

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.15677 of 2015
and M.P.No.1 of 2015 &
Crl.M.P.No.2976 of 2016

1.N.Paul

2.S.Jayapaul

... Petitioners/Accused 1 and 2

Vs.

Vinod Kumar

.. Respondent/ Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records in C.C.No.5226 of 2014 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai-600 015 and quash the same.

For Petitioners :Mr.D.Chandar
(CGSC)

For Respondent :Mr.Vinod Kumar (Party-in-person)

O R D E R

The petitioners, who are arrayed as A1 and A2 in the private complaint in C.C.No.5226 of 2014 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai, have come forward with the present petition for quashing the proceedings initiated against them for the offences under sections 500, 211, 193, 195 r/w 34 IPC.

2. The relevant facts of the case are as follows:

(i)The second petitioner is the Director of Southern Region of the Lab called National Test House (a Government testing lab) and the first petitioner is the lab in-charge. The respondent/complainant is the Scientific Officer. While so, on 19.07.2010, the respondent had received two dishes made of platinum for the purpose of conducting test in the lab and he returned the same at 5.00 p.m., after finishing the lab work. It was apparently visible that the rim of the two dishes

found to be freshly trimmed and edges were observed to be very sharp and glittering and that they found there was a shortage of 2.4145 grams of platinum. The same was immediately intimated by the first petitioner/A1 to the Head Office of the lab i.e., the Director General, National Testing House, Kolkatta. Thereafter, a complaint was lodged against the respondent/complainant and on the basis of the same, a case has been registered in Crime No.817/2010 dated 26.07.2010 before J-7, Velachery police station for an offence under section 409 IPC. Pursuant to the same, the respondent was arrested on 29.07.2010 and was remanded to judicial custody on 30.07.2010 and subsequently, he was released on bail on 03.08.2010.

(ii) Due to initiation of criminal proceedings, the respondent was suspended from service on 30.07.2010. After investigation, the criminal case registered against the respondent was closed on 21.03.2012 as "Mistake of fact", due to which, the respondent was reinstated in service and awarded a punishment of censure. In the mean while, the Department has filed a protest petition, which was dismissed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, with a direction to file a private complaint. As of now, no private complaint is preferred on the side of the Department against the respondent.

(iii) However, the respondent as a complainant has filed a private complaint against the petitioners for the offences punishable under Sections 500, 211, 193, 195 read with 34 IPC as if the petitioners have given a false complaint by providing fabricated evidence to defame him and cause injury to his reputation with a malafide intention. The private complaint was taken on file as C.C. No.5226 of 2014 by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai. Challenging the same, the petitioners are before this Court for quashing the proceedings against them.

3. The learned counsel for the petitioners has raised the following grounds for quashing the proceedings:

(i) The petitioners have no ill-will against the respondent while discharging their duty. After noticing the shortage, they have informed the same to the Director General of National Testing House and on the basis of the instructions received from their Head office, they have given the complaint, which was registered in Velachery Police Station as Crime No.817 of 2010 against the respondent for the offence under Section 409 IPC and

subsequently, it was closed as 'Mistake of fact'. According to the petitioners, there is no falsification of records and no fabrication of documents. Therefore, no ingredients for the offences stated in the private complaint have been made out against them.

(ii) Before filing a private complaint against the Government servants, the respondent has to obtain sanction under section 197(1)(a) Cr.P.C. and therefore, the learned Magistrate ought not to take cognizance of the offence and ought to dismiss the private complaint filed by the respondent.

(iii) The petitioners being the Government servants, they have done their duty in accordance with law and they got protection under sections 76, 79 and 93 IPC.

(iv) Though the earlier complaint was closed as mistake of fact on 21.03.2012 and the disciplinary proceedings initiated against the respondent was concluded on 23.01.2013, the respondent has preferred the private complaint only on 18.9.2014. Therefore, there is a delay of more than one year in filing the private complaint.

To substantiate his arguments, he relied upon the decision of this Court in the case of (S.Arulanandam, Deputy Superintendent of Police, Vigilance officer, Corporation of Chennai v. A.Kalaiselvan) in CrI.O.P.No.30234 of 2006, dated 14.08.2009. Thus, he prays for quashing the proceedings initiated against the petitioners.

4. Resisting the same, the respondent/party-in-person would submit that he is the Senior Scientist and on 19.07.2010, at about 11.30 a.m., he had received two dishes made of platinum for conducting test and he returned the same to the second petitioner at 4.50 p.m., after finishing the lab test and necessary entries were also made in the register and the second petitioner himself put his signature against the word "returned" after being satisfied with the material. But on the same day at 5.15 p.m., the respondent was called by them for explanation and informed that there is a loss of weight in the dishes and obtained his signature. Thereafter, the case has been registered against the respondent, he was arrested and remanded to judicial custody. Subsequently, after conducting investigation, the case was closed as mistake of fact. He would further submit that even though the Department has filed protest application, it was dismissed by the concerned Magistrate. It clearly shows that the petitioners with a malafide intention to defame the respondent, lodged a false complaint knowing fully

well that the complaint itself is false. Hence, the petitioners are liable to be prosecuted for the offences under Sections 500, 211, 193, 195 read with 34 IPC.

5.It is further submitted by the respondent that he has given a letter for sanction to prosecute the petitioners, but neither sanction has been accorded nor it was rejected. Respondent/complainant got papers only through Right to Information Act and the petitioners had given reply belatedly by suppressing the material facts. No sanction is necessary to prosecute the petitioners and to substantiate the same, he relied upon the decision of the Apex Court in Criminal Appeal No.129 of 2013, dated 13.04.2015 in (Inspector of Police and another v. Battenapatla Venkata Ratnam and another). The respondent has also given a complaint before the Central Vigilance Commission against the petitioners and the same has been forwarded to the CVO Department of Consumer Affairs for taking necessary action, but so far no action has been taken. Hence, the respondent has preferred the private complaint against the petitioners and therefore, he prays for dismissal of this petition.

6.Heard both sides.

7.A perusal of the typed set of papers reveals that the second petitioner is the Director of National Test House (Southern Region) and the first petitioner is the lab in-charge. The respondent/complainant is the senior Scientist. On 19.07.2010, at about 11.30 a.m., the respondent had received two dishes made of platinum for the purpose of conducting test in the lab and the said dishes were handed over by the first petitioner after making entries in the record register. After completing the test, the respondent returned the same at 5.00 p.m. At that time, the petitioners found that the rim of the two dishes were found to be freshly trimmed and edges were observed to be very sharp and glittering. Due to suspicion arises, they reported the matter immediately to the Divisional Head of the Chemical Laboratory, who in turn reported the same to the Director. The same was also verified by the Divisional Head, Director, Assistant Vigilance Officer and Assistant Director (Administration) in charge and Scientist (Chemical.2). Immediately, the respondent was called for explanation and he failed to give convincing reply in this regard. Meanwhile, on verification, it was established that there has been a total loss of weight of platinum in both the dishes by 2.4145 grams comparing the initial original weight recorded in his register on the same day. Thereafter, a

complaint was lodged against the respondent/complainant and on the basis of the same, a case has been registered in Crime No.817/2010 dated 26.07.2010 for an offence under section 409 IPC. On that basis, the respondent was arrested on 29.07.2010 and was remanded to judicial custody on 30.07.2010 and subsequently, he was released on bail on 03.08.2010.

8.It further reveals that after thorough investigation and examination of witnesses, the police have come to the conclusion that the complaint has been filed as mistake of fact and the same was closed. Then the petitioner was reinstated in service. In the meanwhile, the Department has filed a protest application and the same was dismissed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, with a direction to the Department to file a private complaint. But they have not chosen to file any private complaint against the respondent. However, the respondent has preferred a private complaint against the petitioners for the offences under Sections 500, 211, 193, 195 read with 34 IPC and the same has been taken on file as C.C.No.5226 of 2014 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai. Challenging the same, the petitioners have come forward with this petition for quashing the proceedings in C.C.No.5226 of 2014.

9.The point to be decided is whether sanction is mandatory before taking cognizance of the offence. So it is appropriate to incorporate Section 197 Cr.P.C., which runs as follows:

"197.Prosecution of Judges and public servants.- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3-A) Notwithstanding anything contained in Sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a proclamation issued under clause (1) of article 365 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

In the above Section, it was specifically mentioned that if any Government servant is to be prosecuted, while he was committing offence in discharging his official duty,

sanction is mandatory and it should be obtained from the competent authority.

10. In the case on hand, no sanction order has been obtained from the competent authority. At this juncture, the respondent/complainant would submit that he has already given a petition seeking sanction, but neither sanction was accorded nor his petition was rejected and the same has been pending. It is to be noted that the respondent has not filed any document to prove the same.

11. As per the decisions reported in (2012) 3 Supreme Court Cases 64, Subramanian Swamy v. Manmohan Singh and Another; 2014 SCC OnLine SC 1019, State of Punjab v. Labh Singh; 2015 SCC OnLine SC 390, D.T. Virupakshappa v. C. Subash, prior sanction is necessary before taking cognizance of the offence under IPC, as per Section 197 Cr.P.C.

12. A perusal of page No. 30 of the typed set of papers reveals that the learned XVIII Metropolitan Magistrate, Saidapet, Chennai has taken cognizance of the offence on 29.09.2014, on which date, there is no evidence to show that the sanction has been obtained.

13. Now it is appropriate to consider the decision relied upon by the respondent/complainant reported in Criminal Appeal No. 129 of 2013, dated 13.04.2015 in (Inspector of Police and another v. Battenapatla Venkata Ratnam and another), wherein the Honourable Apex Court has considered various decisions of the Apex Court and in para-11, it came to the conclusion as follows:

"11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only. "

But the above decision is not applicable to the facts of the present case. Because the petitioners had sent a communication to their higher officials and on their instruction only, they had given the complaint against

the respondent, while discharging their official duty. In such circumstances, I am of the view, sanction is mandatory to prosecute the petitioners before taking cognizable offence. So the above citation is not applicable to the facts of the present case.

14.Learned counsel for the petitioners relied upon the decision of this Court in the case of (S.Arulanandam, Deputy Superintendent of Police, Vigilance officer, Corporation of Chennai v. A.Kalaiselvan) in Crl.O.P.No.30234 of 2006, dated 14.08.2009, wherein this Court after considering several judgments of the Apex Court and High Courts held that if the Government servant has committed any offence while discharging his official duty, sanction is necessary before taking cognizable offence.

15.It is appropriate to incorporate the following decisions of the Honourable Apex Court, which read as follows:

(i) In Prof. N.K.Ganguly v. CBI New Delhi reported in (CDJ 2015 SC 904), in para-25, it is held as follows:

"25. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate government under Section 197 of CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the Appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the Appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 of CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence."

(ii) In Vinod Chandra Semwal v. Special Police Establishment, Ujjain reported in (CDJ 2015 SC 237), in para-13, it is held as follows:

"13. In the present case what we find is that the delegatee K.K.Singh Chauhan executed the exchange-deed dated 23.12.1993 on behalf of the Chairman. There is nothing on record to suggest that it was executed at the instance of the appellant. By Office Order dated 22.12.1992, the appellant, as Chairman of the Trust, delegated all his powers to Shri K.K.Singh Chauhan, Chief Executive Officer, Town Improvement Trust under Section 25(1)(2) of the Act. All the powers, duties or functions were delegated to him except the powers conferred or imposed upon or vested in Chairman under Sections 16, 19, 29 and 56 of the Act. If the delegatee has not acted in terms of the delegated powers, we are of the view that the delegator cannot be held to be guilty for such execution of the exchange deed. Though for some other reasons, we are of the view that it was not a fit case for grant of sanction either under Section 19 of the P.C. Act for prosecuting the appellant under Sections 13(1)(d) read with 13(2) of the P.C. Act or under Section 197 Cr.P.C. for prosecuting the appellant under Section 120B IPC. If the State Government and the Central Government refused to grant sanction, the Special Judge rightly declined to take cognizance of the offences punishable under Section (1)(d) read with Section 13(2) of the P.C. Act and for want of prosecution of sanction under Section 19 of the P.C. Act and Section 120B IPC for want of sanction under Section 197 Cr.P.C."

The above citations are squarely applicable to the facts of the present case. In the decision reported in 2015 (8) SCC 383, it was held that if the delegatee has not acted in terms of the delegated powers, delegator cannot be held to be guilty for such execution, so it is not a fit case for grant of sanction for prosecuting the appellant. In the instant case, the petitioners had acted as per the direction of their superior and preferred the complaint.

So they shall not be prosecuted. As per the decision in Prof. N.K.Ganguly v. CBI New Delhi reported in (CDJ 2015 SC 904), sanction is necessary under Section 197 Cr.P.C., since the complaint has been given by the petitioners as per the direction of their superior officer while discharging their official duty.

16. Learned counsel for the petitioners has drawn attention of this Court through Sections 76, 79 and 93 IPC submitting that entire proceedings has been vitiated, since sanction order is not obtained and the petitioners being the Government servants, they have only done their duty in accordance with law. So it is appropriate to extract Sections 76, 79 and 93 IPC, which are as follows:

"76. Act done by a person bound, or by mistake of fact believing himself bound, by law. _ Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

79. Act done by a person justified, or by mistake of fact believing himself justified, by law. _ Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

93. Communication made in good faith. _ No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person. "

17. Considering the facts and circumstances of the case along with the above sections, I am of the view, the petitioners had sent a communication to their higher authorities in good faith intimating that there was a shortage of 2.4145 grams of platinum and as per their directions, the petitioners acted in good faith and lodged the complaint against the respondent. Therefore, the petitioners in good faith had lodged the complaint against the respondent. Further, it is appropriate to consider the arguments advanced by the learned counsel for the petitioners that even though complaint has been

closed as mistake of fact. In the disciplinary proceedings, the allegation of charges were proved against the respondent and culminated in punishment of "censure, recordable in service records" was awarded by the appointing authority after following service rules. At this juncture, the respondent/complainant has argued that the same has been challenged by him, which is pending.

18. It is pertinent to note that the complaint against the respondent was closed as mistake of fact on 23.01.2013. But the respondent preferred the private complaint against the petitioners only on 18.09.2014. It clearly shows that the respondent kept quiet for more than one year and came forward with the private complaint belatedly only with a malafide intention. As already stated that the petitioners while discharging their official duty, had given the complaint as per the direction of their higher officials. After due investigation, the said complaint was closed as mistake of fact. Merely because the petitioners had lodged the complaint against the respondent, he cannot prefer the private complaint against them for the offences under Sections 500, 211, 193, 195 read with 34 IPC.

19. Now this Court has to consider the ingredients of Sections 499, 500, 211, 193, 195 read with 34 IPC, which are as follows:

(i) "499. Defamation: Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

500. Punishment for defamation. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

Section 499 deals with defamation and 500 IPC deals with punishment for defamation. As already discussed supra, the petitioners in good faith sent a communication to the higher officials regarding the shortage of weight and on their instructions only, they lodged the complaint against the respondent. So there is no mala fide intention on the part of the petitioners to defame the respondent. Therefore, the ingredients of Section 499 IPC has not been made out against the petitioners.

(ii) "Section 211. False charge of offence made with intent to injure. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, [imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. "

Section 211 IPC deals with false charge of offence made with intent to injure. In the case on hand, it is not the case that the petitioners with an intention to cause injury to the respondent, instituted criminal proceedings against him. Hence, prima facie the ingredients of Section 211 IPC have not been made out against the petitioners.

"(iii) Section 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 any other 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.

Section 195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment_Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [by the law for the time being in force in [India]] is not capital, but punishable with [imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished."

Section 193 deals with punishment for creating false evidence with an intention and Section 195 deals with giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment. Prima facie neither the ingredients of Section 193 IPC nor the ingredients of Section 195 IPC have been made out. It is true, there was a delay in getting answers from the Right to Information Act and the respondent has also given the complaint before the Central Vigilance Commission. Non furnishing the information under the Right to Information Act will not fascinate the criminal liability against the petitioners. As discussed above, the ingredients of Sections 499, 211, 193 and 195 IPC have not been prima facie made out against the petitioners. The petitioners while discharging their official duty, preferred the complaint on the direction of their superior. Hence, I am

of the view, it is a fit case for quashing the proceedings.

20.Considering the facts and circumstances of the case along with the submissions made by the petitioners as well as the respondent, this Court is inclined to quash the proceedings initiated against the petitioners. Accordingly, the Criminal Original Petition stands allowed and the entire proceedings in C.C.No.5226 of 2014 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai-15, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kj

To

The XVIII Metropolitan Magistrate,
Saidapet, Chennai-600 015.

1 cc to Mr.D. Chandar, Advocate, Sr. 17894 (29/04/2016)

+ 1 cc to Mr.Vinod Kumar, (Party-in-person) Advocate Sr
4727 (2/5/16)

CrI.O.P.No.15677 of 2015
and M.P.No.1 of 2015 &
CrI.M.P.No.2976 of 2016

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