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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Orders Reserved on : 03.03.2017
Orders Pronounced on : 28.03.2017

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P.(MD).No.5044 of 2011

and

M.P.(MD).Nos.2 & 3 of 2011

Thennarasu,
Sub-Inspector
C5, Karimedu Police Station,
(Law and Order), Madurai Town.

... Petitioner

Vs.

1.The Assistant Commissioner,
(Law and Order),
Thilagar Thidal Zone,
Karimedu Police Station,
Madurai.

2.State rep by
Inspector of Police,
Karimedu Police Station,
Madurai.

3.A.Ganesan

... Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., praying to call for the entire records in C.C.No.18 of 2001 on the file of the learned Chief Judicial Magistrate, Madurai and to quash the same.

For Petitioner : Mr.D.Sharmugaraja Sethupathi

For Respondents : Mr.C.Mayilvahana Rajendran, APP For
R1 & R2

Mr.K.Sudalaiyandi for R3

* * * * *

ORDER

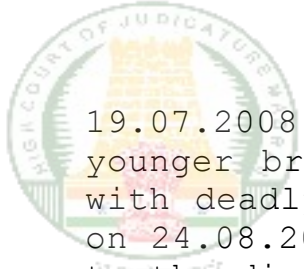
This Criminal Original Petition has been filed by the petitioner praying to call for the entire records relating to the criminal proceedings in C.C.No.18 of 2001 on the file of the learned Chief Judicial Magistrate, Madurai and to quash the same.

2.The brief facts of the case are as follows:-

2-1.The petitioner was working as Sub-Inspector of

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Police in Karimedu Police Station from the year 2006 to 2008. While so, the 3rd respondent herein had lodged a complaint dated

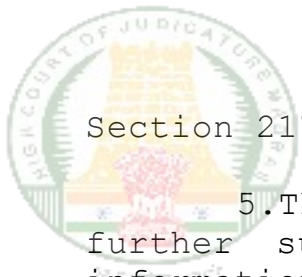


19.07.2008 with the Karimedu Police Station alleging that his younger brother was attacked by one Mr.Grummer Suresh and others with deadly weapons. A case in Cr.No.1487 of 2008 was registered on 24.08.2008 against the said Grummer Suresh and others, pursuant to the direction given by the learned Judicial Magistrate, Madurai in Crl.M.P.No.2021/2008.

2-2.The 3rd respondent has also filed a complaint as against the petitioner herein and others under Section 156(3) of Cr.P.C. before the learned Judicial Magistrate No.5, Madurai. The allegation made by the 3rd respondent herein against the petitioner herein is that the petitioner has not registered the First Information Report on receiving the complaint dated 19.07.2008 lodged by him; thereby, the petitioner has not discharged his duty while working as Sub-Inspector of Police attached with Karimedu Police Station. The complaint lodged against the petitioner and others by the 3rd respondent was registered in Crime No.80 of 2009 for offences under Sections 213, 214, 217, 218 & 506(ii) IPC and Sections 8 & 9 of the Prevention of Corruption Act, on the basis of the direction issued by the learned Chief Judicial Magistrate under Section 156(3) of Cr.P.C. On completion of investigation, the 1st respondent herein filed a charge sheet in C.C.No.18 of 2011 before the learned Chief Judicial Magistrate, Madurai as against the petitioner alone, alleging that the petitioner, being Sub-Inspector of Police, has failed to register the FIR on the complaint given by the 3rd respondent and thereby, failed to discharge his official duty. Now, the petitioner has come forward with the present petition before this Court seeking to quash the above said chargesheet.

3.It is the submission of the learned counsel for the petitioner that the allegation against the petitioner is that the petitioner has failed to register the FIR on the basis of the complaint given by the 3rd respondent; in other words, the petitioner has committed an offence while discharging his official duty, by disobeying the direction of law with the intention to save a person from the punishment of law. When that being so, sanction under Section 197 of Cr.P.C is required to prosecute the petitioner. But, the 1st respondent has not obtained any sanction as required under Section 197 of Cr.P.C for prosecuting the petitioner. In this regard, the learned counsel for the petitioner has also relied upon the decision reported in **2015 (2) MWN (Cr.) 559 (SC) [D.T.Virupakshappa Vs. C.Subash]**.

4.It is further submitted by the learned counsel for the petitioner that the allegations found in the chargesheet would not attract the ingredients of offence under Section 217 IPC. In the chargesheet, it has not been specifically alleged as to what is the direction of law which has been disobeyed by the petitioner. In the absence of specific allegation against the petitioner, the petitioner cannot be prosecuted for the alleged offence under



Section 217 IPC.

5. The learned counsel appearing for the petitioner would further submit that Section 154 of Cr.P.C contemplates that information relating to the commission of cognizable offence, if given to an officer in-charge of the police station, it shall be reduced to writing by him by registering First Information Report. At the time of alleged complaint by the 3rd respondent, the petitioner was working as Sub-Inspector of Police and he is not the officer in-charge of the Police Station. Therefore, the petitioner cannot be imposed with criminal liability under Section 217 IPC for having allegedly not registered the First Information Report.

6. The learned counsel for the petitioner would further submit that in the criminal case in respect of the alleged occurrence relating to the attack of the complainant's brother culminated into Sessions Case No.19/2012, wherein the 3rd respondent/complainant has turned hostile and the case ended in acquittal. Thus, the learned counsel for the petitioner sought for quashing the impugned chargesheet filed against him.

7. Heard the learned Additional Public Prosecutor appearing for the official respondents and the learned counsel for the 3rd respondent, who opposed the prayer of the petitioner.

8. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record. The submissions made by the learned counsel for the petitioner are on two folds_

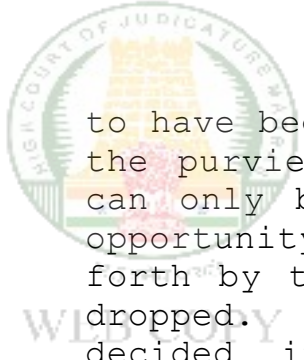
i) No sanction was obtained by the 1st respondent before registering the complaint against the petitioner as required under Section 197 of Cr.P.C.

ii) Allegations in the complaint do not attract the offence under Section 217 of Cr.P.C.

9. The present petition has been filed by the petitioner mainly placing reliance on the decision reported in **2015(2) MWN (Cr.) 559 (SC) [D.T.Virupakshappa Vs. C.Subash]**, wherein it has been held that if a Government servant is 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. By relying upon the above said decision, it is submitted by the learned counsel for the petitioner submitted that in the instant case also, no previous sanction was obtained by the 1st respondent/complainant before registering the complaint against the petitioner for prosecuting him.

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10. But, in my considered opinion, whether the acts alleged



to have been committed by the petitioner/accused would come within the purview of performing his official duty or misuse of power, can only be determined during the course of trial by giving an opportunity to the defence to establish it. If the case, as put forth by the prosecution, fails, the proceedings will have to be dropped. Thus, the question of sanction is left open to be decided in the main judgment which may be delivered upon conclusion of the trial. In view of the above, non-obtaining of a sanction order under Section 197 Cr.P.C will not serve as a ground to quash the complaint. Moreover, no material was placed before this Court to show that the petitioner, who was Sub-Inpsector of Police, will fall with the provisions of Section 197 Cr.P.C. Hence, I am not inclined to accept the submission made by the learned counsel for the petitioner that since no sanction was obtained by the respondent to prosecute the petitioner, the complaint has to be quashed.

11. So far as the submission of the learned counsel for the petitioner that the allegations in the complaint do not attract the ingredients of Section 217 IPC is concerned, this Court is of the opinion that the allegation made in the chargesheet makes out a *prima facie* case against the petitioner. The genuineness of the said allegation can be gone into only during the course of trial. Similarly, it is yet another submission of the learned counsel for the petitioner that the petitioner was not the incharge of the office at the time of alleged complaint made by the complainant/R3, therefore, he cannot be blamed for not registering the complaint given by the 3rd respondent. But, on perusal of the complaint, as observed earlier, I find a *prama facie* case against the petitioner. Hence, I am not inclined to quash the complaint and the present petition is liable to be dismissed.

12. Accordingly, the Criminal Original Petition is dismissed. However, the petitioner is at liberty to prove all his defence before the trial Court in the manner known to law. The petitioner is granted further liberty to approach the Trial Court for dispensing with his personal appearance, by filing an affidavit to the effect that he will co-operate for completion of the Trial. On such an affidavit being filed by the petitioner, the Trial Court is directed to pass appropriate orders dispensing with his appearance, except the date on which his presence is required. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(C)

/True copy/



To

1.The Chief Judicial Magistrate, Madurai.

2.The Assistant Commissioner,
(Law and Order),
Thilagar Thidal Zone,
Karimedu Police Station,
Madurai.

3.The Inspector of Police,
Karimedu Police Station,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Sudalaiyandi,Advocate,SR.18838

CrI.O.P.(MD).No.5044 of 2011
and
M.P.(MD).Nos.2 & 3 of 2011
28.03.2017

SSV

KK-SKN-02.05.2017-5P-6C