

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.19070 of 2010
and
M.P.No.1 of 2010**

Parthasarathy

... Petitioner

vs.

S.Radhakrishnan

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.111 of 2009, on the file of the Chief Judicial Magistrate, Chengelpet and quash the same.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.S.Radhakrishnan (party-in-person)

JUDGMENT

The petitioner has filed this Criminal Original Petition to call for the records in C.C.No.111 of 2009 on the file of the Chief Judicial Magistrate, Chengelpet and to quash the same.

2.The case of the petitioner is that he serves in Tamil Nadu State Police and in the year 2007 he served as the Deputy Superintendent of Police of organized crime unit-II of CBCID, Salem. At that relevant point of time he was entrusted with responsibility for the conduct of the trial and disposal of a case in S.C.No.363 of 2005.

3.In the said case the respondent herein is the 1st accused and the charge leveled against him was that on 12.04.2004 he abducted and murdered his Son-in-Law namely Pradap. In the said case the respondent's daughter namely Selvarasi stood arrayed as an important witness. Originally the above crime was investigated and the charge sheet in S.C.No.363 of 2005 was filed in the year 2005 itself even prior to assuming of charge by the petitioner in the above CBCID unit.

4.The said case was posted for trial and the trial Court had also issued summons to the witness. Therefore the petitioner being the deputed police authority for the conduct of case, in this regard the petitioner has enquired with the respondent on 22.01.2009 about the whereabouts of his daughter namely Selvarasi so as to serve the witness summons.

5. Whereas as if the respondent was threatened by the petitioner, the respondent filed a petition before the Principal District and Sessions Judge at Chengelpet. The said petition was returned by the Learned District Judge with an endorsement to approach the competent authority. Subsequently after a period of 3 month the respondent on 22.04.2009, come up with the present private complaint as if respondent was intimidated and wrongfully restrained by the petitioner, when the respondent was waiting in the veranda of the Court on 22.01.2009.

6. It is the case of the respondent that on 22.01.2009 the petitioner herein questioned the respondent about his absence in the previous hearing of the case on 07.01.2009, for which the respondent replied that he had met with an accident at Madurai and hence was not present on 07.01.2009.

7. The above said complaint is an utter false and not maintainable either in law or fact. The filing of the above complaint as against the petitioner is with a view to prevent the petitioner from taking efforts in speedy disposal of the above case. The private complaint filed by the respondent against the petitioner is not maintainable since there is no sanction under Section 197 (1) of Cr.P.C.

8. Therefore the petitioner invoking the inherent power of this Court under Section 482 of Cr.P.C has come up with the present criminal original Petition in CrI.O.P.No.19070 of 2010 seeking to quash the charge sheet in C.C.No.111 of 2009 on the file of Chief Judicial Magistrate, Chengelpet.

9. I heard Mr.R.Vivekananthan, learned counsel appearing for the petitioner and Mr.S.Radhakrishnan, respondent (party-in-person) and on careful perusal of the records available before this Court.

10. This Court on repeated reading of the complaint is not able to trace out even a word, attracting the offence of 341 IPC. The complaint runs that the respondent was intimidated on 22.01.2009 for his absence on 07.01.2009 and further alleges that the petitioner required the respondent's daughter Selvarasi, the prosecution witness to be present 2 days prior to her examination. It was further case of the respondent that the petitioner threatened him that in case of failure to produce his daughter, the respondent will be shot dead.

11. It is needless to say that in the above complaint there is absolutely no ingredient present to attract the offence of Section 341 IPC.

It is further noticed that the respondent being a practicing advocate has not stated any reason for the delay of 3 months for the filing of the complaint on 22.04.2009, for an alleged offence said to have taken place on 22.04.2009.

12. Further, considering sanction for prosecution under section 197 (1) of Cr.P.C, even as per the statement of the respondent, the petitioner herein has threatened the respondent while discharging his duty as a Deputy Superintendent of Police. In that context, it is useful to refer the Judgment relied on by the learned counsel for the petitioner reported in **2006 (4) SCC 584 (*Sankaran Moitra v. Sadhna Das and Another*)**, wherein the Hon'ble Apex Court held that if a police officer committed the act in question during the course of performance of his duty, sanction under section 197 (1) Cr.P.C. was necessary for his prosecution. The above judgment has stated as follows:

"60. In *Bakhshish Singh Brar v. Gurmej Kaur & Another*, [(1987) 4 SCC 663], this Court held that when police officers were accused of causing grievous injuries and death while conducting raid and search, it could not be said that they were acting in purported discharge of their official duty but if while discharging duty, they exceeded the limits

of such official capacity, sanction under Section 197 of the Code would be necessary. While insisting on the need and necessity to protect public servants, the Court also emphasized the protection of rights of citizens. The Court stated: (SCC p. 667, para 6)

"It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind Section 196 and Section 197 CrPC. But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted. 'Encounter death' has become too common. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance

having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence."

61. In *P.K. Pradhan v. State of Sikkim*, [(2001) 6 SCC 704], after referring to the relevant case-law on the point, it was observed that different tests have been laid down to ascertain the scope and meaning of the relevant words occurring in Section 197 "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". It was then stated that the offence alleged to have been committed must have something to do, or must relate in some manner, with the discharge of official duty of a public servant. No question of sanction would arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter

even if the act exceeds what is strictly necessary for the discharge of the duty, as that question would arise only at a later stage when the trial proceeds on the merits. What a court must consider is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty. If the answer to the said question is in affirmative, Section 197 will be attracted, but not otherwise. This Court reiterated that the question as to applicability of Section 197 of the Code can be raised at any stage of the proceedings. In order to come to the conclusion, whether the claim of the accused that the act he had committed was in the course of performance of his duty was a reasonable one and neither pretended nor fanciful can be examined during the course of trial by giving opportunity to the defence to establish it and the question of sanction would be left to be decided in the main judgment which may be delivered upon at the conclusion of the trial.

62. In *State of Orissa v. Ganesh Chandra Jew*, [(2004) 8 SCC 40], it was held that the expression "any offence alleged to have been committed by public servant while acting or purporting to act in the discharge of his official duty" implies that the act or omission must have been done

by the public servant in the course of his service and that it should fall within the scope and range of his official duty. It was then observed that the test is whether omission or neglect to do that act would have on a public servant the charge of dereliction of his official duty. The protection is available only when the alleged act done by the public servant is reasonable, connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act [vide S.K. Zutshi v. Bimal Debnath (2004) 8 SCC 31].

63. In K. Kalimuthu v. State by DSP [(2005) 4 SCC 512], it was stated that the protection given under Section 197 of the Code 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 acting 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.

But the said 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.

64.It was, therefore, observed: (SCC p. 517, para 7)

"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 it 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.” (emphasis supplied)

65. Recently, in *Rakesh Kumar Mishra v. State of Bihar & Others*, [(2006) 1 SCC 557], this Court restated the object behind enacting Section 197 of the Code and also the prerequisites for application thereof.

66. The Court stated: (SCC p.561, para 6)

"6. The protection given 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 acting 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 it chooses 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 acting 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 is a reasonable connection between the act done and the official duty, nor is it 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." (Emphasis supplied)

67. From the aforesaid decisions, in my opinion, the law appears to be well settled. The primary object of the legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus,

reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter under Section 197 of the Code. In other words, protection afforded by the said section is qualified and conditional.

68.Mr.Tulsi, no doubt, submitted that the appellant was a police officer. He was on duty. He had received a message about rioting and law and order situation at Baliaghata. He, therefore, had gone to the spot pursuant to the said message, in police uniform, in police jeep to deal with the situation. All the ingredients of Section 197 of the Code were thus satisfied and the High Court was wrong in not applying the said provision."

13.In the present case on hand, as stated above, admittedly even according to the respondent, the threatening by the petitioner was during the course of performance of his official duty. Hence, the respondent herein ought to obtained sanction from the higher officials to prosecute the petitioner as contemplated under section 197 (1) of Cr.P.C. Admittedly the respondent herein has not obtained sanction to prosecute the petitioner. Hence the above said criminal proceedings against the petitioner herein are liable to be quashed for want of sanction alone.

14.It is noteworthy that the respondent being the prime accused and the petitioner being the investigating authority such a complaint is lodged by the respondent, who is also an Advocate without any reasonable explanation behind his failure to file a complaint immediately after the date of alleged offence on 22.01.2009.

15.Therefore in view of the foregoing reasons and the facts involved in the case this Criminal Original Petition succeeds and the proceedings in C.C.No.111 of 2009 on the file of the Chief Judicial Magistrate, Chengelpet is hereby quashed. Consequently, connected miscellaneous petition is closed.

05.10.2017

vs

Speaking order

Index : Yes

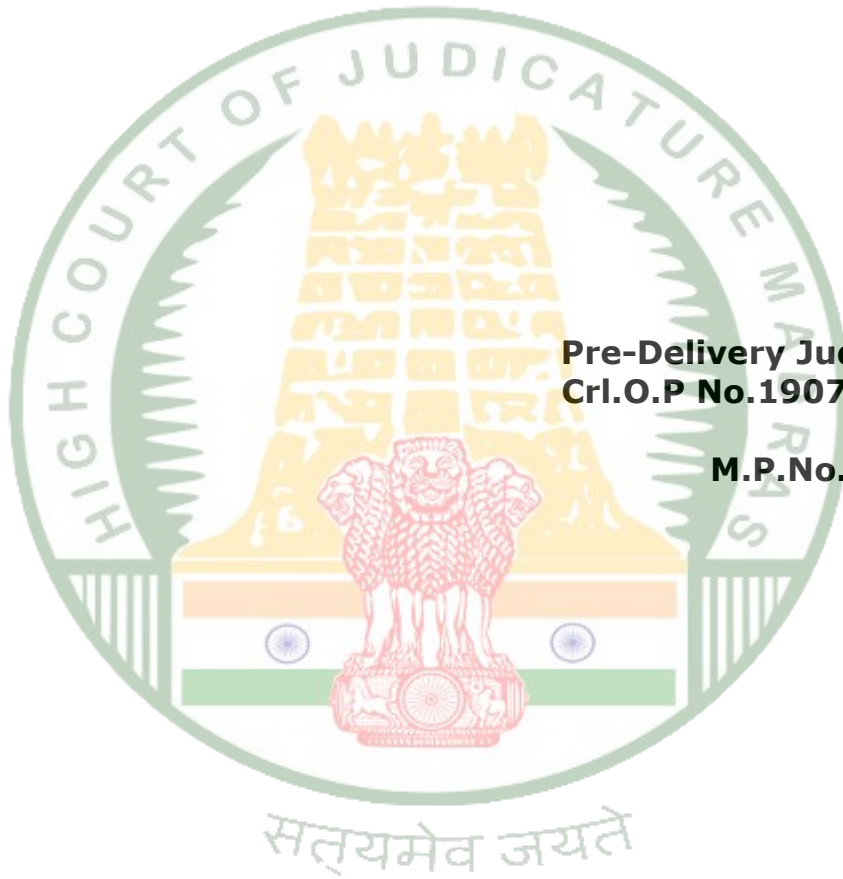
To

The Chief Judicial Magistrate, Chengelpet.

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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.19070 of 2010
and
M.P.No.1 of 2010**

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