

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.17221 of 2017

and

Crl.M.P.Nos.10555 & 10556 of 2017

1. Rajendran

2. Mohan

... Petitioners/Accused 1 & 2

vs.

S.Udhayashankar

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash all the proceedings in C.C.No.2924 of 2017 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

For Petitioners : Mr.P.Kumaresan

For Respondent : Mr.S.Seenuvasan

O R D E R

This petition has been filed seeking to quash the proceedings in C.C.No.2924 of 2017, pending on the file of the V, Metropolitan Magistrate, Egmore.

2. The first petitioner is working as an Inspector of Police and on 29.03.2017, he was on the night rounds covering three police stations. The second petitioner is a police constable and he had driven the car during the rounds. While discharging their official duty during the night hours, the petitioners intercepted a car at about 11.45 p.m on 29.03.2017. The petitioners asked the persons, who were present in the car, to give their identity. The respondent, who is an advocate, raked up an argument with the petitioners. Thereafter, the respondent has proceeded to give the private complaint against the petitioners for alleged offence under Sections 341, 294-b, 323, 506 (ii) r/w 379 of IPC. The said complaint was taken cognizance by the Court below and summons was issued to the petitioners.

3. The learned counsel for the petitioner would submit that the petitioners are admittedly public servants and they were only performing their public duty and the respondent instead of identifying himself before the petitioners, picked up a quarrel with the petitioners and had gone ahead and given a private complaint against the petitioners.

4. The learned counsel for the petitioner would submit that the Court below ought to have insisted for a sanction to proceed against the petitioners by virtue of provisions under Section 197 of IPC and police standing order No.63.

5. The learned counsel for the petitioner, for the purpose of substantiating the above said arguments, relied upon the judgment of this Court in Kannan Vs S.M.Noor Mohamed reported in 2018-2-L.W. (Crl.) 576 and submitted that the Court below ought not to have taken cognizance and issued summons to the petitioners without obtaining the sanction.

6. The learned counsel for the respondent would submit that the petitioners have acted beyond the call of duty and therefore, the offence committed by them cannot be said to be in discharge of the public duty. Therefore, the learned counsel would submit that no sanction is required to prosecute the petitioners and the petitioners will have to face the trial before the Court below.

7. This Court has carefully considered the submissions made on either side.

8. The entire allegations in the complaint pertain to the act that was done by the petitioners in-discharge of their public function.

9. It will be relevant to extract the portion of the judgment relied upon by the learned counsel for the petitioner, which reads as follows:-

" 14. In the instant case, on a reading of the complaint, it is clear that the respondent is aggrieved by the act of the petitioner in discharge of his official duty. Whenever the offence charge, be it one of commission or omission, which was committed by the public servant either in his official capacity or under colour of the office held by him, obtaining sanction becomes a pre requisite to prosecute the petitioner. As held by this Court, the moment the Magistrate decides to issue summons under Sanction 204 Cr.P.C, the same could have been done only after obtaining sanction against the petitioner. In this

case, this crucial aspect has been lost sight of by the Court below and Court below has taken cognizance and issued summons to the petitioner without sanction. Therefore, the issuance of summons to the petitioner without sanction. Therefore, the issuance of summons to the petitioner has to be necessarily quashed on this ground."

10. The above said judgment squarely applies to the facts of the present case. In the instant case, on a reading of the complaint, it is clear that the respondent is aggrieved by the act of the petitioners in discharge of their official duty. The moment, Court below decided to issue summons under Section 204 Cr.P.C, the same could have been done only after obtaining sanction against the petitioners. Admittedly, this has not been done in the present case. That apart, even on merits, this Court is of the considered view that the entire incident has been over stated by the respondent and it is inherently improbable. Therefore, the continuation of the proceedings before the Court below, will amount to abuse of process of Court, which requires the interference of this Court in its jurisdiction under Section 482 of Cr.P.C.

11. In the result, the proceedings in C.C.No.2924 of 2017 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dss

To
The V Metropolitan Court,
Egmore, Chennai.

+3cc to Mr.P.Kumaresan, Advocate Sr.88796

Cr1.O.P.No.17221 of 2017
and

Cr1.M.P.Nos.10555 & 10556 of 2017

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srg 31/01/2019