

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P Nos.3611 and 3612 of 2009
and
M.P.Nos.1 and 2 of 2009

S.Vimala

Assistant Commissioner of Police,
Anti-Dowry Cell-Thousand Lights,
Chennai.

... Petitioner in Crl.OP.No.3611/2009

M.Rajendiran

... Petitioner in Crl.OP.No.3612/2009

vs.

T.Suresh Babu

... Respondent in both the Crl.O.P.s

Common Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records related to the case in C.C.No.2767 of 2008, pending trial, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

(Both the Crl.O.P.s)

For Petitioners : Mr.A.Natarajan, Senior counsel
for M/s.A.Madhumathi

For Respondent : No Appearance

COMMON JUDGMENT

The above said two Criminal Original Petitions are filed to call for the records relating to the case in Calendar Case No.2767 of 2008 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same for the reasons stated in the accompanying affidavit.

2. The case of the petitioners in both the above said Criminal Original Petitions are that the petitioner in Criminal

Original Petition No.3611 of 2009 is the Assistant Commissioner of Police and the petitioner in Crl.O.P.No.3612 of 2009 is the Inspector of Police. Both the petitioner along with one Azari @ Arjun are arrayed as respondents/accused in the aforesaid calendar case in C.C.No.2767 of 2008, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai. The petitioner in Crl.O.P.No.3611 of 2009 was arrayed as 1st accused and the petitioner in Crl.O.P.No.3612 of 2009 was arrayed as 3rd accused in above said calendar case.

3. The allegations made as against the petitioners in both the Criminal Original Petitions are that a complaint was lodged by the respondent herein as against one Azari @ Arjun in Crime No.915 of 2006 for the offence under sections 341, 294(b), 506 (ii) of I.P.C., by the K-1 Sembiam Police Station. After getting Anticipatory bail in the aforesaid case, the said Azari @ Arjun lodged a complaint as against the respondent herein before the Commissioner of Police, Greater Chennai. The said complaint was forward to the Assistant Commissioner of Police on 13.07.2006, who is the petitioner in Crl.O.P.No.3611 of 2009.

4. The crux of the allegation as against the petitioners in both the criminal original petitions are that the complaint lodged by the said Azari @ Arjun as against the respondent herein was not properly investigated, but the respondent herein was compelled to settle the dues of Rs.8,50,000/- Further, he was illegally detained at N.K.P. Police station on 13.07.2006 up to 10.00 p.m. Thereafter, the custody of the respondent herein was handed over to the petitioner in Crl.O.P.No.3612 of 2009, who is the Inspector of Police at P-6 Kodunkaiyur Police Station, on 14.07.2006. Further, the petitioner in Crl.O.P.No.3611 of 2009 had forcefully taken and obtained an undertaking from the respondent herein which stipulated to settle the total dues within a month to the said Azari @ Arjun.

5. Being aggrieved by the act and excess of the petitioners in both the criminal original petitions, the respondent herein lodged a complaint before the Commissioner of Police on 17.07.2006 and also sent a telegraphic legal notice 18.07.2006 to the petitioner Crl.O.P.3611 of 2009. However, as no legal action was initiated by the authorities concerned, the respondent herein sent a representation to the Secretary, Home Department sought for permission to permit him to take legal action against the petitioner in Crl.O.P.No.3611 of 2009. Though it was received on 31.07.2006, the respondent herein had not received any reply. Therefore, the respondent herein filed a complaint under Section 200 of Code of Criminal Procedure, as

against the petitioners herein and after the perusal of the complaint; the learned Chief Metropolitan Magistrate took cognizance against the petitioners herein for the offence under Sections 218, 341, 342, 348, 384, 506(i) of IPC r/w 120(b) and 34 of IPC.

6. As against the complaint filed by the respondent herein, the petitioners in both the Criminal Original Petitions are filed the present criminal original petitions for the relief sought for. So, challenging the proceedings of the learned Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.2767 of 2008, the instant Original Petitions are filed.

7. I heard Mr.A.Natarajan, learned senior counsel for M/s.A.Madhumathi, learned counsel appearing for the petitioner and the relevant records are perused. No representation on behalf of the respondent in both the Criminal Original Petitions.

8. It is the case of the petitioners that the allegations raised in the private complaint are not at all true. Further, the complaint lodged by one Azari @ Arjun, was referred to the file of the 1st petitioner herein by the Commissioner of Police, Greater Chennai and the same was further forwarded to the file of the petitioner in CrI.O.P.No.3612 of 2009. Thereafter, enquiry was conducted purely in accordance with law and at the end of enquiry, the respondent herein agreed to settle the dispute between the said Azari @ Arjun and the respondent herein. Moreover, the mode of settlement was negotiated and agreed by the parties concerned and the same was recorded. It is needless for the petitioners to resort illegality in examining the respondent herein as part of enquiry.

9. The learned counsel for the petitioners would submit that the allegations made as against the petitioners are the act in discharge of their official duty. So, no prosecution can be initiated as against the petitioners in view of specific bar as contemplated Under Section 197 of Cr.P.C. At this juncture, for better appreciation Section 197 of Cr.P.C is extracted hereunder:

"Section: 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 which 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."

10. Further, a Judgment of the Hon'ble Supreme Court, reported in MANU/SC/0973 of 2009, State of Uthara Pradesh v. Parasnath Singh in Crl.A.No.499 of 2004 decided on 05.05.2009 is relied on by the learned counsel for the petitioners. In the said judgment, the Hon'ble Supreme Court in categorical terms held that when allegations are made as against a Government servant that he got committed offence in discharge of the official duty of the Government servant, and then it is mandatory to obtain sanction for the initiation of prosecution according to Section 197 of Cr.P.C. Therefore, the said judgment is squarely applicable to the petitioners' case also, since though the respondent/defacto complainant sought for the permission, but before granting permission, he has filed the present private complaint.

11. Though the private notice was served on the respondent Mr.T.Suresh Babu and his name also printed in the cause list, but none appear either the respondent Mr.T.Suresh Babu or any counsel on behalf of the respondent.

12. This Court has seen that the complaint was lodged by the respondent herein before the learned Chief Metropolitan Court, Egmore was for the reason that the respondent herein was harassed by the petitioners herein and they committed illegality under the pretext of enquiry. So, even as per the complaint of the respondent, the alleged illegality was committed during the time of enquiry on the complaint of one Azari @ Arjun as against

the respondents herein. So, it is undoubtedly, in the discharge of the official duty of the petitioners herein. Once, the respondent himself has accepted the alleged illegality said to have taken place in the enquiry, then it becomes necessary on the part of the respondents herein to get sanction to the appointing authority to obtain consent for the initiation of prosecution as against the petitioners herein. In the absence of such sanction from the competent authority, the respondents has no locus-standi to initiate prosecution as against the petitioners herein as the complaint lodged by the respondent in C.C.No.2767 of 2006 is barred by section 197 of Cr.P.C.

13. Therefore, for the reasons discussed above and in view of the specific bar in the code of Criminal procedure, in the considered opinion of this court that the calendar case in C.C.No.2767 of 2006 on the file of the Chief Metropolitan Court, Egmore is held to be barred by law and the same is deserved quashment, accordingly quashed.

14. In the result, this criminal original petitions are allowed and Calendar Case No.2767 of 2008 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai is quashed in so far as the petitioners are concern. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Chief Metropolitan Magistrate,
Egmore, Chennai.

+2ccs to M/s.A.Madhumathi, Advocate, S.R.No.17442,17443

CrI.O.P Nos.3611 and 3612 of 2009
and
M.P.Nos.1 and 2 of 2009

CS/22/06/17