

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.1270 of 2011

1.P.Ganesan
2.M.Gothandaraman
3.A.Vincent Paulraj
4.S.Rayappan

... Petitioners/Accused 1,3,5 and 6

Vs

N.Natarajan . Respondent/Complainant

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.72 of 2010 on the file of the Chief Judicial Magistrate, Coimbatore and to quash the same insofar the petitioners are concerned.

For Petitioners : Mrs.Kavitha
for M/s.C.Prakasam

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed by the petitioners to call for records in C.C.No.72 of 2010 on the file of the learned Chief Judicial Magistrate, Coimbatore and to quash the same.

2. The respondent has filed a private complaint against the petitioners and others for the offence under Sections 176, 177, 182, 218 and 323 of IPC. The petitioners are accused Nos.1, 3, 5 and 6 in the private complaint. The learned Chief Judicial Magistrate, Coimbatore has taken cognizance of the offence in C.C.No.72 of 2010.

3. In the complaint, the respondent alleged that, on 27.09.2006, Avinashi PEW police arrested him in connection with Crime No.141 of 2006 between 5.00 and 6.00 P.M. at Karamadai town, adjacent to Karamadai VAO's office and when he was taken from the upstairs of the building to downstairs and then he was boarded in a car parked adjacent

to the building, constable Kothandam and other policemen of PEW police station used heavy force leading heavy pain in the back of him and also front side of the neck almost blocking the entire throat leading breathing problems. At that time, another police constable kicked the respondent on his body. It is alleged that Head Constable Royappan was the root cause and he only abetted the police constables to torture the respondent. The said incident was witnessed by lot of persons. The police constables took the respondent from the place of arrest to Karamadai police station, where also he was tortured.

4. In the complaint, it is alleged that one M.Manoharan of Karamadai town acts as an agent of Karamadai police station and collects amounts for the benefit of the police officers in that locality. The Ex-Village Munsif Bujinga Gowder @ Kannappan threatened the respondent that he would be put in jail for a period of one year. The Ex-Village Munsif Kannappan was an agent of the police department and Thimmampalayam arrack producers and theft case offenders used to stay in the garden of Kannappan at Thimmampalayam and due to intervention of Kannappan, offenders of the society were escaping without any form of criminal case.

5. It is stated in the complaint that when the respondent was taken by car to Avinashi PEW police station, four identifiable policemen threatened the respondent stating that his legs and hands would be broken, if he petitioned further. On the same day, the respondent was taken from Avinashi PEW police station to Mettupalayam, however, he was not produced before the Judicial Magistrate, Mettupalayam or the Tahsildar. But the police constables kept the respondent at Mettupalayam town during night hours. Thereafter, the respondent was produced before the Judicial Magistrate, Mettupalayam and the respondent moved bail and was set at liberty. The police were threatening illegally to foist cases against two persons who stood as sureties to the respondent.

6. According to the complainant, he sent notice/petition to accused Nos.1, 5, 6 and 7. Though they have received the notice, they neglected it amounting to dereliction of their respective duties and therefore, all of them are offenders, including other accused. The respondent also sent several representations to the higher officials of the police department as well as to the Chief Minister's Cell. The non-registration of the petitions of the respondent caused much hardship to him. Hence, the respondent has filed the private complaint under Section 200 of Cr.P.C. The learned Chief Judicial Magistrate,

Coimbatore has taken cognizance of the offence in C.C.No.72 of 2010.

7. The petitioners, who were arrayed as accused Nos.1,3,5 and 6 have contended that the 1st petitioner registered a case against the respondent and one Vijayakumar in Crime No.141 of 2006 and Crime No.140 of 2006 respectively for the offence under Section 4(1)(aa) of TNP Act. After registration of cases, Vijayakumar was produced before the Judicial Magistrate, Avinashi, for remand and he pleaded guilty and paid the fine amount. The 1st petitioner was searching the respondent for arrest in Crime No.141 of 2006 and on 27.9.2006, on reliable information, the 1st petitioner and his team went to the place and arrested the respondent at 7.30 P.M. and brought him to Avinashi PEW police station at 9.30 p.m. and was taken to Judicial Magistrate quarters, Mettupalayam at 10.30 p.m. But the police could not meet him and produce him before the Judicial Magistrate and hence the respondent was taken to Mettupalayam Traffic Police room for safe custody and on the next day, he was produced before the Judicial Magistrate Court, Mettupalayam and after that he was released on bail.

8. According to the petitioners, from the time of arrest and production of the respondent before the learned Judicial Magistrate, the petitioners and other policemen assaulted the respondent. After a lapse of one month, on 30.10.2006, the respondent lodged a complaint before the higher police officials including the petitioners to save his illicit arrack business. After an enquiry by the Revenue Divisional Officer, the complaint was closed and against which no appeal was preferred by the respondent.

9. It is stated that the respondent has not obtained any previous sanction under Section 197 of Cr.P.C. from the higher police officials for initiating criminal case against the petitioners. The complaint of the respondent was false and only to safeguard his illegal business, he had filed the complaint. According to the petitioners, the learned Chief Judicial Magistrate, Coimbatore ought not to have taken cognizance of the offence. Hence, prayed for quashing of C.C.No.72 of 2010.

10. Despite service, the respondent has not entered appearance and his name was printed in the cause list.

11. I heard Mrs.Kavitha for Mr.C.Prakasam, learned counsel for the petitioners and perused the materials available on record.

12. It appears that the respondent has filed the private complaint alleging that he was unnecessarily implicated in Crime No.141 of 2006 on the file of Avinashi PEW police station and while arresting him, the petitioners have tortured the respondent. The respondent has made several complaints to the higher officials of the petitioners as well as the Chief Minister's Cell. Despite receipt of the complaint, the higher police officials of the petitioners have not taken any action against the petitioners. Hence, the respondent has filed the private complaint and the learned Chief Judicial Magistrate, Coimbatore has taken the case on file as C.C.No.72 of 2010.

13. On the other hand, it is the say of the petitioners that they have discharged their duties as per law and they never tortured the respondent. In fact, by levelling false allegations against the petitioners, the respondent has filed the complaint and the learned Chief Judicial Magistrate, Coimbatore, without proper enquiry has taken cognizance of the offence.

14. It is seen that on 25.8.2006, when the petitioners were working in Avinashi PEW police station, they went for raid for recovery of illicit arrack on Annur-Mettupalayam road, nearby Mannar and Company. At that time, one Vijayakumar, who was illegally kept 120 liters of illicit arrack and the same was seized by the petitioners. When the petitioners have enquired the said Vijayakumar, he informed that he had purchased the said illicit arrack from the respondent. Based on the statement of Vijayakumar, the petitioners and the police party went to the spot at Kumarankundru three road junction and intercepted the respondent who was coming in TVS 50. After seeing the police party, the respondent ran away leaving the TVS 50 and gunny bags containing illicit arrack and the same were seized by the petitioners under the cover of seizure.

15. On 27.09.2006, on reliable information that the respondent was staying at Hotel Palanippan building, the petitioners went to the said hotel and was informed by the 1st petitioner that he was going to arrest him in Crime No.141 of 2006. When the respondent attempted to escape from the custody of the police, the 1st petitioner and his party arrested the respondent and produced him before the learned Judicial Magistrate, Mettupalayam and thereafter enlarged him on bail.

16. It is pertinent to note that at the time of production of the respondent before the learned Judicial Magistrate, Mettupalayam, he has not reported anything against the petitioners and other policemen for the alleged

assault on him. If really the petitioners and other policemen assaulted and/or tortured the respondent during arrest, definitely, he would have informed the same to the learned Judicial Magistrate. But, in this case, the respondent has not complained against the petitioners and other police officers qua attack/torture. Therefore, it is to be held that only for the purpose of filing the private complaint, the respondent said so.

17. Though the arrest of the respondent was stated to have been made on 27.09.2006, the respondent lodged complaint only on 30.10.2006 after a lapse of one month before the revenue officials and higher police officials. In fact, the Revenue Divisional Officer has conducted an enquiry and found that no such assault was made on the respondent by the petitioners. This would also show that the petitioners have not assaulted and/or tortured the respondent during the course of arrest.

18. On a perusal of the complaint, it is seen that nowhere the respondent averred that he was not selling illicit arrack at the relevant point of time. On the contrary, the petitioners contended that the respondent was doing illicit arrack business. Since the petitioners arrested the respondent in relation to Crime No.141 of 2006, he had filed a false private complaint. If such private complaint is entertained by the Court of law, then no police official can arrest the accused and they cannot discharge their duties without fear. The respondent filed the private complaint against the petitioners and other policemen only to safeguard his illegal arrack business.

19. Lodging of complaint by a person like the respondent, who was doing illegal arrack business against the police officials is a threat made on the police officials not to register case against the offenders. If such type of complaints are entertained, it will not only create a bad precedent, but also encourage the offenders from filing false complaints against the police officials.

20. In the case on hand, there is nothing on record to show that the petitioners and other policemen tortured and/or assaulted the respondent during arrest and afterwards till he was produced before the learned Magistrate. Only with malice after thought and to cause prejudice to the petitioners, the respondent has filed the complaint.

21. It is pertinent to note that despite service of notice in this Criminal Original Petition, the respondent failed to appear either in person or through counsel. Only

to counter-blast the registration of Crime No.141 of 2006 against the respondent, he had filed the private complaint against the petitioners and other policemen. There are no merits in the complaint lodged by the respondent and the learned Chief Judicial Magistrate, Coimbatore, ought not to have taken cognizance of the offence as the allegations were against the police officers, who have done their official work that too based on the criminal complaint in Crime No.141 of 2006. Therefore, continuing the criminal proceedings based on the complaint of the respondent is nothing but abuse of process of Court and thus, C.C.No.72 of 2010 is liable to be quashed.

22. In the result, the Criminal Original Petition is allowed and the proceedings in C.C.No.72 of 2010 on the file of the learned Chief Judicial Magistrate, Coimbatore is quashed in so far as the petitioners are concerned. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

vs

To

The Chief Judicial Magistrate,
Coimbatore.

CRL.OP.No.1270 of 2011

ASK(30/11/2018)

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