

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :10.07.2017

PRONOUNCED ON :23.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.OP No.27423 of 2011

Nagarajan

Petitioner

Vs

Anthony Joseph

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in connection with the proceedings pending on the file of the Judicial Magistrate, Virudhachalam in PRC No.12 of 2010 and quash the same.

For Petitioner : Mr.P.Venkatraman
for Mr.Muthappan

For Respondent : Mr.J.Antony Jesus

ORDER

This Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in connection with the proceedings pending on the file of the Judicial Magistrate, Virudhachalam in PRC No.12 of 2010 and quash the same.

2. The case of the prosecution is that the petitioner is serving as a Sub-Inspector of Police, Virudhachalam Police Station in the Tamil Nadu Police Subordinate Service during 2006. On 11.09.2006 at about 7.30 P.M Tr.Anthony Joseph, the respondent herein residing at Iruppukurichi, Virudhachalam Talu, preferred a complaint against one Tr.Gnanamuthu and 30 others, alleging that all of them armed with dangerous weapons came to the house of the complainant damaged the house and also set fire to the house. They have also taken away number of articles from the house including the cash and jewels owned by the complainant. The said complaint given by Tr.Anthony Joseph was registered in Cr.No.367 of 2006 on the file of the Virudhachalam Police Station, under Section 147,148,446 and 506 I.P.C. On the other hand one Selvaraj also preferred a complaint against the respondent herein and the same also

registered in Cr.No.366 of 2006 on the file of the Virudhachalam Police Station.

3. According to the petitioner, there is a property dispute between Tr.Anthony Joseph and Tmt.Alphonsa Mary with reference to a house situated in Survey No.26/7C. The respondent/complainant Tr.Anthony Joseph claims to have purchased the property for a valuable consideration. But at the same time, one Tmt.Alphonsa Mary claims to have purchased the property. On 05.09.2006 alleging that the respondent/complainant was taken by the accused Rajaram and Palanivelu who was serving in the Virudhachalam Police Station and it is further alleged that after the respondent/complainant reached the Police station, as if the petitioner threatened the defacto complainant with dire consequences and directed him to sign a blank paper to release the 50% of the land in favour of Tmt.Alphonsa Mary which the defacto complainant refused and the respondent has preferred the private complaint which was taken on file by the trial Court and now it is in PRC state.

4. The learned counsel for the petitioner has submitted that the first accused is the petitioner herein working as a Sub-Inspector of Police and the defacto-complainant has preferred the present private complaint only after the C.C.No.367 of 2006 on the file of the Virudhachalam Police Station have alleged offence under Sections 147,148,446 and 506 I.P.C which was closed as a 'mistake of fact' has preferred this complaint only to settle the civil dispute between the private parties and petitioner was dragged into the civil dispute.

5. The learned counsel for the respondent has submitted that it is a specific case of the respondent/private complaint that on 05.09.2006 at about 5.30 a.m all the police respondent who are arrayed as an accused A1 and a3 have came in a Government Jeep having Registration No. TN-31-G-0310 and picked up the defacto-complainant and the brother of the opposite party who are affiliated to the then ruling party and at Police Station, all the accused forceably obtained signature in the blank stamp paper to make it to convert the same as a conveyance whereby, 50% of the less shall go to the political party who was then in power and the same have carried on by all the accused association with the politician that let in the police station itself.

6. Heard both sides and perused records.

7. On perusal of the plaint filed in O.S.No.55 of 2006, on the file of the District Munsif, Virudhachalam Court and also the allegations contained in the private complaint which was taken on file by the Principal Session Judge and

after completion of the formalities by the Judicial Magistrate, Virudhachalam and the private complaint was subsequently re-numbered as PRC.No.12 of 2010 and it is pending for further proceedings.

8. The contention for the learned counsel for the petitioner is that there was no prior sanction was obtained before prosecuting the police personnel viz., A1 to A3 and the subject matter of the complaint is a civil in nature.

9. With regard to obtaining of the prior sanction for prosecution of Constable, Head Constable, Inspector of Police, in the decision reported in Hon'ble Apex as held i) CDJ 2013 SC 1089 (Fakhruzamma V.State of Jharkhand & Another) as follows:-

"Whether sanction under Section 197 of Cr.P.C is necessary from State Government before prosecuting Appellant as Sub-Inspector of Police. The question that has come up for consideration in this case is whether sanction under Section 197 Cr.P.C is necessary from the State Government before prosecuting the Appellant, though he was removed from service following the procedure laid down Police Manual and an Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the State Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty".(emphasis supplied)

ii) In the CDJ 2003 APHC 412 (I.S.A.Azeez V.Pasam Hari Babu and another) it is held that:-

In the second cited supra, there is no dispute that when a public servant is to be prosecuted in respect of the official acts of such public servant, sanction to prosecute him is necessary. The object of Section 197 Cr.P.C is to protect public servants against irresponsible, frivolous or vexatious proceedings for acts done in discharge of official duty, and to see that no prosecution is started unless there is some foundation for the charge brought. The immunity from prosecution without sanction extends only in acts which can be shown to be done in discharge of official duty or to purport to be done in such

discharge, but an offence arising out of abuse of official position by an act not purporting to be official does not require any sanction". (emphasis supplied)

10. From the above two decisions, it is clear that the sine qua non for the applicability of Section 197 Cr.P.C is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant in his official capacity or under colour of the office held by him. The act complained of is an offence and it must be shown that it was committed in discharge of his official duty.

11. It is to be stated that in respect of constable, Head Constable and Inspector of Police, they are removable from service by the I.G (Police) concerned and dismissal order of removal of service is not by the State Government and hence, prior permission for prosecution is not necessary for police officer is the rank constable, head constable and Inspector and in view of the said settled position of law as stated above this Court is also held that in respect of officer in the cadre of Constable, Head Constable and Inspector of Police, as they can be removed from service by the order of the I.G of the police not by the State Government and hence, prior sanction for the prosecution of those officials are not required.

12. Accordingly, the contention raised by the petitioner counsel is hereby rejected and in respect of the second contention that there is specific averment has been made by the defacto-complainant who has moved the private complaint alleging that the men in uniform have misused their official postings to settle a civil dispute between the defacto-complainant and the another party who is affiliated a political party which was in power at the relevant point of time by exercise force and coercion and further alleged to have obtained signature of the private complainant/respondent in respect of the property in dispute whether such allegation is established or not? is a matter of fact which can be decided only during the course of the trial by adducing in evidence and subjecting the witnesses to the cross examination and hence, the same cannot be gone into under Section 482 of Cr.P.C and hence, both the points raised by the learned counsel for the petitioner stands rejected.

13. Accordingly, this Criminal Original Petition is dismissed and the Judicial Magistrate, Virudhachalam is directed to complete the proceedings within a period of twelve weeks from the date of receipt of a copy of this order.

Assistant Registrar
Dt.8.11.17

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate, Virudhachalam.

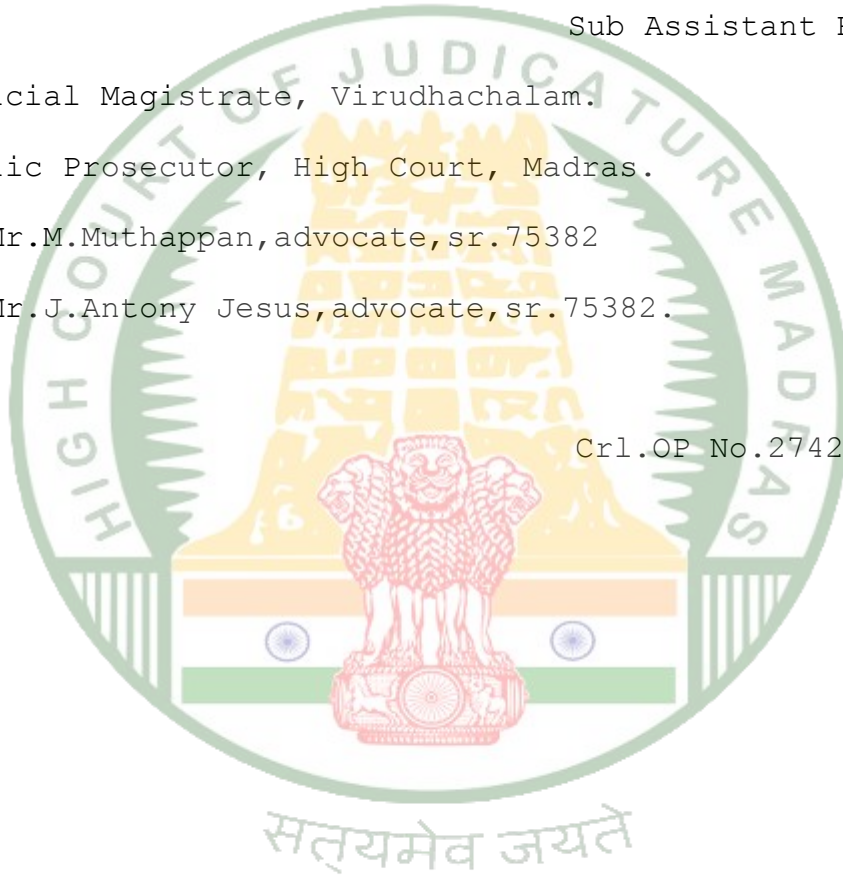
2.The Public Prosecutor, High Court, Madras.

+1 cc to Mr.M.Muthappan,advocate,sr.75382

+1 cc to Mr.J.Antony Jesus,advocate,sr.75382.

Nm(co)
krd 23/11

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