



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 22.10.2018

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.(MD)No.11954 of 2015

and

M.P.(MD)Nos.1& 2 of 2015

1.Janaki Raman
2.Ganesan
3.Robinson
4.Sakthikumar

...Petitioners/Accused 1 to 4

Vs.

Grace Nevis Prosper @Phaspero

...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the private complaint in C.C.No.35 of 2015 on the file of the Judicial Magistrate No.II, Nagercoil and quash the same.

For Petitioners: Mr.P.Athimoolapandian
For R1 : Mr.G.Aravindhan

ORDER

This Criminal Original Petition has been filed to quash the private complaint in C.C.No.35 of 2015 on the file of the Judicial Magistrate No.II, Nagercoil and having taken cognizance for the offences under Sections 499, 500 and 120(b) I.P.C against the first and second accused and under Section 500 r/w 109 and 120(b) I.P.C against the third and fourth accused.

2.The case of the prosecution is that the complainant and his brother are tenants in a two shop buildings of Kamaraj Shopping Complex belonging to Nagercoil Municipality. They obtained a lease of a shop building in the first floor having an extent of 1049 sq.ft in the year 1995. But in the lease agreement, the area was mentioned as 1249 sq.ft instead of 1049 sq.ft. Even then, the Nagercoil Municipality have not taken any steps to reduce the rent. Further, the municipal authority took steps to vacate the complainant from the premises. His brother also obtained a lease of another shop building in the year 2001 in the ground floor of Kamaraj Building having an extent of 400 sq.ft, whereas in the lease agreement, the area was mentioned as 645 sq.ft instead of 400 sq.ft. The Complainant filed a suit in O.S.No.60 of 2007 on the file of the learned I Additional District Munsif, Nagercoil as against the Nagercoil Municipality to reopen the shop and to hand over the possession to the complainant, since the shops were closed and possession was taken by the Nagercoil Municipality.



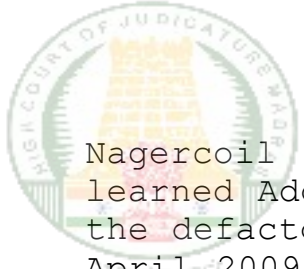
Even after an interim order passed by the Civil Court and after paying the arrears of rent to the Nagercoil Municipality, on 13.05.2014 the first petitioner herein went to the shop and sealed the premises. Thereby, he violated the order passed by the Civil Court. Again on 28.08.2014, the first petitioner along with other accused persons trespassed into the shop of the complainant by break open the door and had taken all the articles worth about 40 lakhs and without getting any order from the lower Court or High Court, the first and second accused made an interview to news persons that the shops have been sealed as per the order of the Court and also made an attachment. They also made a statement that the complainant and another have to pay a sum of Rs.30,36,000/- towards arrears of rent to the Municipality. The third and fourth accused have conspired with the first and second accused and made such a violation statement. Thereby, the accused nos. 1 to 4 committed an offences under Sections 499, 500 and 120(b) r/w 109 I.P.C

3.The learned counsel for the petitioners would submit that the petitioners are arraigned as Accused Nos. 1 to 4. All the petitioners are public servants and while discharging their official duties, the present false complaint has been foisted as against the petitioners . Further, he would submit that the petitioners, when they discharged their official duties, it is necessary to obtain a sanction under Sections 197 Cr.P.C before filing the complaint. The respondent herein without even obtaining any sanction to prosecute the case against the petitioners, he filed the private complaint. The learned Magistrate without even verifying that the respondent should obtain a sanction order from the competent person or not and mechanically having taken cognizance as against the petitioners. Therefore, he seeks to quash the private complaint.

4.The learned counsel for the respondent/complainant would submit that even without obtaining any order from the Court of law, the accused nos. 1 to 4 with an intention to defame the complainant made an interview as if the complainant is in due to the tune of Rs.30,36,000/- towards arrears of rent to the Nagercoil Municipality. The said news also published in Dinakaran Newspaper on 29.08.2019 and thereby, defamed the defacto complainant among the society. There are specific allegations as against the petitioners and as such the points raised by the petitioner are to be tested during the trial. Therefore, he seeks to dismiss the quash petition.

5.Heard the learned counsel appearing on either side.

6. Admittedly, the defacto complainant and his brother are the tenants in the shops belonging to the Nagercoil Municipality. They filed the suit before the learned I Additional District Munsif,



Nagercoil in O.S.Nos.60 of 2007 and 78 of 2007 respectively. The learned Additional Judge also passed an interim order. Thereafter, the defacto complainant and his brother paid the arrears rent till April 2009. After that, the defacto complainant is failed to pay the rent and he is in arrear of Rs.30,36,000/- and as such the petitioners had sealed the rented premises. Therefore, the petitioners have discharged their official duties. If there is any violation or any offence committed by the petitioners during the course of employment, the sanction is very much necessary to prosecute them.

7.The learned counsel for the petitioners has relied upon the Judgment reported in **(2013) 10 Supreme Court Cases 750 (Anil Kumar and others Vs.M.K.Aiyappa and Another)**. Paragraph Nos.13 to 17 of the aforesaid decision are particularly relevant and they read as under:

"13.The expression " cognizance" which appears in Section 197 Cr.P.Ccame up for consideration before a three Judge Bench of this Court in State of U.P. v.Paras Nath Singh, and this Court expressed the following view: (SCC pp.375, para 6)

"6.....10..... and the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any offence, by any Court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which, it shall be available and the effect in law if the circumstances in which, it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, ' no court shall take cognizance of such offence except with the previous sanction' . Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary, the work ' cognizance' means ' jurisdiction' or ' the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking



notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of public servant who is accused of an offence alleged to have been committed during discharge of this official duty.

14. In *State of W.B v. Mohd. Khalid*, this Court has observed as follows:

"13. It is necessary to mention here that taking cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made out"

The meaning of the said expression was also considered by this Court in *Subramanian Swamy Case*.

15. The Judgments referred to hereinabove clearly indicate that the word "cognizance" has a wider connotation and is not merely confined to the stage of cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

16. A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two opinions: he may take cognizance of the offence under Section 190 Cr.P.C or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) Cr.P.C. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private



complaint for police investigation under Section 156(3) Cr.P.C.

17. We may now examine whether, in the above mentioned legal situation, the requirement of sanction is a precondition for ordering investigation under Section 156(3) Cr.P.C, even at a pre-cognizance stage"

8. In the case on hand, admittedly, no sanction order was obtained by the respondent to prosecute the case as against the petitioners herein. The question of sanction is of paramount importance for protecting the public servants who has acted in good faith while performing his duty. The purpose of obtaining sanction is to see that the public servants need not necessarily harassed on complaint, failing which, it would not be possible for the public servants to discharge his duty without fear and favour. The requirements of sanction is pre-requisite even for presenting the private complaint under Section 200 Cr.P.C.

9. In view of the above discussions, the entire proceedings is nothing but sheer abuse of process of law. Under these circumstances, the petitioners need not go for an ordeal trial.

10. Therefore, the proceedings in C.C.No.35 of 2015 pending on the file of the Judicial Magistrate Court No.II, Nagercoil against the petitioners shall stand quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-III)

To

The Judicial Magistrate No.II,
Nagercoil.

+ 1 CC TO MR.P.Athimoolapandian , ADVOCATE IN SR NO.91227

+ 1 CC TO MR.P.JESSI JEEVA PRIYA, ADVOCATE IN SR NO.91160

MSA

BU/SKN/SAR-III :23.11.2018 : 5P/4C

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and

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