

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.04.2017

Delivered on : 03.11.2017

CORAM

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

CRL.O.P.No.28328 of 2010

and

M.P.No.1 of 2010

M.Shahul Hameed

.. Petitioner

Vs

Govindaraju

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.123 of 2010 on the file of the learned Judicial Magistrate No.II, Dharmapuri and quash the same.

For Petitioner : Mr.A.S.Baalaji

For Respondent : Mr.C.Prabakaran

ORDER

The petitioner herein is the then Deputy Superintendent of Police of Dharmapuri District. By way of this Criminal Original Petition he seeks to quash the private complaint lodged against him and his subordinate for the alleged offences under sections 294(b), 323, 362, 166, 340, 307 and 506(i) of IPC before the learned Chief Judicial Magistrate, Dharmapuri in C.C.No.9 of 2010 which subsequently stood transferred to the learned Judicial Magistrate No.II, Dharmapuri re-numbered as C.C.No.123 of 2010.

2. According to the petitioner, the allegations made against him in the above private complaint are untrue and legally unsustainable.

3. It is his case that he as the Jurisdictional Officer dealt with the case involved in Crime No.448 of 2010 for offence under sections 294(b), 307, 394, and 506(ii) of IPC basing upon a complaint given by one Maadhu as against the complainant, therefore as a counter blast to the registration of F.I.R. against the respondent, he filed the above complaint.

4.The prime contention of the petitioner is that the proceeding of the above complaint by the learned Magistrate in examining the complainant by way of sworn statement would be improper and unsustainable as there was no sanction received under section 197 of Cr.P.C.

5.It is his specific case of the petitioner that when the respondent's project a complaint with regard to discharge of his duty, necessarily a prosecution can be initiated only in adherence with 197 of Cr.P.C.

6.I heard Mr.A.S.Baalaji, learned counsel for the petitioner and Mr.C.Prabakaran, learned counsel for the respondent/complainant and perused the records.

7.At the outset it is seen that the respondent/complainant is an Advocate and he claims to practice before the Dharmapuri Court and a member of Dharmapuri Advocate Bar Association. It is also further found that the complainant has 7 previous cases.

8.On further perusal of the records, it is the respondent's case that being a dynamic Advocate activist, he participated in several demonstrations in support of public and Bar Association and out of same he did not have a cordial relationship with Dharmapuri District Police.

9.It is his further case that on 10.05.2010 on a call from his client complaining over his illegal confinement rushed to the spot. However the complainant was also restrained by the opposite party of his client.

10.In the said factual backdrop the police was called by the opposite party and in the mean time the respondent called his friends from the Bar Association.

11.In the meantime, the petitioner came to the spot and in another 10 minute a Highway Patrol headed by the 1st Accused in the Private complainant namely Pandiarajan, Inspector of Police came to spot and forcibly taken the complainant to the Kaariyamangalam Police Station.

12.According to the respondent at the instigation of the Superintendent of Police, Dharmapuri, a case was registered by receiving the complaint of Maadhu, the opposite party of his client. The case was registered in Crime No.448 of 2010 under sections 294(b), 307, 394, 506(ii) of IPC. According to the complainant, he was ill-treated in the police station and he was attacked with hands besides scolding him unparliamentarily.

13.The complainant was thereafter remanded and sent to Judicial custody, thus according to the respondent/complainant, the petitioner as well as the 1st Accused, Pandiarajan has involved in offences punishable under sections 294(b), 323, 362, 166, 340, 307, and 506(i) of IPC and accordingly he came with the above private complaint dated 19.08.2010 under section 200

of Cr.P.C.

14.The records disclose that though the case against the respondent came to be registered on 10.05.2010 but the above private complaint came to be lodged only in the month of August 2010.

15.In the meantime, it is found that on 14.06.2010 the respondent/complainant has issued a legal notice alleging ill-treatment. Thus it is clear that only on 24.06.2010 firstly such allegation against the appellant is raised.

16.It is relevant to note here that the complainant being an Advocate if was subjected to custodial ill-treatment, he would have addressed it before the Judicial Magistrate at the time of his remand. There can be no doubt that when the respondent being dynamic in profession as well as public activist, he would have certainly complained before the Judicial Magistrate, whereas there is no such complaint made which will clearly demonstrate that the complaint is lodged with an intention to harass and make the petitioner to face a criminal prosecution.

17.Apart from the above fact, on other facet on legal basis the complaint is not maintainable as there is no sanction as contemplated under section 197 of Cr.P.C. from the Government, which is a condition precedent.

18.In this regard, it would be useful to look into the decision of the Hon'ble Apex Court reported in 2005 (8) SCC 202 wherein the Hon'ble Apex Court held that

"The protection under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are action or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a

public servant, but whether it was committed by a public servant action or purporting to act as such in the discharge of his official capacity. Before section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of section 197 does not get immediately attracted on institution of the complaint case."

19. In this regard it would be further relevant to look into yet another decision of the Hon'ble Apex Court reported in 2009 (8) SCC 617 holding that in the matter of State of Madhyapradesh -vs- Sheetla Sahoai and others holding that to initiate prosecution against a public servant alleging criminal misconduct sanction under section 197 of Cr.P.C. is mandatory.

20. In the case on hand admittedly the allegation against the petitioner is that while discharging his duty while forwarding the respondent to the Judicial custody, respondent was ill-treated and harassed.

21. Therefore, there can be no doubt that to prosecute the petitioner, sanction under section 197 of Cr.P.C is required.

22. Thus if the complaint is allowed to be proceeded further, the same would be Lawless and abuse of process of law.

23. In the result:

(a) this Criminal Original Petition is allowed;

(b) the proceedings in C.C.No.123 of 2010, pending on the file of the learned Judicial Magistrate No.II, Dharmapuri, is

quashed;

(c) the respondent/complainant approaching the State Government for sanction under Section 197 of Code of Criminal Procedure and after obtaining the sanction, the same is produce before the learned Magistrate, the Magistrate is proceed further in the case in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

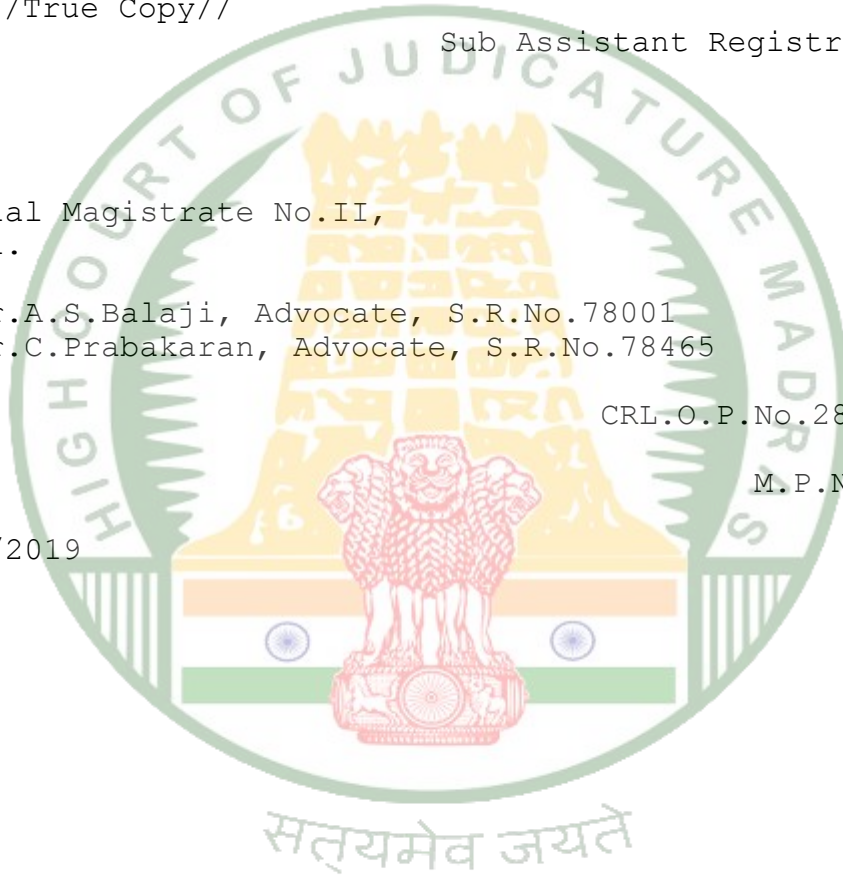
The Judicial Magistrate No.II,
Dharmapuri.

+lcc to Mr.A.S.Balaji, Advocate, S.R.No.78001

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.78465

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rrs 10/01/2019



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