

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :04.10.2018
CORAM
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM
W.P.No.28921 of 2016

R.Muruganandam ..Petitioner
vs

1.The Secretary to Government,
Law Department,
Government of Puducherry.
2.The Secretary to Government,
Home Department,
Government of Puducherry.
3.The State rep by
Station House Officer,
Orleanpet Police Station,
Puducherry.
4.Omsakthi Sekar
5.Kaviarasan
6.Thamba @ Kalaiazhagan
7.Ganesan @ Thandi Ganesan
8.Senthamaraikannan
9.Palani @ Palanikumar .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the record of the 1st respondent in G.O.Ms.No.28/2015-D, Law Department, Puducherry dated 27.07.2015 and consequential order passed in Cr.MP.No.819/2016 in CC.No.62 of 2015 dated 13.04.2016 on the file of the Judicial Magistrate-II, Puducherry quash the same.

For Petitioner : Mr.V.Subramanian
for M/s.S.P.Yuaraj
For R1 to R3 : Mr.R.Syed Mustafa
Special Government Pleader
(Pondicherry)
For R4 to R9 : Mr.R.Saravanan

O R D E R

This writ petition has been filed, praying to issue a Writ of Certiorarified Mandamus, to quash the G.O.Ms.No.28/2015-D, Law Department, Puducherry dated 27.07.2015 and consequential order passed in Cr.MP.No.819/2016 in CC.No.62 of 2015 dated 13.04.2016 on the file of the Judicial Magistrate-II, Puducherry.

2. Brief facts are as follows:-

a)The petitioner herein is running a Maligai Shop(Grocery Shop) in the name of 'Bakilakshmi Grocery Shop' in Door No.107, Lenin Street, Kosapalayam, Puducherry. He has been serving as the Secretary of Human Rights and Consumer Society at Puducherry with like minded human right activists including retired Government Servants and People without any sort of financial help for non Governmental Organisation. One Mr.Rajaraman retired Inspector of Police was running a weekly magazine named as [Puduvai Pulanaivu] in which the petitioner herein is the Assistant Editor. The petitioner's movement fought against number of atrocities and violation of human rights and one such incident is the sexual offences committed by police men against minor girl in Protection Home of Puducherry by which 9 police men who got involved in the cruel offences, were suspended initially and terminated later following the legal action taken by them before Court.

b)One Mr.Omsakthi Sekar Ex.MLA, a close associate of the ruling parties indulged in many anti people activities and that was exposed by the petitioner in the local news paper run by the said Rajaraman. On seeing the said news the said Omsakthi Sekar and his men on 21.09.2012, in day light brutally attacked the petitioner and the said Rajaraman and also the petitioner's shop was ransacked fully and caused loss of Rs.5 Lakhs. In the said incident the petitioner and the said Rajaraman had sustained serious injuries and he has lodged a complaint before the 3rd respondent and based on the same a case was registered in Crime No.272 of 2012 on 21.09.2012 against Omsakthi Sekar and 5 others and after investigation the third respondent has filed a charge sheet under Sections 147, 148, 448, 323, 324, 326, 427, 356, 379, 506(ii) R/W 149 IPC and based on the said charge sheet the learned Judicial Magistrate -II, Puducherry, has taken the case on file in C.C.No.62 of 2015.

C)The said Omsakthi Sekar, who was MLA at that time, had influenced the Government and in pursuance of the said influence, the Government had issued G.O.Ms.No.28 of 2015-LD, Law Department, Puducherry dated 27.07.2015, instructing the Assistant Public Prosecutor to withdraw the above case. In pursuance of the said G.O., the Assistant Public Prosecutor has filed a petition under Section 321 of Cr.P.C in CrI.M.P.No.819 of 2016 in C.C.No.62 of 2015 praying to pass an order to withdraw the case. The learned Judicial Magistrate-II, Puducherry has allowed the said application and acquitted all the accused by the order dated 13.04.2016.

3. The petitioner has filed the present writ petition challenging the G.O.Ms.No.28 of 2015-LD, Law Department, Puducherry dated 27.07.2015 on the ground that no reason has been assigned.

4. The learned counsel for the petitioner has submitted that in the said G.O.Ms.No.28 of 2015-LD, Law Department, Puducherry, had instructed the Assistant Public Prosecutor to seek permission to withdraw the aforesaid case under Section 321 of Cr.P.C. Without assigning any reasons. He further submitted that since the petitioner herein and his friend Raja Raman have been brutally attacked and the petitioner's Maligai Shop(Grocery Shop) was ransacked by the accused persons, the Government should not have issued G.O. to withdraw the case. He further submitted that no public interest is involved for withdrawing the case and therefore he prayed to quash the aforesaid G.O.

5. Per contra, the learned Special Government Pleader (CrI.Side) Puducherry has submitted that since based on the aforesaid G.O, the Assistant Public Prosecutor has filed a petition under Section 321 Cr.P.C and said petition was allowed by the learned Judicial Magistrate and the accused were acquitted, if at all the petitioner is aggrieved, he has to file a revision against the order passed by the Judicial Magistrate and instead of doing so, he has filed the present writ petition challenging the G.O. and the said writ petition is not maintainable. In support of the said contention, he relied upon the decision of the Hon'ble Division Bench of this Court in Secretary to Government, Public Department, (L&O-D.O) Government of Tamil Nadu and another vs. P.Rajamani Ammal and others, (2010) 7 MLJ 1.

6. The learned counsel for the respondents 4 to 9 has adopted the arguments advanced by the learned Special Government Pleader (Puducherry).

7. The learned counsel for the petitioner by way of reply, relying upon the decision of the Hon'ble Supreme Court in *Mahmadhusen Abdulrahim Kalota Shaikh vs. Union of India & Ors* 2009(1) SCC(Cri) 620 has submitted that the petitioner is still having judicial recourse under Article 226 of the Constitution.

8. In *Mahmadhusen Abdulrahim Kalota Shaikh vs. Union of India & Ors* 2009(1) SCC(Cri) 620 (supra) the Hon'ble Supreme Court dealt with the Provision of Section 2(3) of the Prevention of Terrorism (Repeal) Act, 2004. As per the said Section, once the Review committee expresses the opinion that there is no Prima facie case for proceeding against the accused, in cases in which cognizance has been taken by the Court, such cases shall be deemed to have been withdrawn. The only role of the public prosecution in the matter is to bring to the notice of the court, the direction of the Review committee. The Court has to record that the case stands withdrawn. The Court will not examine correctness or propriety of the opinion nor exercise any supervisory jurisdiction in regard to such an opinion of the Review Committee. Under the said circumstances, the Hon'ble Supreme Court has held that the persons who are aggrieved by the Review committee's decision to withdraw the case, still have recourse under Article 226 of the Constitution of India. Whereas in this case, the Provisions of Section 321 of Cr.P.C will apply. Under the said Provision the Public Prosecutor or Assistant Public Prosecutor in charge of the case has to satisfy himself that the case is fit for withdrawal from prosecution in accordance with the settled Principles indicated in the decisions of the Hon'ble Supreme Court. Further, the Court also has to grant consent for withdrawal of the case from prosecution. So, the petitioner is having remedy to challenge the order passed by the learned Judicial Magistrate by filing a revision under Section 397 Cr.P.C., Therefore, the aforesaid decision will not be applicable to the facts of this case.

9. In *Secretary to Government, Public Department, (L&O-D.O) Government of Tamil Nadu and another vs. P.Rajamani Ammal, and others* (2010) 7 MLJ 1 (supra), the Government had issued G.O. to withdraw the prosecution. The defacto complainant has filed a Writ of Certiorari Mandamus to quash the said G.O. The learned single Judge of this Court has allowed the said writ petition and quashed the afore said G.O. Challenging the order of the learned Single Judge, the Government had filed Writ Appeal before the Division Bench. The Division Bench of this Court has allowed the said Writ Appeal and observed in paragraph 12 as follows:-

¶12. If really, 1st respondent was aggrieved by the order of withdrawal from prosecution, the same cannot be challenged by invoking article 226 of Constitution of India. The order ought to have been challenged by way of Revision and not by invoking Article 226 of Constitution of India. Grievance of the 1st respondent is that before withdrawal from prosecution, no notice was issued to the 1st respondent and therefore, there was violation of principles of natural justice. Section 321 of Cr.P.C does not contemplate any notice to the complainant for withdrawing the prosecution. The complainant can challenge the Government decision by way of Revision under Section 397 Cr.P.C. Subject to certain considerations by showing any non-compliance with the requirements of the Section. Observing that as against the order made in an application filed under Section 321 Cr.P.C, Revision alone will lie, in *Sheonandan Paswan v.State of Bihar and Others* AIR 1987 SC 877:(1987)1 SCC 288, the Supreme Court held that there is no appeal provided by the Act against an order giving consent under Section 321, but the order is revisable under Section 397 of the Criminal Procedure Code, Writ petition filed under Article 226 of Constitution of India is not maintainable.¶

10. The aforesaid decision is directly on the point in issue in this case. In view of the aforesaid Division Bench decision, the present writ petition is not maintainable and the petitioner has to

challenge only the order passed by the Judicial Magistrate by filing a revision petition under Section 397 Cr.P.C.

11. For the aforesaid reasons, this Writ Petition is dismissed as not maintainable with a liberty to the petitioner to file Criminal Revision if he is so advised. For the purpose of limitation, the time during which the petitioner has been prosecuting this writ petition shall be excluded.

P.RAJAMANICKAM, J.

stm

12. With the above observations this Writ Petition is dismissed. No costs.

04.10.2018

stm

Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

To

1. The Secretary to Government,
Law Department,
Government of Puducherry.

2. The Secretary to Government,
Home Department,
Government of Puducherry.

3. The State rep by
Station House Officer,
Orleanpet Police Station, Puducherry.

4. The Judicial Magistrate-II,
Puducherry.

5. The Public Prosecutor,
High Court, Puducherry.

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