

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.09.2017
Pronounced on : 02.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.9522 of 2015

P.Raja

.. Petitioner

Vs.

P.Harikrishnan

.. Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the proceedings in PRC.No.6 of 2015 on the file of the learned Judicial Magistrate, Thirukovilur and to quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.KTS.Sivakumar

O R D E R

Heard Mr.S.Doraisamy, learned counsel for the petitioner and Mr.KTS.Sivakumar, learned counsel for the respondent.

2.The case of the petitioner is as follows:

On 07.07.2007 one Parameswari lodged a complaint before Manalurpettai police station which came to be registered by the Sub Inspector of Police in Cr.No.144 of 2007. The petitioner who was the then Inspector of Police, took up the investigation and after preparing mahazor and obtaining the statements of the witnesses, arrested the respondent herein who is the husband of the complainant Parameswari and remanded him to judicial custody. The case then came to be transferred to CBCID on the basis of orders of this Court in Crl.O.P.No.29737 of 2007 dated 12.11.2007. Subsequently, charge sheet came to be filed in S.C.No.135 of 2010 and after trial, the respondent was acquitted by the learned Judge, Fast Track Court, Villupuram on 26.09.2014. Pursuant to the acquittal, the petitioner herein has filed a private complaint under Sections 193, 195, 196, 109, 211 and 344 IPC in PRC.No.6 of 2015 which proceedings is challenged in this Criminal Original Petition.

3. According to the learned counsel for the petitioner, the petitioner herein, being the Inspector of Police, Manalurpettai Police Station had taken up the investigation in his official capacity. Since there is no specific averments in the private complaint that the petitioner had discharged his duty in his individual capacity, the prior sanction of the Government for prosecuting the petitioner was mandatory under Section 197 Cr.P.C., and therefore, the private complaint without the sanction of the Government is bad in law. The learned counsel for the petitioner also submitted that if at all, the complaint is made under Section 195 Cr.P.C., it has to be given by the Court to file the case and not at the instance of the complainant as per the provision under Section 195(1)(d) of Cr.P.C.

4. The learned counsel for the petitioner by relying upon the judgment of the Hon'ble Supreme Court in Prof. N.K. Ganguly Vs. CBI New Delhi reported in 2016 (2) SCC 143 submitted that it is mandatory to obtain sanction under Section 197 before taking cognizance of an offence against the public servant. The relevant portion of the said order reads as follows:

"19. In the instant case, it is alleged in the charge-sheet that the appellants entered into an agreement to commit an illegal act, which is an offence punishable under Section 120B of IPC. Therefore, the provision of Section 197 of CrPC is squarely applicable to the facts of the case. Prior sanction of the Central Government was required to be taken by the respondent before the learned Special Judge took cognizance of the offence once the final report was filed under Section 173(2) of CrPC. In this regard, Mr. Gopal Subramaniam, learned senior counsel appearing on behalf of the appellant has very aptly placed reliance on the decision of a three judge bench of this Court in the case of R.R. Chari v. State of Uttar Pradesh[1], wherein, while examining the scope of Section 197 of CrPC, this Court made an observation indicating that the term "cognizance" indicates the stage of initiation of proceedings against a public servant. The Court placed reliance upon the judgment of the Calcutta High Court delivered in the case of Superintendent and Remembrance of Legal Affairs, West Bengal v. Abhani Kumar Bannerjee[2], wherein it was held that before taking cognizance of any offence, a Magistrate must not only be said to have applied his mind to the contents of the petition-

"but he must have done so for the purpose of proceeding in a particular way as indicated

in the subsequent provisions of this Chapter, proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

The said judgment has also been followed in a subsequent order of this Court passed in Crl.O.P.5031 of 2015 dated 15.02.2015 [C.Asaithambi V. K.Rasamuthu].

5.The learned counsel for the respondent on the other hand submitted that a false case has been created to implicate the respondent by fabricating the records for the purpose of creating false evidence and arresting the respondent, who is innocent and since he has misused his official capacity outside the Court, he is liable to be prosecuted. The learned counsel for the respondent submitted that Section 195(1)(d) is attracted only when the offence under the provisions have been committed. In this case, false records and evidence have been created outside the Court of law and therefore, a bar created under Section will not come into play.

6.I have given careful considerations to the submissions made by the learned counsel on either side.

7.From the perusal of the complaint, it can safely be concluded that the grievance of the complainant is that the petitioner herein had falsely implicated the respondent and remanded him to judicial custody without any basis. There is no averment to the effect that the petitioner had acted in his individual capacity. From the various averments, it can only be seen that the petitioner herein had been acting in discharge of his official duties. As pointed out by the learned counsel for the petitioner, after the petitioner has taken up the investigation, he has proceeded to the spot, prepared the mahazar, recorded statements of the complainant/Parameswari and thereafter, remanded the husband of the complainant to judicial custody. It is further seen that during the course of investigation, the petitioner also recorded statement of other witnesses, obtained medical certificate from the doctor and on the direction of this Court in Crl.O.P.No.29737 of 2007 dated 12.11.2007, the said case was transferred to CBCID which took up the latter part of the investigation from the petitioner and thereby the charge sheet came to be filed. While that being so, I am unable to comprehend as to how the petitioner had acted in his individual capacity for the purpose of implicating the

respondent for the offences. Hence, it can only be concluded that the petitioner was discharging his official duty as an Inspector of Police while conducting the investigation in Cr.No.144 of 2007.

8.Moreover, under Section 195 Cr.P.C., no Court shall take cognizance of an offence relating to documents given in evidence except on the complaint in writing of the public servant or some other public servant he is as subordinate. In other words, such a complaint has to be given by the Court which tried the case or such officer of that Court and therefore, the complaint by the respondent herein is not maintainable in law. Hence, the present impugned complaint at the instant of the respondent herein cannot be maintained in view of the specific bar under Section 195(1) (b) Cr.P.C.

9.In view of my aforesaid finding that the petitioner has discharged his duty only in his official capacity, it necessarily follows that the trial Court cannot take cognizance of the offence except with prior sanction of the Government as per provision under Section 197 Cr.P.C., which provides that no Court shall take cognizance of any offence, without obtaining prior sanction of the Government for the purpose of prosecuting the Inspector of Police who discharged his duty in his official capacity and that the impugned complaint was not at the instant of the Court which tried the case, the impugned proceedings is liable to be quashed.

10.In the result, the Criminal Original Petition stands allowed. The proceedings in PRC.No.6 of 2015 on the file of the learned Judicial Magistrate, Thirukovilur is quashed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

DP
To

1.The Judicial Magistrate,
Thirukovilur.

2. The Section Officer
Criminal Section, High Court,, Madras.

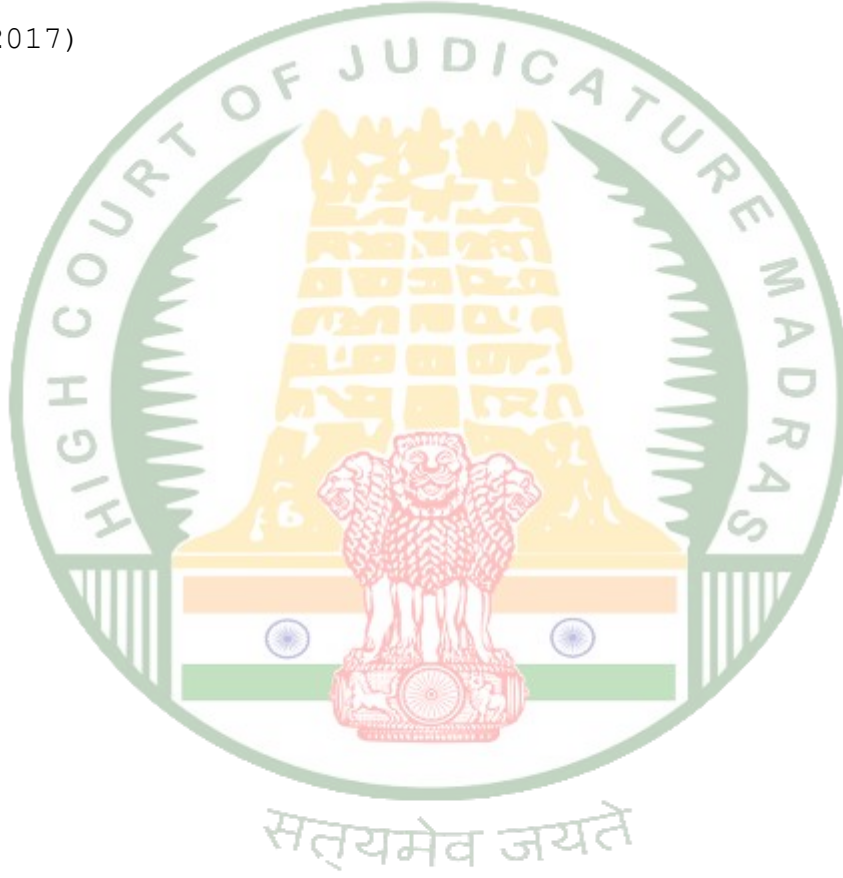
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3.The Public Prosecutor,
High Court, Madras.

+1 Cc to Mr.S. Doraisamy, Advocate sr 77929.
+1 Cc to Mr.K.T.S. Sivakumar, advocate sr 77795

Cr1.O.P.No.9522 of 2015

KGK (CO)
SP(17/11/2017)



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