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Crl.O.P.No.23585, 23595 and 23598 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.03.2023

Pronounced on : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.Nos.23585, 23595 and 23598 of 2019

and

Crl.M.P.Nos.12426, 12428, 12430, 12431,

12434 and 12435 of 2019

S.Sundara Vadivel

... Petitioner in all Crl.O.Ps

Vs.

Judicial Magistrate Court – I

(Full Additional Charge)

Panruti,

Cuddalore District.

...Respondent in all Crl.O.Ps

Common Prayer: These Criminal Original Petitions have been filed under Section 482 of Cr.P.C to call for the entire records relating to the impugned complaints in S.T.C.Nos.1, 2 and 3 of 2018 on the file of learned Chief Judicial Magistrate, Cuddalore and quash the same.



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For Petitioner in all Crl.O.Ps : Mr.V.Ragavachari, Senior Counsel
for M/s.V.Srimathi

For Respondent in all Crl.O.Ps : No Appearance

COMMON ORDER

The petitions seek to quash three different complaints filed by the respondent herein against the petitioner for not discharging his duty as a Police Officer and executing the Warrants lawfully issued to him.

2. According to the complainant, several cases were pending on his file for a long period of time since the accused were absconding and nonailable Warrants issued against them were not executed by the police. Hence, he directed the petitioner herein who is the Deputy Superintendent of Police, to execute the pending Warrants failing which to file a report stating the reasons for not executing the Warrants. It is alleged that the petitioner had violated his duty by not executing the warrants and hence was liable for prosecution under Section 44 of the Tamil Nadu District Police Act.



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3. (i) Three separate complaints were filed which are impugned in the above quash petitions. In STC No.1 of 2018 which is impugned in Crl.O.P.No.23585 of 2019, it is alleged that the Warrants against two accused in C.C. No.480 of 2005 were pending execution for a long time. On 14.08.2018 the respondent issued a letter to either execute the Warrant against the accused or file a status report on 03.09.2018. It is alleged that the petitioner neither secured the accused nor filed any status report; that the petitioner hence, disobeyed the order of the Court and failed to act as per the order. A show cause notice was issued to the petitioner calling upon him to explain as to why, action should not be taken against him under Section 21 r/w. 44 of Tamil Nadu District Police Act. On 18.09.2018, the petitioner gave an explanation stating that he had appeared before the respondent on 03.09.2018 and asked the Sub Inspector of Police, one Vishnupriya to file the report. The complainant further states that since the petitioner in his explanation admitted that no report was filed on 03.09.2018 and since he had left the Court without the order of the Court his conduct amounts to dereliction of duty and disrespect to the Court.



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(ii) In S.T.C.No.2 of 2018, which is impugned in Crl.O.P.No.23595 of

2019, it is alleged that in PRC No.63 of 2005, a Warrant was pending against one of the accused since 2010 and the respondent had issued a letter on 14.08.2018 to secure the accused or file the status report on 03.09.2018. However, on 03.09.2018 neither the accused was secured nor any status report was filed. The respondent had sent a notice on 25.09.2018, calling upon the petitioner to offer his explanation. However, the petitioner did not give his explanation and hence his conduct of not executing the warrants, not filing the status report and not giving any response would amount to dereliction of duty punishable under Section 44 of the Tamil Nadu District Police Act.

(iii) Likewise, in STC No.3 of 2018 which is impugned in Crl.O.P.No.23598 of 2019, it is stated that a Warrant was pending against one of the accused in CC.No.9 of 2007 and on 03.10.2018, a letter was sent to the petitioner to execute the warrant and to secure the said accused or to file a status report on 01.11.2018. Neither the accused was secured nor any status report was filed. Hence, on 16.11.2018 a show cause notice was issued to the petitioner asking him to give explanation by 01.12.2018. However, he did not give any



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explanation. Since the petitioner neither executed the Warrant nor responded to the show cause notice, he had violated his duty, punishable under Section 44 of the Tamil Nadu District Police Act. Hence, relying upon the Judgment of this Court in ***Crl.O.P.No.12478 of 2015*** dated 07.09.2015 in ***The Superintendent of Police, Tiruvannamalai District Vs. The Judicial Magistrate, Cheyyar*** reported in ***2015 (5) CTC 511*** the respondent has filed the impugned complaints before the learned Chief Judicial Magistrate, Cuddalore.

4. (a) Mr.V.Raghavachari, learned Senior Counsel for the petitioner submits that the complaints are an abuse of process of law. The petitioner is not a Station House Officer. He was directed to execute the Warrants in his supervisory capacity as the Warrants were pending for several years. Since the Station House Officers did not execute the Warrants, a letter was sent to the petitioner mentioning about nearly ten cases where the Warrants were pending against the accused therein. He was asked to execute the Warrants or file a status report. In compliance with the direction, the petitioner had executed Warrants in some cases. Likewise, the petitioner was asked to execute Warrants in several other cases by various letters. In fact between 28.06.2018 to 17.12.2018 several letters were



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issued to the petitioner in which several Crime Numbers were mentioned. The petitioner had taken efforts to execute the Warrants issued by the learned Judicial Magistrate, Panruti, the respondent herein and also the other learned Magistrates in Cuddalore. The learned Senior Counsel furnished the details of the cases where Non Bailable Warrants were executed by the petitioner which is as follows.

<i>S.No</i>	<i>Month</i>	<i>No of NBWs executed</i>	<i>No of NBWs pending</i>
1.	June, 2018	43	195
2.	July, 2018	73	192
3.	August, 2018	56	169
4.	September, 2018	245	156
5.	October, 2018	157	244
6.	November, 2018	115	154
7.	December, 2018	22	130

(b). The learned Senior Counsel further contended that the petitioner is only a superior Police Officer and the Station House Officer ought to be first directed to execute the Warrants. He in his supervisory capacity who is in charge of several stations cannot be pulled up for dereliction of duty for non execution of Warrants pending for several years. All the three complaints are motivated and the learned Magistrate has personal grievance against the petitioner the details of which he had spelt out in the petition.



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5. Notice was served on the learned Magistrate / Respondent herein.

The learned Chief Judicial Magistrate has sent a report on the directions of this Court. He had stated that his predecessor had taken the complaint on file since the petitioner had not executed the Warrants. He would further state that he had no personal knowledge and his report has been filed based on the records.

6. The impugned complaints have been filed primarily based on the Judgment of this Court in **2015 (5) CTC 511**. In the said case, this Court had quashed the prosecution against the Superintendent of Police initiated by a learned Magistrate for failing to respond to the communication sent to him. The complaint was filed under Sections 174, 175 and 176 I.P.C. However, this Court observed that the Subordinate Courts should not be left without any remedy when Police Officers disobey the Court directions by not serving summons, executing Warrants and for not producing documents etc. This Court further held that Sections 21 and 44 of the Tamil Nadu District Police Act would empower the learned Magistrates to give a complaint to the learned Chief Judicial Magistrate if there is a violation of duty of the Police Officer. The said decision was given in the context of Police



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Officers violating their duty by not executing the non bailable Warrants or summons. In that context, this Court had also observed that the learned Magistrate must maintain a Warrant Register for recording, and keeping track of all Warrants in terms of the directions of the Honourable Supreme Court in ***Raguvanth Dev Chand vs. State of Maharashtra*** in ***(2012) 3 MLJ Criminal 689***. This Court further directed that whenever a Court issues a Warrant it should make an entry in Warrant Register and record the name of the Station House Officer to whom the Warrant is directed to be executed.

7. Admittedly, in the cases that were pending before the respondent, the Warrants were pending for several years. There is nothing in the impugned complaint to show that a Warrant Register was maintained and in that Warrant Register, the name of this Station House Officer to whom the Warrant was directed to be executed was recorded. The learned Magistrate had relied on some of the observations in the Judgment referred above and has not taken note of the other observations. Paragraph 24 of this Court's Judgement reads as follows.

“24. Whenever a Court issues a Warrant , it should make an entry in the Warrant Register and record the name of



the Station House Offer to whom the Warrant is directed to be executed. The Warrant should bear a formal date for the Police to Report to the Court. On the specified date, the Court shall call for a report from the Police Officer about the steps that have been taken for executing the Warrant . At this juncture, it may be relevant to quote Section 44 of the Tamil Nadu District Police Act, 1859:

“44. Penalties for neglect of duty etc, - Every Police Officer who shall be guilty of any violation of duty or wilful breach or neglect of any Rule or Regulation or lawful order made by Competent Authority or who shall cease to perform the duties of his office without leave, or without having given two months' Notice provided by this enactment, or engage without Authority in any employment other than his Police duty, or who shall maliciously and without probable cause prefer any false, vexations or frivolous charge or information against any individual, or who shall knowingly and wilfully and with evil intent exceed his powers, or shall be guilty of any wilful and culpable neglect of duty, in not bringing any person who shall be in his custody without a Warrant before a Magistrate as provided by law, or who shall offer any unWarrant able personal violence to any person in his custody, shall be liable, on conviction, before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour not exceeding three months or both”.”



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The Learned Magistrate in his impugned complaint has extracted the above portion of the Judgment as well. In such circumstances, the learned Magistrate ought to have first maintained a Warrant Register recording the name of the Station House Officer to whom the Warrant was directed to be executed. This direction of the Court was to ensure that the named Police Officer would be made responsible for non-execution of the Warrant . The execution of the Warrant is the primary responsibility of the Station House Officers. It is not known as to whether the learned Magistrate had complied with Paragraph 24 of this Court's Judgement. Be that as it may.

8.The letter issued to the petitioner was sent to him mentioning ten different cases. The letter reads as follows:

“பொருள் - வழக்குகள் - குற்ற வழக்குகள் - பண்ருட்டி காவல் நிலைய குற்ற எண்கள். 756/1997, 396/1999, 1037/2002, 451/2004, 1024/2004, 233/2005, 588/2005, 936/2007, 410/2008, 998/2013 - வழக்கில் கண்ட எதிரிகளை ஆஜர்படுத்துவது - சம்மந்தமாக.



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மேற்கண்ட வழக்கில் எதிரிகள் மீது பிடியாணை பிறப்பிக்கப்பட்டு இன்று வரை நிறைவேற்றாமல் இருந்து வருகிறது. இவ்வழக்குகள் ஐந்து ஆண்டுகளுக்கு மேல் தாக்கல் செய்யப்பட்டு இன்று வரை நலுவலையில் இருந்து வருகிறது. இதுவரை பல காவல் அதிகாரிகளுக்கு கடிதம் அனுப்பியும் பலன் இல்லை. எனவே நீவர் இவ்வழக்கு எதிரிகள் மீது உள்ள பிடியாணையை நிறைவேற்றி அவர்களை உடனடியாக இந்நீதிமன்றத்தில் ஆஜர்படுத்தி வேண்டும் என இதன்மூலம் உத்தரவிடப்படுகிறது. தவறும்பட்சத்தில் தாங்கள் அதற்குண்டான காரணத்தை 03.09.2018 அன்று காலை 10.00 மணியளவில் இந்நீதிமன்றத்தில் ஆஜராகி தெரிவிக்க வேண்டும் என உத்தரவிடப்படுகிறது.”

The letter directs the petitioner to ensure that the Warrants are executed since letters written to several Police Officers earlier did not yield any result. Two of the cases shown in the letter namely Cr.Nos.451 of 2004 and 588 of 2005 are the subject matters of two complaints. In respect of S.T.C.No.3 of 2018, the letter is said to have been issued on 03.10.2018 for a different case. The very fact that no complaints have been filed in respect of eight other cases mentioned in the letter dated 14.08.2018 would show that the alleged violation of duty is in respect of only two cases. That apart, it is also seen that the petitioner being the Deputy



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Superintendent of Police had executed Warrants issued by various other learned Magistrates, during the period from June 2018 from December 2018.

9.The directions given by this Court giving power to the learned Magistrates to file a complaint has been misconstrued by the respondent in this case. As stated earlier, a Warrant Register had to be first maintained fixing responsibility on the Station House Officer to whom the Warrant is directed and thereafter the action should be taken if there is a wilful violation of duty. The maintenance of Register would ensure that responsibility is fixed and depending on the delay in execution of the warrant to determine whether the non execution was wilful. The letters issued to the respondent and non execution of Warrants within 20 days cannot be the basis to initiate prosecution alleging violation of the duty. Admittedly, the Warrants were pending for several years. Further, since the complaints have been filed only in respect of two cases mentioned in the letter dated 03.10.2018 shows that some Warrants have been executed. Hence, the violation of duty, even assuming to be true cannot be said to be wilful. The learned Magistrate also seems to be aggrieved by the fact that no report was filed by the petitioner as directed by him. Merely because a report was not filed on the date on



which the learned Magistrate had given time for filing the report would not *ipso facto* lead to the conclusion that there was a violation of duty. The violation of duty mentioned in Section 44 of District Police Act has to be wilful and deliberate to be liable for prosecution. Though “wilful and deliberate” is not found qualifying the words “violation of duty” in the provision, the same has to be read into it. Mensrea has to be read into any criminal statute, unless the statute specifically excludes it. The statute does not exclude it in the instant provision namely Section 44 of the District Police Act. In this regard, it would be useful to refer to the observations of the Hon'ble Supreme Court in the case of ***Nathulal Vs State of Madhya Pradesh*** reported in ***AIR 1966 SC 43***;

“K.Subba Rao J

4....Mens rea is an essential ingredient of a criminal offence. Doubtless a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the



question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof....

J.C. shah,J

7. Definitions of diverse offences under [the Indian Penal Code](#) state with precision that a particular act or omission to be an offence must be done maliciously, dishonestly, fraudulently, intentionally, negligently or knowingly. Certain other statutes prohibit acts and penalise contravention of the provisions without expressly stating that the contravention must be with a prescribed state of mind. But an intention to offend the penal provisions of a statute is normally implicit, however, comprehensive or unqualified the language of the statute may appear to be, unless an intention to the contrary is expressed or clearly implied, for the general rule is that a crime is not committed unless the contravenor has mens rea. Normally full definition of every crime predicates a proposition expressly or by implication as to a state of mind: if the mental element of any conduct alleged to be a crime is



absent in any given case, the crime so defined is not committed.

8. I have no doubt that an offence under Section 7 of the Essential Commodities Act, 10 of 1955 for breach of Section 3 of the Madhya Pradesh Foodgrains Dealers Licensing Order, 1958 necessarily involves a guilty mind as an ingredient of the offence.....”

10. The complaint of the respondent is on two different aspects. The first is that the petitioner neither executed the Warrant nor filed a status report within the stipulated time. Secondly, in one case his explanation to the show cause notice was found to be unsatisfactory and in two other cases, he had not offered any explanation. Only if it is found that the petitioner had violated his duty by not executing the warrants or for not filing a report, the need to give explanation to the show cause notice would arise. In the instant case, this Court finds even assuming that the petitioner had not filed his status report on 03.09.2018 in response to 14.08.2018, the said act would not amount to deliberate violation of duty. Even in the show cause notice dated 04.09.2018, the petitioner's presence before the learned Magistrate is recorded, which reads as follows :-



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“இந்நீதிமன்றத்திலிருந்து தங்களுக்கு பார்வையில் கண்ட
கடிதம் மூலம் அறிவிப்பு அனுப்பப்பட்டு தாங்கள் இந்நீதிமன்றத்தில்
03.09.2018 இன்று ஆஜரானீர். ஆனால் எதிரிகள் மீதுள்ள
பிடியாணை நிறைவேற்றவும் இல்லை அல்லது அதற்குண்டான
காரணத்தை விளக்கி அறிக்கையும் சமர்ப்பிக்கவில்லை.”

In obedience to the letter given by the learned Magistrate, the petitioner had appeared before him. His explanation was that since the learned Magistrate insisted on individual reports, he was preparing it and waiting in the Court till 1:00 P.M., and since he had urgent work relating to law and order he had left the Court premises. Having noted the petitioner's presence on 03.09.2018, the learned Magistrate ought to have given one more opportunity to him and should not have acted in haste in resorting to the provisions of Section 21 r/w. 44 of the District Police Act.

11. That apart, as noted earlier, the observations by this Court in the case of *The Superintendent of Police, Tiruvannamalai District Vs. The Judicial Magistrate, Cheyyar* (cited supra) made in a different context has been misconstrued by the learned Magistrate. Those observations giving authority to invoke Section 21 read with 44 of the District Police Act is when the police officer



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named in the Warrant register had failed to execute the warrant wilfully. For invoking the said provision, the learned Magistrate ought to have first maintained a register as directed by the Honourable Supreme Court in ***Raguvanth Dev Chand vs. State of Maharashtra*** in ***(2012) 3 MLJ Criminal 689***. In order to prosecute the superior Police Officer, it has to be first ascertained whether the violation of the directions issued to the superior officers to execute warrants in their supervisory capacity is wilful or deliberate. Only if it is wilful or deliberate, a prosecution can be launched. It cannot be launched in a routine manner. In the facts and circumstances, this Court is of the view that the conduct of the petitioner does not suggest that he is liable for prosecution of the alleged offence. Hence, the impugned complaints are liable to be quashed.

12. Accordingly, the Criminal Original Petitions are allowed.

Consequently, the connected Miscellaneous Petitions are closed.

.03.2023

dk/ay



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Chief Judicial Magistrate, Cuddalore

2.The Judicial Magistrate Court – I
(Full Additional Charge)

Panruti,

Cuddalore District.



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Crl.O.P.No.23585, 23595 and 23598 of 2019

SUNDER MOHAN, J

dk/ay

Pre-delivery order in

Crl.O.P.No.23585, 23595 and 23598 of 2019

and

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.03.2023