

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 11.07.2017**

**PRONOUNCED ON : 21.09.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

**Crl.OP No.28686 of 2010**  
**and**  
**M.P.No.1 of 2010**

1.R.Arasu  
 2.Arokiyaraj  
 3.S.Ramesh

.. Petitioners

..Vs..

Kangayan

.. Respondent

**Prayer :-** Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the criminal complaint in C.C.No.24 of 2009 on the file of the Chief Judicial Magistrate Court, Salem quash the same by allowing this Criminal Original Petition.

For Petitioners :Mr.R.Marudhachalamurthy

For Respondent :Mr.K.Selvaraj

**ORDER**

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records relating to the criminal complaint in C.C.No.24 of 2009 on the file of the Chief Judicial Magistrate Court, Salem.

2. The petitioner herein the facts leading to the in short are as follows:-

The petitioners are the accused No.6 to 8 in the private complaint filed by the respondent herein in C.C.No.24 of 2009 on the file of the Chief Judicial Magistrate, Salem.

3. The petitioners filed this petition seeking quashment of the Criminal complainant filed against them for the alleged offences under Section 365,350,342,330 and 324 of I.P.C. on investigation the respondent, his wife and his elder brother Natarajan have hatched up a conspiracy to give false information to police with intent to cause injury to the accused 1 and 2 in this case accordingly, the wife of the respondent has given a criminal case against the petitioners with intent to cause injury. The respondent has given a private complaint dated 15.09.2009 before the learned Judicial Magistrate, Salem against the Inspector of Police 2nd petitioner herein, head constable 1st petitioner herein and Jeep driver 3rd petitioner herein attached to Magudanchavadi Police Station and also against other persons alleging that they are liable for prosecution under Section 365,350,342,330 and 324 I.P.C. The said complaint has been taken on the file in C.C.No.24 of 2009 on 07.06.2010 for the alleged offences under Sections 365,350,342,330 and 324 of I.P.C It is further alleged in the complaint that the respondent had managed to escape from the custody of the abductors and thereafter he was detained in the police station between 15.06.2009 and 17.06.2009.

4. The learned counsel for the petitioner herein have submitted that these petitioners are working as Police Constable, Head Constable, Inspector of Police at Mechari Police Station, Salem and initially, the defacto-complainant has wantonly absconded whose wife gave a complaint of man-missing which after enquiry came to the conclusion that it is only a stage

show and hence, the complainant was altered and charge sheet has been filed under Section 182, 211 and 120(B) I.P.C in C.C.No.24 of 2009 and hence, in order to avoid that case a false private complaint has been filed before the Chief Judicial Magistrate,Salem against this police officers who have discharged their official duty and further, contended that prior sanction was not obtained for prosecution of the police officers and hence, seeks the quashment.

5. After hearing both sides, it is seen that on the first round of litigation by accused 1 to 5 have moved the CrI.O.P.No.21561 of 2010 and by an order dated 1.11.2011 it is ordered that the C.C.No.110 of 2009 on the file of the Judicial Magistrate,Sankagiri is directed be transferred to Chief Judicial Magistrate, Salem to be tried along with C.C.No.24 of 2010 and this Court by subsequent order in CrI.R.C.No.546 of 2010 dated 19.01.2016. The case in C.C.No.190 of 2009 Judicial Magistrate No.II, Sankagiri is ordered to be transferred to the Chief Judicial Magistrate, salem for enabling for simultaneous trial with and C.C.No.24 of 2010 on the file of the said court.

6. The learned counsel for the respondent has submitted that inspite of the specific order by this Court, this case is still pending before the Judicial Magistrate,Sankagiri.

7. The short points that needs to be addressed in this case is that:-

i) Whether prior sanction is necessary for prosecuting the police officials in discharge of their duties?

ii) Whether the ingredients of 482 is attracted in respect of taking cognizance of C.c.No.24 of 2009 Chief Judicial Magistrate,Salem?

8. After perusing the complaint, it is seen that the respondent herein as alleged that, he was kidnapped by unknown person on 11.06.2008 and as he was found missing, his wife has moved the concerned Police Station and filed a F.I.R for man-missing case and while was taken in an illegal custody. He tried to escape and went to Tiruvannamalai Police Station on 14.06.2009 on the same night, he was handed over to Mechari Police station wherein, receiving the Police Station has given an endorsement to Tiruvannamalai police that "ey;y Kiwapy; xg;gilf;fgl;Ltpl;IJ". However, it is alleged by the respondent in the private complaint before the Chief Judicial Magistrate, Salem, the 7th accused alleged to have physical beaten up the respondent herein and A6,A7/Inspector have illegally detained private complainant between 14/15.06.2009 and 17.06.2009 he was subjected to physical torture and with bleeding injury, he was produced before the Judicial Magistrate No.II, Sankagiri on 17.06.2009 evening in only.

9. In support of his case, the additional typed set of papers has been filed wherein the respondent herein was arrayed as A1 in Crime.No.454 of 2009 which was originally given by his wife Amudambigai for man-missing wherein, section was altered as if they have committed the offence under Section 182, 211 and 120(B) of I.P.C and they have been produced before the Judicial Magistrate No.II,Sankagiri on 17.06.2009, in which, remand report attested by the Magistrate produced at 3.00P.M and made some observations in the remand report itself as to be certain allegations made by the respondent herein about physical torture in the Police Station with specifically naming the Inspector and two other constables, the same have also been noted in the remand report and further in view of the seriousness of the injury while, remanding the respondent, the Judicial Magistrate has also observed that the respondent herein (who is A1 in the crime No.454 of 2009) is forwarded to Central Prison Hospital for proper treatment and based upon such endorsement and Medical Certificate issued by the Central Prison, it appears that the respondent herein has moved the present C.C.24/09 before the Chief Judicial Magistrate, Salem, alleging various offence as stated therein.

10. From the facts pleaded in the complaint also the papers produced before the Court in the form of typed set, it is seen that the Police Officer of Tiruvannamalai police station have handed over the custody of this respondent on 14/15.06.2009 around 4.00 A.M. However, they have been

produced before the concerned Magistrate Court only after expiry of statutory period with bleeding injury and at the time of remand, respondent also alleged the physical torture and ill treatment met out in the police station at the hands of the petitioner herein was clearly noted by the learned Judicial Magistrate No.II, Sankagiri and hence, I am not inclined to entertain this petition in quashment case at the instance of police officer, since the various allegations contended in the complaint are matter for evidence that has to be let in and gone into during the course of trial only and besides the presence of the remand order and the treatment report given by the Jail prison on the respondent herein.

11. With regard to the prior sanction of Constable, Head Constable, Inspector of Police decision reported in Hon'ble Apex in the decision reported 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 (IS.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)

12. 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 and unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person, provided that such delay shall not, in any case, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Provision of Cr.P.C mandates that the arrested person should be produced within twenty-four hours exclusive of the time taken for journey before the Court. When such is the law, petitioner should not have detained by the 1st respondent beyond twenty-four hours in any case. Petitioner detained the 1st respondent illegally.

13. 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, I have no hesitation to reject the contention of the petitioner in this regard and hence, both these points are answered in negation against the petitioner and no reasonable ground much less any ground is made out by the petitioner herein for the quashment of the C.C.No.24 of 2009, on the file of the Chief Judicial Magistrate, Salem and hence, the same is devoid of merits liable to be dismissed.

14. In the result, this Criminal Original Petition is devoid of merits and accordingly, this Criminal Original Petition is dismissed. The Chief Judicial Magistrate, Salem is directed to dispose of C.C.No.24 of 2009 on his file within a period of twelve weeks from the date of receipt of a copy of this order and he is also directed to comply with an earlier order passed on 01.11.2011 in CrI.O.P.No.21561 of 2010 and also Criminal Revision 546 of 2010, dated 19.01.2016. The Judicial Magistrate No.II, Sankagiri is directed to transmit the entire case records in C.C.No.190 of 2009 to the Chief Judicial Magistrate, Salem within a period of two weeks from the date of receipt of a copy of this order for making compliance as per the earlier order passed by this Court. The Chief Judicial Magistrate, Namakkal is hereby required to ensure the earlier order passed by this Court on 01.11.2011 and 19.01.2016 are complied within the stipulated period as stated above. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

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Index:Yes  
Internet:Yes

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To

- 1.The Chief Judicial Magistrate Court, Salem
2. The Public Prosecutor,  
High Court, Madras.

Copy to:

- 1.The Chief Judicial Magistrate, Namakkal
- 2.The Judicial Magistrate No.II, Sankagiri.

**RMT.TEEKAA RAMAN,J.,**

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Order in  
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