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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 01.03.2017

Orders Pronounced on : 28.03.2017

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH
Crl.O.P.(MD).No.2023 of 2011
and
M.P.(MD).Nos.1 & 2 of 2011

1.Vasanthamani
2.Usha

... Petitioners/Accused 1 & 2

Vs.

V.Sahaya

... Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., praying to call for the entire records relating to the impugned complaint in C.C.No.31 of 2008 on the file of the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil, and to quash the same insofar as the petitioners herein/accused 1 & 2 are concerned.

For Petitioner : Mr.A.Saravanan

For Respondents : No appearance

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ORDER

This Criminal Original Petition has been filed by the petitioners praying to call for the entire records relating to the impugned complaint in C.C.No.31 of 2008 on the file of the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil, and to quash the same insofar as the petitioners herein/accused 1 & 2 are concerned.

2.The 1st petitioner Vasanthamani is working as Inspector of Police and the 2nd petitioner Usha is working as Head Constable in All Women Police Station, Tharapuram, Erode District. The respondent herein filed a private complaint against them and two others in C.C.No.31 of 2008 pending on the file of the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil, for the alleged offence under Section 166, 294(b), 323, 357, 342 & 383 IPC. The allegation made in the complaint is that on 19.08.2007



at about 12 noon, the respondent/complainant was called by the Inspector of Police, All Women Police Station, Dharapuram Erode District, for an enquiry pursuant to the complaint lodged by her husband, which was registered in Crime No.15 of 2007; that the respondent/complainant went to the Police Station along with her mother Mary and one Subash and Ambika; that under the guise of enquiry, the respondent/complainant was harassed by the petitioners; further, she was threatened to withdraw the case pending against her husband before the learned Judicial Magistrate, Boothapandy in C.C.No.95 of 2005. Hence, the respondent/complainant lodged the private complaint in C.C.No.31 of 2008 on the file of the learned Chief Judicial Magistrate, Nagercoil. as against the petitioners herein and two others. Now, the present petition has been filed by the petitioners/A1 & A2, seeking to the quash the complaint in C.C.No.31 of 2008 as against them.

3.Heard the learned counsel for the petitioners and perused the materials available on record.

4.The learned counsel for the petitioners, by relying upon the decision of the Hon'ble Supreme Court reported in **2015(2) MWN (Cr.) 559 (SC) [D.T.Virupakshappa Vs. C.Subash]** submitted that if a Government servant is an accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, previous sanctions from the Government is mandatory; but, in the instant case, no previous sanction was obtained by the respondent/complainant before lodging the private complaint, as required under Section 197 Cr.P.C.

5.But, from a perusal of the materials available on record, I find that in the instant case, the 1st petitioner is working as Inspector of Police and the 2nd petitioner is working as Head Constable; to show that whether they would fall within the purview of Section 197 of Cr.P.C., or not, no material was placed before this Court by the learned counsel for the petitioners. Hence, I am not inclined to entertain this quash petition.

6.Hence, the Criminal Original Petition is dismissed. However, the petitioners are at liberty to establish before the Trial Court that they will fall within the purview of Section 197 of Cr.P.C. In case, if they are able to establish that they would fall within the purview of Section 197 of Cr.P.C. before the Trial Court, the criminal proceedings will have to be dropped. The petitioners are granted further liberty to approach the Trial Court for dispensing with their personal appearance, by filing an affidavit to the effect that they will co-operate for completion of the trial. On such an affidavit being filed by the petitioners, the Trial Court is directed to pass appropriate orders dispensing with their appearance, except the date on which



their presence is required. Consequently, connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

To,

The Chief Judicial Magistrate,
Kanyakumari at Nagercoil

+1 CC TO MR.A.SARAVANAN,ADVOCATE,SR NO.19003

SSV
MAS/MR/SAR3:19.04.2017:3P-3C

order in
CrI.O.P. (MD) .No.2023 of 2011
and
M.P. (MD) .Nos.1 & 2 of 2011
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