



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.11.2017

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.(MD)No.16290 of 2011
and
CrI.M.P.(MD).Nos.1 & 2 of 2011

R.Lakshmi ... Petitioner/Accused No.1

-Vs-

J.Susila ... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the complaint in C.C.No.196 of 2011, on the file of the learned Judicial Magistrate No.II, Dindigul and to quash the same.

For Petitioner : Mr.R.Karthikeyan

For Respondent : Mrs.Vidhya
for Mr.P.Mahendran

O R D E R

This Criminal Original Petition has been filed to quash the case in C.C.No.196 of 2011, pending on the file of the learned Judicial Magistrate No.II, Dindigul.

2. The petitioner was working in the Tamil Nadu Municipal Service in the cadre of Municipal Commissioner. She filed this petition under Section 482 of Cr.P.C., challenging the private complaint lodged by a private contractor/complainant, who was maintaining the Toilet in the public place. The complaint was filed under section 2(D) of the Protection of Human Rights Act, 1993, read with Section 200 Cr.P.C. alleging that the petitioner and other accused persons threatened the respondent/complainant saying that she was a bootlegger, she went to the prison and she is not fit to maintain the Public Toilet and took away the keys and sent her away. Aggrieved by the same, the respondent preferred a complaint before the learned Judicial Magistrate under Section 2 (D) of the Protection of Human Rights Act, 1993, read with Section 200 Cr.P.C., against which the Criminal Original Petition has been filed.



3. Mr.R.Karthikeyan, learned counsel appearing for the petitioner would submit that the complaint is not maintainable since the complaint was filed under Section 2(D) of the Protection of Human Rights Act, 1993, 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 120(b), 506(i) and 500 IPC and the same was taken on file as C.C.No.196 of 2011. These are of the provisions which will not attract the Human Rights violation. Hence, the complaint itself is bad in law.

4. I have heard the learned counsel for the petitioner 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 petitioner in the above said crime for the offences punishable under Sections 120(b) and 506(i) of IPC. Hence, the complaint filed under Section 2(D) read with Section 200 Cr.P.C. before the learned Judicial Magistrate is not sustainable in law. 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.

6. 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".

7. From the above said judgment, if the penal offence is not attracted, it is the committee which is constituted under Section 21 of the Protection of Human Rights Act, 1993, alone can entertain the complaint filed by the respondent. Hence, the complaint filed before the learned Judicial Magistrate cannot have any jurisdiction under the Human Rights violation.

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

9. In the present case, this Court found no material was placed before this Court to issue any direction to the learned Judicial Magistrate to entertain the complaint for initiating committal proceedings. 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.

10. 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 C.C.No.196 of 2011, on the file of the learned Judicial Magistrate No.II, Dindigul is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.II, Dindigul.

+ 1 cc TO Mr.P.Srinivas , Advocate in SR No. 89040

+ 1 cc TO Mr.P.Mahendran , Advocate in SR No. 88927

PJL

AE/SKN RSK/SAR4/22.12.2017/3P/4C