

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(RESERVED ON : 05.07.2016)

Dated : 26.10.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CrI.R.C.No.133 of 2006

1. B.Udayakumar
Inspector of Police
2. Pon.Chandrasekaran
Deputy Superintendent of Police ...Petitioners/Accused 9&10

Vs.

K.Rajendran ...Respondent/Complainant

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 06.07.2005 made in CMP.No.6317 of 2002 in PR.No.14 of 2002 passed by the learned Judicial Magistrate, Tiruchengode.

For Petitioners : Mr.K.Priya
For Respondent : No appearance.

ORDER

The Criminal revision is directed against the order passed by the learned Judicial Magistrate, Tiruchengode made in CMP.No.6317 of 2002 in PR.No.14 of 2002 dated 06.07.2005, dismissing the discharge application filed by the revision petitioners.

2.It is admitted that at the time of occurrence A9/first petitioner is working as Inspector of Police, CBCID, Namakkal District and A10/second petitioner is working as Deputy Superintendent of Police, Tiruchengode, Namakkal District. Now the first petitioner/A9 is working as Inspector of Police, CBCID, Salem and Second Petitioner/A10 is working as Assistant Commissioner - I, Third Battalion, Tamil Nadu Special Police, Veerapuram, Chennai-55. The petitioners were attached to Komarapalayam Police Station, Namakkal District as Sub Inspector and Inspector of Police respectively, along with one Head Constable No.577/(Late) Paulraj during the relevant period of time (i.e, 1997). The trial Court without looking into the provisions of Sections 190, 192, 195, 197 Cr.PC erroneously

dismissed the application. The trial Court failed to look into the fact that there is no acceptable legal evidence implicating the petitioner for the offences under Sections 193, 201, 211, 218 r/w.149 IPC. The trial Court failed to rely on the complaint recorded by A11, alleged to have been recorded on 22.06.1997 at the Hospital to show that the FIR registered by A9 differs materially from the complaint. The learned counsel for the petitioner further contended that the trial Court failed to peruse the documents filed by the respondent along with his complaint and signed statements recorded by the Deputy Superintendent of Police, Tiruchengode. The respondent/complainant had not stated or proved what evidence was screened to save any of the accused in Cr.No.664 of 1997 or any other fact to constitute an offence under Section 201 IPC. The learned Judicial Magistrate ought to have applied the mind and allowed the petition filed by the petitioner, the trial Court without following the elementary principles and without hearing the contents of the oral evidences available in the documents come to a wrong conclusion. In view of the above circumstance, the learned counsel prays this Court to set aside the order of the learned Judicial Magistrate made in CMP.No.6317 of 2002 in PR.No.14 of 2002 and to allow the revision filed by the revision petitioners.

3.Though, notice was duly served on the respondent/defacto complainant there is no representation on behalf of the respondent either in person or through the learned counsel on record. The name of the respondent is also printed in the cause list.

4.On perusal of the materials available on record it is clearly shown that the petitioner was added as A9 and A10 in PR.No.14 of 2002 registered under Sections 147, 148, 326, 323 r/w.149 and 427 IPC. The private complaint was preferred by one Mr.Rajendran against the 11persons including the present revision petitioners A9 and A10 in the complaint.

5.It is relevant to extract paragraph Nos.29, 30 and 31 of the complaint given by the complainant before the Chief Judicial Magistrate, Salem : -

"29. A1 to A8, have caused grievous injury to the complainant while committing dacoity of the valuables from the possession of the complainant. A9 and A10, have voluntarily with an intention of causing injury to the complainant and to save the accused from legal punishment have fabricated records to conceal the primary evidence and have also signed the witnesses who are accomplices in this case. A10, has purposely done so, so that the case of the prosecution would ultimately fail in the trial Court. Hence, A9 and A10 have committed an offence under Section 193, 201, 211,

218, r/w.109 of IPC.

30. In the above said circumstances, the complainant is persuaded to approach this Hon'ble Court with the true facts and circumstances of this case, so as to enable this Hon'ble Court to punish the accused cited in this complaint in accordance with law.

Therefore, it is prayed that this Hon'ble Court will be pleased to take the complaint on file for the offences U/s.147, 148, 149, 323, 324, 326 and 397 of IPC against A1 to A8 and for the offences U/s.193, 201, 211, 218 r/w.109 of IPC against A9, A10 and A11 and thus render justice."

6. It is useful the refer Schedule - I of Cr.PC : -

Sections 147, 148, 149, 323, 324, 326 of IPC are triable by the Magistrate/Magistrate of First Class. Section 397 of IPC is triable by the Court of Session.

7. In the case, the trial Court has framed charges against the revision petitioners/A9 and A10 for the offences under Sections 193, 201, 211, 218 r/w.109 IPC, the said offences are triable by the Court of Magistrate of First Class, except the offence under Section 201 IPC.

8. The other offences charged against the other accused/A1 to A8 are triable by the Magistrate/Magistrate of First Class, except the offences under Sections 201 and 397 IPC.

9. The provisions of Section 202 Cr.PC which reads as follows :-

202. Postponement of issue of process - (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding :-

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under

section 200

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

10. The complaint is filed by the defacto complainant under Section 200 Cr.PC. On plain reading of the paragraphs 23 and 24 of the complaint given by the complainant against the present revision petitioners/A9 and A10 are as follows :-

"23. The accused No.9 and 10, with an intention of getting the complainant convicted in a case of robbery purposely induced A2 to give an false complaint on 19.06.1997. This was latter, converted into an FIR in Cr.No.858/97 on 16.08.1997 for the offence U/s.392 IPC to create a circumstance to exist before the Court of Law to form an erroneous opinion on the complainant. Hence, A2, A9 and A10 are liable to be punished U/s.193 IPC. Further, A2, A9 and A10 with an intent to cause injury to the complainant has falsely charged him with having committed an offence knowing fully well that there is no just or lawful ground for such charge against him. Hence, they are liable to be punished U/s.211 IPC.

24. The Accused No.10, by fabricating records in favour of the accused and framing incorrect charges in order to save them from legal punishment has committed an offence U/s.218 IPC. The complainant vouched, for the money amounting to Rs.1,58,000/- which was carried away by A1, A2 and A8 to both the investigating agencies. He also produced two loan receipts through which he had pledged his jewels and raised an amount of Rs.58,000/-, through two of his friends. Further a sum of Rs.1,00,000/- was borrowed from Marappan. They have been cited as witness Nos.43, 44 and 45 in CC.No.148/98 respectively. A10, in order to cause injury to the complainant and with an intent to save A1 to A8, from legal punishment conveniently did not recover this money as well as the jewels. Hence, A10 is liable for punishment U/s.218 IPC. Further, it is only with the clandestine support of A10, the accused A1 to A8 with their henchmen, dated this ruthless

murderous assault and dacoity on the complainant. Thus A10 has rendered himself liable for punishment U/s.109 IPC."

11. On reading of the above allegations mentioned in the complaint A9 and A10 are implicated in the offence only for the act done in their official capacity. The complaint was preferred by the complainant, A9 and A10 stated to have committed the above said offence.

12. In the said circumstances, it is useful to refer Sections 193, 195, 197 and 201 Cr.PC, which are extracted hereunder :-

193. Cognizance of offences by Courts of Session :- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence - (1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any

offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

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:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted]

(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

(3A) 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 356 of the Constitution was in force therein, except with the previous sanction of the Central Government (3B) 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

201. Procedure by Magistrate not competent to take cognizance of the case - If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall,-

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court

13.The trial Court in its order stated that the Court perused the documents and evidences and issued summons to A9 and A10, hence the allegations levelled against the revision petitioners/A9 and A10 has to be decided only at the time of trial and at the stage of examination of witnesses, dismissed the petition filed by the petitioners stating that the petition filed by A9 and A10 is not maintainable. Admittedly, as the above stated provisions of Cr.PC, for the offences or any act done by the accused in the official capacity sanction of the Government is necessary before filing of the complaint against the officials against their official capacity.

14.In this case, before lodging a complaint against the accused i.e, A9 and A10 in their official capacity, the complainant has not accorded any sanction from the Government, before filing the present complaint. The private complaint preferred by the complainant is in contravention to the

principles of the above provisions in the Cr.PC.

15.Considering the above facts and circumstances of the case, this Court is of the considered view that the order passed by the Judicial Magistrate, Tiruchengode stating that the Judicial Magistrate has no power to discharge the accused from the charges and only the Sessions Court has power to discharge the accused from the charges levelled against them and that too can be decided only after examination of the witnesses and after full trial, is liable to be set aside and the same is hereby set aside.

16.In the result, the criminal revision petition is allowed, by setting aside the order dated 06.07.2005 made in CMP.No.6317 of 2002 in PRC.No.14 of 2002 passed by the Judicial Magistrate, Tiruchengode.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate, Tiruchengode.

2.do-Thro The Chief Judicial Magistrate
Namakkal

3.The Public Prosecutor High Court Madras

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