs.