



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.(MD)No.14064 of 2011

and

Cr1.M.P.(MD).No.1 of 2011

1.Rev. Sister Flora
Correspondent,
St.Teresa Primary School,
West Marianathapuram,
Dindigul.

2.Arockia Mary

... Petitioners/Accused

-Vs-

S.Babiolo Viancy

... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in H.R.C.No.1 of 2010, dated 06.01.2009, on the file of the learned Principal Sessions Judge, Dindigul, and to quash the same.

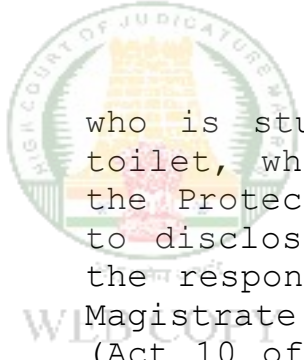
For Petitioners : Mr.N.Ananthapadmanaban

For Respondent : Mr.V.Karuna

O R D E R

This Criminal Original Petition has been filed to quash the case in H.R.C.No.1 of 2010, pending on the file of the learned Principal Sessions Judge, Dindigul.

2. The first petitioner is the Correspondent of a Private School and the second petitioner was working as the helper maid in the said school. They filed this petition under Section 482 of Cr.P.C., challenging the private complaint lodged by a respondent/complainant, who is the parent of a student of their school. The complaint was filed under Section 200 Cr.P.C. and Section 30 of the Protection of Human Rights Act, (Act 10 of 1994) alleging that the petitioners ordered the son of the respondent,



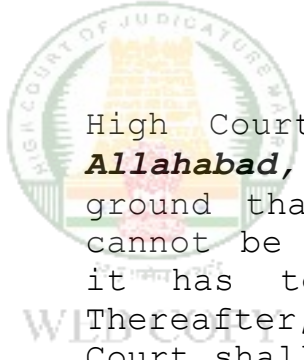
who is studying in their school at fifth standard to clean the toilet, which is the violation under Section 12(C) and 12 (D) of the Protection of Human Rights Act, 1993, and threatened him not to disclose the said incident to anybody. Aggrieved by the same, the respondent preferred a complaint before the learned Judicial Magistrate under Section 30 of the Protection of Human Rights Act, (Act 10 of 1994) read with Section 200 Cr.P.C., against which the Criminal Original Petition has been filed.

3. Mr.N.Ananthapadmanaban, learned counsel appearing for the petitioners would submit that the complaint is not maintainable since the complaint was filed under Section 30 of the Protection of Human Rights Act, (Act 10 of 1994), read with Section 200 Cr.P.C. and no penal provision attracts in the said complaint, and if there is any human rights violation, as per the section amounting the violation can be lodged before the Human Rights Commission either by the victim or by any one on behalf of the victim. Chapter-III of the Protection of Human Rights Act, 1993, deals with the power of Human Rights Commission and Chapter-IV deals with the enquiry procedure of the State Human Rights Commission. However, the petitioner choose the wrong forum for lodging the private complaint before the Judicial Magistrate under Section 200 Cr.P.C., for the offences punishable under Section 12 (C) and 12(D) of the Protection of Human Rights Act, 1993, and the same was taken on file as P.R.C.No.14 of 2008 and after committal proceedings, the case was taken on file in H.R.C.No.1 of 2010, on the file of the learned Principal Sessions Judge, Dindigul, instead of referring the case before the Human Rights Commission. Hence, the complaint itself is bad in law.

4. I have heard the learned counsel for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

5. On perusal of the entire complaint filed by the respondent, it is clear that the complaint did not cause any penal offence implicating the petitioners in the above said crime for the offences punishable under Section 12(C) and 12(D) of the Protection of Human Rights Act. Hence, the complaint filed under Section 200 Cr.P.C. read with Section 30 of the Protection of Human Rights Protection Act, (Act 10 of 1994) before the learned Judicial Magistrate is not sustainable in law. In fact, Section 12 (C) and 12(D) of the Protection of Human Rights Act, 1993, is not penal provisions. The above said Sections falls under Chapter-III of the said Act, which describes the Functions and Power of the Commission and Sections 12(C) and 12(D) of the said Act is a recommendatory nature, if at all any human rights violation that can be recommended for the remedial measure for the purpose of adjudication.

6. However, the Hon'ble Division Bench of Andhra Pradesh



High Court in **A.Goverdhan Reddy v. Superintendent of Police, Allahabad**, reported in **1998 Cr1.L.J.561**, decided the issue on the ground that if any penal provision is attracted, the complaint cannot be instituted straight away before the Special Court, but it has to be instituted only before the Magistrate Court. Thereafter, after following the committal procedure, the Special Court shall try the case.

7. To support his contention the learned counsel for the petitioner relied on a decision of this Court in **Dr.S.Sourubarani and another vs. C.Selvi**, reported in **2005 (1) LW 139**, and the relevant paragraphs are as follows:

"22-A. On this ground alone, quashing the proceedings may not be possible and if at all, a direction could be given to the court concerned, to send the complaint to the Judicial Magistrate concerned, having jurisdiction, to commit the case, if offences are made out. But considering the facts and circumstances of the case and other attending circumstances, in this case, this proceedings need not be followed and the proceedings could be quashed, since there are other materials available, for adopting the latter course.

23. The offences reported in the complaint are under Sections 166, 315, 325, 503 and 509 IPC. Section 166 IPC contemplates punishment, where a public servant disobeyed the law, with intent to cause injury to any person, which is not available in this case, even prima facie, as per the pleadings and therefore, taking cognizance of this offence and compelling the accused to face the trial is unnecessary".

8. From the above said judgment, if the penal provisions attracted against the petitioners, initially, the said complaint can be entertained by the learned Judicial Magistrate. Thereafter, the learned Magistrate, after following the committal procedures, shall commit the case to the Special Court constituted under Section 30 of the Protection of Human Rights Act, 1993. In the present case, the respondent implicated the petitioners only under Sections 12(C) and 12(D) of the said Act, which did not constitute any offence against the petitioners, even as per the pleadings, there is no *prima facie* case attracted against the petitioners. Therefore, compelling the petitioners to face the criminal prosecution is unnecessary.

9. The learned counsel for the respondent fairly conceded that the complaint filed by the respondent before the Judicial Magistrate is unsustainable in law. Accordingly, he seeks permission of this Court to file a fresh compliant before the appropriate forum.



10. In the present case, this Court found no material was placed before this Court to entertain the complaint before the Magistrate. However, the petitioner granted liberty to approach the Human Rights Commission which was formed under Section 21 of the Protection of Human Rights Act, 1993.

WEB COPY

11. In view of the above, I am inclined to quash the complaint with liberty to the respondent to approach the appropriate forum under the Protection of Human Rights Act, 1993. Accordingly, the private complaint in P.R.C.No.14 of 2008, on the file of the learned Judicial Magistrate No.II, Dindigul, which was taken in H.R.C.No.1 of 2010, on the file of the learned Principal Sessions Judge, Dindigul, is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Dindigul.
2. The Judicial Magistrate No.II,
Dindigul.

+1 cc to M/S.N.Ananthapadmanaban, Advocate in SR.No.91354
+1 cc to M/S.V.Karuna, Advocate in SR.No.91328

Cr1.O.P. (MD) No.14064 of 2011
06.12.2017

PK/RR/SAR-1/04.01.2018 : 4P/5C