

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.10252 of 2010

Dr.P.Jayalakshmi ... Petitioner

Vs.

A.Panchatcharam ... Respondent

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records in C.C.No.10 of 2010 on the file of the Judicial Magistrate No.I, Tiruvallur and quash the same.

For Petitioner : Mr.S.D.Venkadeswaran

For Respondent : Mr.T.S.N.Prabhakaran

ORDER

Invoking the provisions of Section 482 of Cr.P.C., the petitioner has filed this petition to call for the records relating to the case in C.C.No.10 of 2010, pending against her on the file of the learned Judicial Magistrate, No.I, Tiruvallur and quash the same.

2. Heard Mr.S.D.Venkadeswaran, learned counsel appearing for the petitioner and Mr.T.S.N.Prabhakaran,

learned counsel appearing for the respondent.

3. It is manifested from the records that the respondent had filed a private complaint against the petitioner under Section 200 of Cr.P.C., as if she had committed the offences punishable under Sections 211, 418, 420, 422, 427, 468 and 500 of I.P.C.

4. The learned Judicial Magistrate, after recording the sworn in statement of the respondent/complainant on 05.10.2010, had found that a prima-facie case was made out and taken cognizance of the offences under Sections 211, 420, 427, 468 and 500 of I.P.C., and subsequently taken the complaint on his file in C.C.No.10 of 2010.

5. On perusal of the private complaint filed by the respondent, it is revealed that the petitioner herein was working as the Medical Officer at Puliyur Primary Health Centre in the year 2007-08. The respondent/complainant was working as Health Inspector in the same Health Centre under the control of the petitioner.

6. That on 29.10.2008, when the petitioner was on duty in the said Primary Health Centre, the Deputy Director of

Medical Services had made an inspection at Puliyur, Kandigai. While so, the respondent/complainant was not on duty. On receiving a report from the petitioner, the Deputy Director had placed the respondent under suspension and subsequently he had issued a charge memo on the respondent and initiated disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on various grounds.

7. The respondent/complainant might have been under the impression that the Department had initiated the disciplinary proceedings against him based on the report of the petitioner. Therefore, he had come forward with a private complaint as against the petitioner alleging that she had committed the offences punishable under Sections 211, 418, 420, 422, 468 and 500 of I.P.C.

8. The learned counsel for the petitioner has adverted to that the learned Judicial Magistrate ought not to have taken cognizance of the offences as against the petitioner, without obtaining sanction of prosecution from the authorities concerned as required under Section 197 of Cr.P.C., as the petitioner herself being a public servant acted in a public capacity.

9. Obviously, no sanction of prosecution was obtained by the respondent herein to launch the prosecution as against the petitioner. Admittedly, she is a public servant and in this regard, Mr.S.D.Venkadeswaran has submitted that since the petitioner had acted in her official capacity, sanction of prosecution from the appointing authority was very much essential and without the sanction of prosecution from the appointing authority or from the appropriate authority concerned, no prosecution could be launched as against the petitioner. He has also drawn the attention of this Court to the provisions of Section 197 of Cr.P.C. Section 197 deals with prosecution of Judges and public servants.

Sub-Section 1 is extracted as under:

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 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.

10. The words while acting or purporting to act in the discharge of his official duty, are very much important and vital insofar as getting sanction of prosecution from the State Government is concerned. Secondly, the words no Court shall take cognizance of such offence except with the previous sanction are also very much important and it act as mandatory in nature.

11. At the time of the alleged offence, the petitioner was working as Medical Officer at Puliur Primary Health Centre in the year 2007-08. This was not rejected or disputed by the respondent.

12. The term "'public servant'" denote a person in

Section 21 of the Indian Penal Code.

S.21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:-

First.-[Repeated by the Adaption of Laws Order, 1950];

Second.- Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third.- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory function;

Fourth.- Every officer of a Court of Justice (including a liquidator, receiver or Commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

Fifth.- Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.- Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government ;

Tenth.- Every officer whose duty it is, as such

property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh.- Every persons who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth.- Every person-

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

13. Since the petitioner was working as a Medical Officer at Puliur Primary Health Centre, at the relevant point of time, she comes under the purview of the term public servant as defined under Clause 12(a) of Section 21 of I.P.C.

of I.P.C.

14. Apart from this, this Court would like to point out that the term public servant has not been defined in Prevention of Corruption Act 1947. However, Section 2 of the Act completely incorporates the provision of Section 21 of the Penal Code, in order to define a 'public servant'. Probably the Legislature in its wisdom might not have thought it necessary to give a separate definition of 'public servant' in the Act, but in order to achieve brevity in legislation it incorporated the provision of Section 21 of the Penal Code into it. Accordingly, Section 2 of the Act runs thus:-

For the purposes of this Act, 'public servant' means a public servant as defined in Section 21 of the I.P.C. Subsequently the I.P.C. Was amended twice namely in 1958 and 1964. Twelfth Clause was added.

15. But the Supreme Court in **State of M.P. v. M.V.Narasimhan, AIR 1975 SC 1835 : 1975 CrLJ 1939** has held that :

'where a subsequent Act incorporates provisions of a previous Act, then the borrowed provisions become an integral and independent

unaffected by any repeal or amendment in the Prevention Act''.

16. The Supreme Court has also held that having regard to the preamble and the object of the 1947 Act and the Penal Code, there can be no doubt that the Act was a statute supplemental to the Penal Code. Therefore, the definition of 'public servant' borrowed from S.21 of the Penal Code was required to be read into S.2 of the Act not only at the time when it was borrowed (i.e.1947) but even at the material date when the offence was committed.

17. On coming to the instant case on hand, this Court finds that the act of the petitioner being the Medical Officer at Puliur Primary Health Centre in the year 2007-08 was within the bounds of her official capacity. Therefore, as contemplated under Section 197 of Cr.P.C., to launch the prosecution as against a ''public servant'', previous sanction ought to have been obtained by the respondent. But here, the respondent has abruptly and miserably failed to obtain previous sanction.

18. On the other hand, Mr.T.S.N.Prabhakaran, learned counsel for the respondent has submitted that in fact the provisions of Section 197 of Cr.P.C., were applicable only

provisions of Section 197 of Cr.P.C., were applicable only to the honest public servant and since the respondent/complainant had made so many allegations against the petitioner saying that she being a superior officer, had directed the respondent/complainant to go and collect bribe from the medical companies and when the respondent had refused to do so, she had developed grudge against him, and on account of this reason, she had victimised the respondent by making false allegations. Therefore, according to the learned counsel for the respondent, the petitioner had got no right to seek protection under Section 197 of Cr.P.C.

19. The argument made on behalf of the respondent by Mr.T.S.N.Prabhakaran is not able to be countenanced. The mandatory provisions of Section 197 of Cr.P.C., cannot be scrambled and violated. Mr.T.S.N.Prabhakaran, in support of his contention, has also placed reliance upon the decisions of the Apex Court in **Balbir Singh v. D.N.Kadian and others (1986 Crl.LJ 314)**, wherein, it is held that for the Act not performed in discharge of official duties, no previous sanction is necessary from the Lt.Governor for their prosecution. It is also held that "there must be a reasonable connection between the act and the discharge of

that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.''

20. This Court has given its due consideration to the above cited decisions and found that it is not made applicable to the instant case on hand. It is clearly established by the petitioner that she was working as a Medical Officer at Puliur Primary Health Centre at the relevant point of time and therefore, she had acted in the capacity of public servant.

21. Keeping in view of the above said fact, this Court is of considered view that the learned Judicial Magistrate ought not to have taken cognizance of the alleged offences as against the petitioner without production of previous sanction to launch the prosecution as against the petitioner. Therefore, the private complaint filed by the respondent as against the petitioner in C.C.No.10 of 2010 is deserved to be quashed for want of sanction of prosecution.

22. In the result, this Criminal Original Petition is allowed and the criminal proceedings of the case in

allowed and the criminal proceedings of the case in C.C.No.10 of 2010 pending on the file of the learned Judicial Magistrate No.I, Tiruvallur as against the petitioner are quashed.

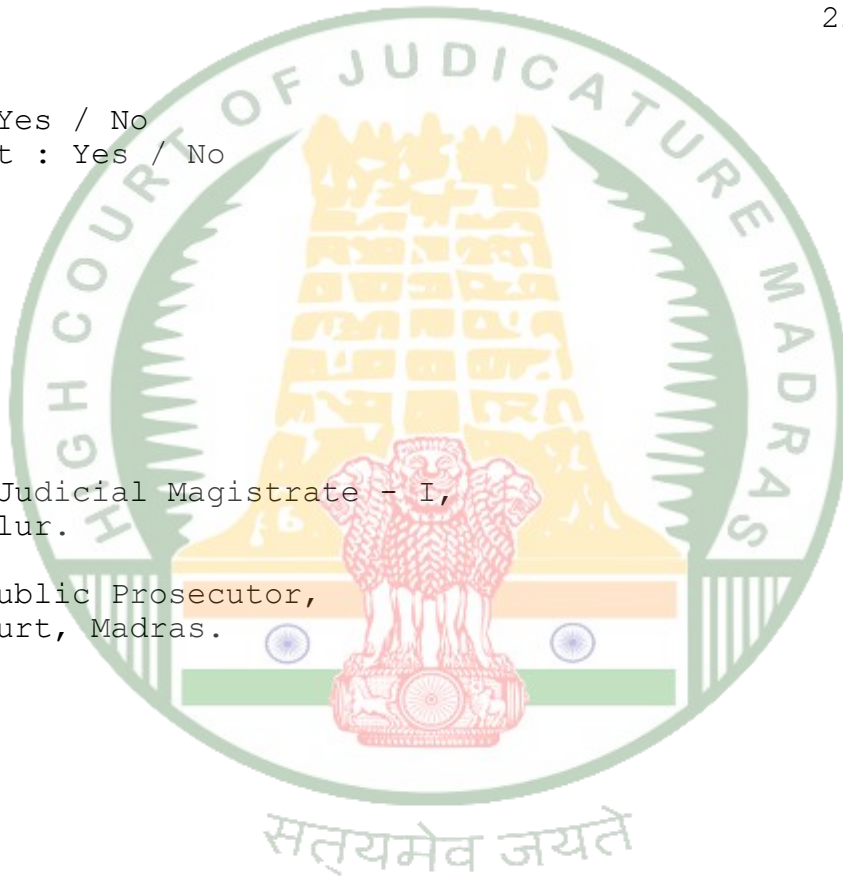
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Index: Yes / No
Internet : Yes / No
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To

1. The Judicial Magistrate - I,
Tiruvallur.

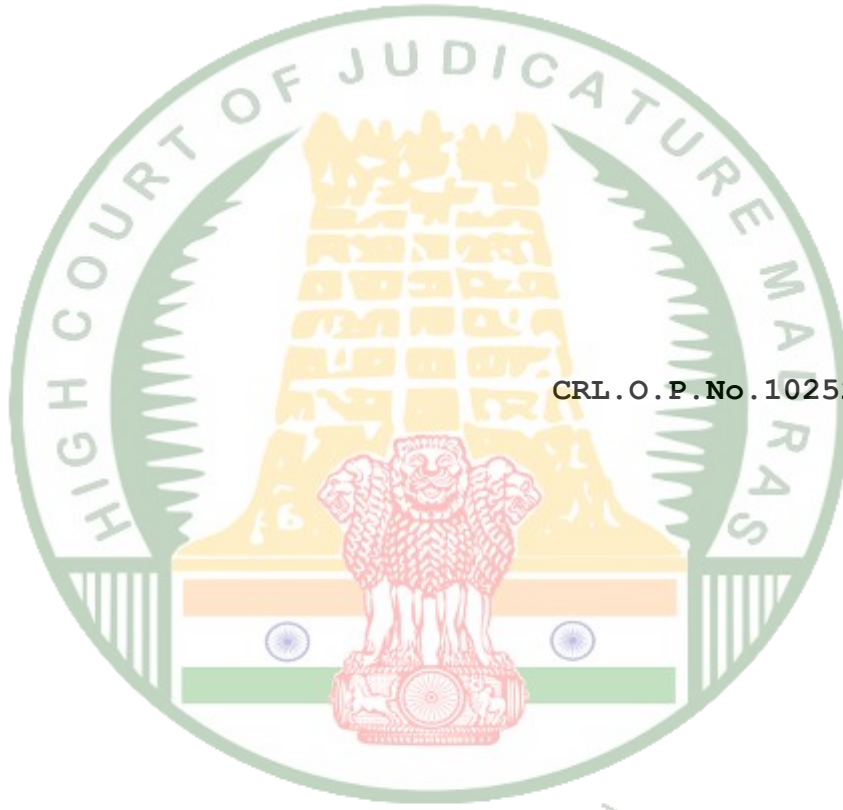
2.The Public Prosecutor,
High Court, Madras.



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T.MATHIVANAN, J. ,

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