

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2018

DELIVERED ON: 28.08.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.17773 of 2011

and

M.P.No.1 of 2011

K.K.Mahalingam

.. Petitioner

Vs.

R.Palanisamy

.... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.160 of 2011 on the file of the Chief Judicial Magistrate, Coimbatore and quash the same.

For Petitioner : Mr.C.S.Dhanasekaran

For Respondent : M/s V.Raghupathy

ORDER

The petitioner Mr.K.K.M.Mahalingam, Inspector of Police, C.B.C.I.D., Coimbatore City is the accused in C.C.No.160 of 2011 on the file of the Chief Judicial Magistrate, Coimbatore.

2. The respondent/complainant filed a private complaint under Section 200 of the Code of Criminal Procedure against the present petitioner in C.C.No.160 of 2011 before the Chief Judicial Magistrate, Coimbatore for an alleged offence punishable under Section 166 of the Indian Penal Code. The contention of the respondent/complainant is that he (respondent) lodged a complaint dated 13.10.2008 with the Superintendent of Police, Coimbatore district, against 10 persons including the Sub Registrar, Sub Registrar Office, Annur, Coimbatore District and the petitioner herein though registered the First Information Report in Crime No.16 of 2008, filed a referred charge sheet on 13.01.2011 before the Chief Judicial Magistrate, Coimbatore. According to the respondent, though a notice was issued to him along with a copy of the final report, the copies of documents relied on by the petitioner herein were not

furnished to him, inspite of repeated requests both oral and in writing made by him. It is further contended by the respondent in his complaint in C.C.No.160 of 2011 that, he filed a petition before the Chief Judicial Magistrate, Coimbatore District on 19.01.2011 to direct the petitioner to hand over the copies of documents to him and that though it was allowed by the Chief Judicial Magistrate, Coimbatore, the petitioner did not furnish the copies of the documents. He has therefore, filed the private complaint in C.C.No.160 of 2011.

3. The said private complaint was taken cognizance by the Chief Judicial Magistrate, Coimbatore and summons were also sent to the petitioner. Therefore, he filed the present petition to quash the entire proceedings in C.C.No.160 of 2011 on the following grounds.

1. The Chief Judicial Magistrate, Coimbatore, without any authority, has passed the order dated 04.03.2011 directing the respondent to furnish the documents scrutinized by the investigating officer, the petitioner herein to the de-facto complainant.

2. The disobedience of the orders passed by the Chief Judicial Magistrate, Coimbatore would not give rise to filing of complaint under Section 200 of the Code of the Criminal procedure for an alleged offence under Section 166 of the Indian Penal Code.

3. The petitioner is not required under any law to furnish the documents to the complainant, scrutinized by him during the course of investigation.

4. The prosecution in C.C.No.160 of 2011 is an abuse of process of law.

4. A perusal of the records shows that the respondent/complainant filed a petition dated 04.03.2011 under Section 363 (5) of the Code of the Criminal Procedure read with Rule 339 of Criminal Rules of Practice before the Chief Judicial Magistrate, Coimbatore to direct the petitioner herein to furnish the documents perused by him (Investigating Officer) in Crime No.16 of 2008. The said petition was allowed by the Chief Judicial Magistrate by an order dated 04.03.2011. A perusal of the order passed by the Chief Judicial Magistrate, Coimbatore shows that it is passed without application of mind. In fact, no speaking order was passed by the Chief Judicial Magistrate, Coimbatore. However, this order was not challenged by the petitioner in this petition. The specific contention of the respondent/complainant is that, the petitioner herein has not obeyed the order dated 04.03.2011 passed by the Chief Judicial Magistrate, He therefore, filed a private complaint under Section 200 of the

Code of Criminal Procedure against the petitioner for an alleged offence under Section 166 of the Indian Penal Code in C.C.No.160 of 2011 on the file of the Chief Judicial Magistrate, Coimbatore.

5. At this juncture, it is relevant to extract Section 166 of the Indian Penal Code.

Public Servant disobeying law, with intent to cause injury to any person. - Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment of a term which may extend to one year, or with fine, or with both.

The following are the ingredients of the offence,

- a. The offender should have disobeyed a direction of law knowingly.
- b. There should be an intention to cause injury to the complainant.

Thus, the offence under this section consists in a willful departure from the direction of law intending to cause injury to any person.

6. Mr. C.S.Dhanasekaran, learned counsel appearing for the petitioner would contend that the petitioner cannot be prosecuted for the offence under Section 166 of the Indian Penal Code and the private complaint in C.C.No.160 of 2011 on the file of the Judicial Magistrate, Coimbatore is nothing but abuse of process of law. Reliance was also placed by him on the decision in M/s Pepsi Foods Limited and another Vs. Special Judicial Magistrate and others reported in 1998 Supreme Court 128

7. He would further contend that non compliance of the orders passed by the Chief Judicial Magistrate, Coimbatore would not give rise to the respondent to file a complaint against the petitioner for an offence under Section 166 of the Indian Penal Code and that there is no disobedience of law, as contemplated under Section 166 of the Indian Penal Code. It is also contended that the respondent cannot file a private complaint without getting sanction under Section 197 of the Code of Criminal Procedure and therefore, the entire proceedings in C.C.No.160 of 2011, on the file of the Chief Judicial Magistrate, Coimbatore is liable to be quashed.

8. Per contra, Mr.V.Raghupathy, learned counsel appearing for the respondent contended that the question relating to the need of sanction under Section 197 of the Code

of Criminal Procedure need not be considered as soon as the complaint is lodged and on the allegations contained therein and that if a public servant indulged in an act of criminal misconduct, such misdemeanor on his part cannot be treated as an act in discharge of his official duties and therefore, provisions of Section 197 of the Code of Criminal Procedure will not be attracted. His specific contention is that the petitioner has not obeyed the orders dated 04.03.2011 passed by the learned Chief Judicial Magistrate, Coimbatore and therefore, has committed an offence under Section 166 of the Indian Penal Code. Reliance was placed on the following decisions in

[a] Shri S.K.Zutshi and another V. Shri Bimal Debnath and another reported in 2004(8) SCC 31.

[b] Devinder Singh and others Vs. State of Punjab through CBI reported in (2016) 12 Supreme Court Cases 87

[c] Choudhury Parveen Sultana V. State of West Bengal and another reported in (2009) 2 MLJ (crl.) 361 (SC)

[d] Inspector of Police and another V. Bettanapatla Venkata Ratnam and another reported in 2015(5) SCALE 253

[e] K.Kalimuthu V. State by D.S.P. reported in CDJ 2005 SC 356

9. The petitioner as investigating officer, has scrutinized several documents in Crime No.16 of 2008 as evidenced by a copy of the referred charge sheet filed by him before the Chief Judicial Magistrate. The petitioner/ Inspector of Police, has served a notice to the respondent, who was the de-facto complainant in Crime No.16 of 2008 along with a copy of Referred Charge Sheet. The respondent filed a petition under Section 363(5) of the Code of Criminal Procedure to direct the petitioner herein to furnish the copies of documents perused by the Investigating Officer, during the course of investigation. Section 363(5) of the Code of Criminal Procedure is for an application by any person affected by a judgment or order of a criminal court for a copy of judgment, or order or any deposition or other part of the record. Therefore, the respondent/complainant cannot invoke Section 363(5) of the Code of Criminal Procedure seeking direction of the Chief Judicial Magistrate, Coimbatore to furnish the copies of documents relied on by the Investigating officer. As already observed, the Chief Judicial Magistrate, Coimbatore without application of mind, passed a cryptic order by allowing the said petition. The non-compliance of the order passed by the Chief Judicial Magistrate, Coimbatore can only be considered to be an irregularity and by no stretch of imagination would give rise to filing of a criminal complaint under Section 200 of the Code of

Criminal procedure and that too for an offence under Section 166 of the Indian Penal Code. Section 166 of the Indian Penal Code is not attracted also because, there is no willful disobedience of law on the part of the petitioner with an intention to cause injury to the respondent. The Investigating Officer is not under any obligation to furnish the copies of records, which he perused during the course of investigation. Therefore, proceedings in C.C.No.160 of 2011 on the file of the Chief Judicial Magistrate, Coimbatore is totally misconceived and the same is liable to be quashed.

10. In the result,

(i) The criminal original petition is allowed and the connected the miscellaneous petition is closed.

(ii) The proceedings in C.C.No.160 of 2011, on the file of the Chief Judicial Magistrate, Coimbatore is quashed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Chief Judicial Magistrate,
Coimbatore.
2. Inspector of Police, C.B.C.I.D., Coimbatore.
3. The Public Prosecutor,
Madras High Court.

+2cc to Mr.V.Raghupathi, Advocate, S.R.No.59668

+1cc to Mr.C.S.Dhanasekaran, Advocate, S.R.No.58956

CrI.O.P.No.17773 of 2011
M.P.No. 1 of 2011

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GSP(12/09/2018)