

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.03.2018
Date of Verdict : 26.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.8436 of 2015
and
M.P.No. 1 of 2015

Sumathi ...Petitioner/A5

v.

1. The Inspector of Police,
B-1, Bazaar Police Station (Crime),
Coimbatore,
Coimbatore District.

2. S.Senthil ...Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.366 of 2014 now pending investigation on the file of the learned Judicial Magistrate No.V at Coimbatore and to quash the same so far as it relates to the petitioner/accused-5 herein.

For Petitioner : Ms. M.Vijayalakshmi

For Respondent-1 : Ms.P.Kritika Kamal
Government Advocate (Crl. Side)

For Respondent-2 : Mr.G.Surya Narayanan

O R D E R

The petitioner herein, who was discharging her duties as a Sub Inspector of Police at B10, Selvapuram Crime Police Station on the date of occurrence has been arrayed as the fifth accused for offences under Sections 414 r/w.109 & 218 of IPC in the charge sheet taken on file in C.C.No.366 of 2014 by the learned Judicial Magistrate-V, Coimbatore. The said charge sheet is under challenge in the present petition.

2.The case of the prosecution is that the petitioner herein while serving as Sub Inspector of Crimes, while enquiring the complaint of the second respondent, had directed the defacto complainant to share the sale residue of 55 grams of gold along with the accused 2 and 4 which was entrusted to him by the first accused.

3. Heard Ms. M.Vijayalakshmi, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing on behalf of the first respondent as well as Mr.G.Surya Narayanan, learned counsel for the second respondent.

4. Ms.M.Vijayalakshmi, learned counsel appearing for the petitioner submitted that from the statement of the witnesses as well as the averments in the complaint, it is patently seen that no incident had occurred on 02.04.2010 and as such, the charge sheet itself is vitiated. The learned counsel submitted that since the petitioner is a public servant, prior sanction under Section 197 of Cr.P.C., is mandatory and admittedly, it is seen that prior sanction was not obtained in the present case and hence the charge sheet is liable to be quashed. It is the further submission of the learned counsel that even as per the prosecution version, the petitioner had no personal gain in the alleged occurrences and consequently, there was no mens rea. There was also a delay in registering the FIR. In view of the fact that no mens rea was attributed to the petitioner herein and also in the absence of any overt act against the petitioner herein, the charge sheet is liable to be quashed.

5. Mrs.P.Kritika Kamal, learned Government Advocate submitted that the overt acts attributed to the petitioner herein does not constitute of actions done in purported discharge of her duties and as such, the prior sanction under Section 197 Cr.P.C., was not required. The learned Government Advocate, by relying upon the decision of the Hon'ble Supreme Court 2013 (15) SCC 624 submitted that since the petitioner was employed as Sub Inspector of Police, she could be removed from service by the competent authority without sanction of the Government and as such, sanction under Section 197 Cr.P.C., is not required. The learned Government Advocate also by relying upon the definition of "voluntarily" under Section 39 of IPC submitted that the offence under Section 414 has been clearly made out and if at all, the petitioner is of the view that there was no occurrence on 02.04.2010, it is always open to her to establish the same during the course of trial.

6. Mr.G.Surya Narayanan, learned counsel appearing for the second respondent reiterated the submissions of the learned Government Advocate and by relying upon the information obtained under Right to Information Act submitted that the involvement of the petitioner in the crime has been taken cognizance by the Investigating Officer and Departmental enquiry has been initiated against her and therefore sought for dismissal of the petition.

7. I have given careful considerations to the submissions made by the respective counsels.

8. Insofar as the submissions of the learned counsel for the petitioner that prior sanction under Section 197 of Cr.P.C. is mandatory for prosecuting a public servant is concerned, she relies upon the judgments of the Hon'ble Supreme Court reported in 1999 (3) SCC 284 [N.K.Ogle V. Sanwaldas @ Sanwalmal Ahuja], 2001 (5) SCC 7 [Rizwan Ahmed Javed Shaikh and others V. Jammal Patel and others] and AIR 2000 SC 3187 [Abdul Wahab Ansari V. State of Bihar and another]. In all the aforesaid judgments, the proposition laid down is that whenever an act is done by a public servant in discharge or purported discharge of his official duty, the trial Court cannot take cognizance of the offences without prior sanction of the competent authority under Section 197 Cr.P.C. The learned Government Advocate (Crl. Side) submitted that the overt acts attributed to the petitioner herein cannot be said to be acts done in purported discharge of her duties and that such sanction is not required. The learned Government Advocate relies upon the judgment of the Hon'ble Supreme Court in Urmila Devi V. Yudhvir Singh reported in 2013 (15) SCC 624 in which the Hon'ble Apex Court has held as follows:

"40. At the risk of repetition it will have to be stated that when such an allegation could not have formed the basis for prosecution of an offence falling under Section 198 Cr.P.C., read along with the provisions contained in Chapter XX of the Penal Code, none of the actions alleged against the respondent by the appellant can be held to be one in which he acted in his capacity as the Executive Magistrate. We are constrained to examine the above factors and steer clear of the factual position in order to state whether or not the conclusions reached by the Additional Sessions Judge and the High Court in the orders impugned to the effect that the invocation of Section 197 Cr.P.C., became imperative before proceeding against the respondent based on the complaint lodged by the appellant.

41. In our considered opinion, having regard to our above conclusions, it will have to be held that the respondent though might have been holding the post of an Executive Magistrate, none of the acts alleged against him can by any stretch of imagination be held to have been carried out in his capacity as an Executive Magistrate. When the said conclusion of ours based on the allegations set out in the complaint and

noted by the courts below are inescapable, it will have to be held that invocation of Section 197 Cr.P.C., was wholly uncalled for and consequently the impugned orders of the learned Additional Sessions Judge as well as the High Court cannot be sustained."

9. In the present case, the averments against the petitioner is that while she was enquiring the complaint of the second respondent, she had directed the defacto complainant as well as the accused 2 and 4 to share the sale residue of 55 grams of gold which was in the custody of the third accused. The said overt acts if taken on its face value, was outside the scope of the complaint lodged by the second accused and as such, it cannot be said that the petitioner herein was discharging her official duties in doing so. By applying the aforesaid ratio laid by the Hon'ble Apex Court reported in 2013 (15) SCC 624, it can only be concluded that invocation of Section 197 Cr.P.C., was not warranted and as such, there was no infirmity or illegality violating the provision of Section 197 Cr.P.C.

10. As rightly pointed out by the learned Government Advocate, while applying the definition 'voluntarily' as defined under Section 39 of IPC, the overt acts attributed to the petitioner in the charge sheet which is supported by the statement of the witnesses recorded under Section 161(3) Cr.P.C., the offence has been manifestly made out. If at all, the petitioner is of the view that the offence have not been made out, it is always open to her to establish the same during the course of trial.

11. In view of the fact that the petitioner has been charged for the offence under Section 414 IPC and in view of the specific overt act attributed in the charge sheet that the petitioner herein had voluntarily assisted in disposing of the gold, it cannot be said that there was no mens rea for committing the offences. Of course, this ground is also open to the petitioner to establish her innocence during the course of trial.

12. The learned counsel for the petitioner, by relying upon the earlier order of this Court, submitted that there was an earlier direction by this Court for engaging a senior official to investigate into the complaint and that the investigation done by the first respondent herein, who is not a senior official is vitiated. The learned Government Advocate submits that though the High Court had observed that the investigation should be done by a senior official, the first respondent herein, who is the Inspector of Police and senior to the petitioner herein had conducted the investigation and as such, there is no violation. Even otherwise, since the High Court has not specified the rank

which the senior official should hold, the investigation done by the first respondent can only be deemed to be proper. In my view, such a ground raised by the petitioner may not be an illegality which warrants quashing of the complaint. Apparently, the first respondent herein, who is a senior to the petitioner herein had conducted the investigation and therefore, there cannot be any illegality warranting quashing of the proceedings in C.C.No.366 of 2014. In view of the aforesaid reasonings, I do not find any merits in the present petition and hence, the same is liable to be dismissed.

13. Before parting with the order, it is made clear that this Court had not expressed any of its views with regard to the petitioner's involvement or non involvement in the crime. All the observations made in this order with regard to the petitioner's alleged involvement is only for the purpose of answering the grounds raised by the respective counsels and the trial Court shall not, at any cost, take the observations made in the present order as a precedent or a guiding factor while rendering its findings. These observations have been made for the purpose of not causing any prejudice to the petitioner herein and in order to enable her to face a free, fair and proper trial.

14. In the result, the Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP
To

1. The Judicial Magistrate No.V,
Coimbatore.

2. The Inspector of Police,
B-1, Bazaar Police Station (Crime),
Coimbatore,
Coimbatore District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.M.Vijayalakshmi, Advocate Sr.No.40133

+1cc to M/s.M.Vijayalakshmi, Advocate Sr.No.40133 dt.6.7.2018

sm:5.7.2018

Order in
Cr1.O.P.No.8436 of 2015
and M.P.No.1 of 2015