



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2018

CORAM:

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.(MD).No.1533 of 2015
and
M.P.(MD) No.1 of 2015

Mrs.S.Kousalya

..Petitioner

Vs.

S.Ramesh Chandran

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in P.R.C.No.107 of 2014 on the file of the Judicial Magistrate No.2, Madurai and quash the same.

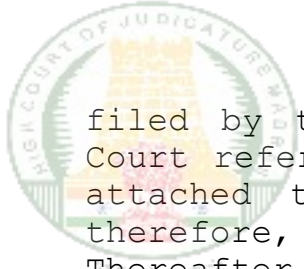
For Petitioner : Mr.K.Samidurai

For Respondent : Mr.V.Palani

ORDER

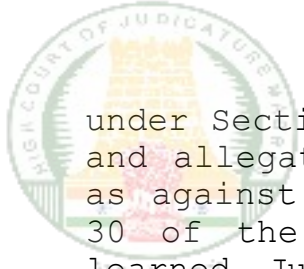
This petition is filed to quash the criminal proceedings in P.R.C.No.107 of 2014 on the file of the Judicial Magistrate No.2, Madurai pending committal for the offences under Sections 166 and 420 of I.P.C. and Section 2(d) and 2(e) of the Protection of Human Rights Act, 1993 as against the petitioner.

2.The case of the complainant is that he filed a private complaint alleging that his second son married the step daughter of the other accused viz., K.Mohan Kumar on 24.03.2011 and on the ill advice of the said accused and his wife Chandra, the son of the complainant and his wife were separated. Thereafter, the said Chandra had lodged a complaint against the complainant and his family members on 06.11.2012. When the investigation was pending, the son of the complainant and his wife were reunited. However, once again, they were separated at the instigation of the other accused. Therefore, the daughter-in-law of the complainant viz., M.Ananthi, W/o.Manikandan lodged a complaint as against the complainant and his family members before the All Women Police Station, Tallakulam, Madurai, where the petitioner was working. On the guise of the complaint, the petitioner intimidated the respondent herein to transfer his property to his grandson, aged about 1-1/2 year old. Thereafter, on the anticipatory bail petition



filed by the respondent/complainant and his family members, this Court referred the matter before Mediation and Conciliation Centre, attached to this Court and the couple got reunited again and therefore, the case in crime No.40 of 2013 had been withdrawn. Thereafter, on 30.09.2013, against the daughter-in-law of the respondent/complainant filed a complaint before the petitioner and hence, the petitioner registered a case in crime No.40 of 2013 for the offences under Sections 498(A), 406 and 294(b) of I.P.C. After, examining the witnesses, the son of the respondent/complainant viz., R.Manikandan was arrested on 01.10.2013 and remanded to judicial custody by the learned Judicial Magistrate No.2, Madurai. After investigation, charge sheet has been laid as against the respondent and his family members on 30.11.2013 for the offences under Sections 498(A), 294(b) of I.P.C. and the Additional Mahila Court, Madurai, has taken cognizance in C.C.No.59 of 2014 and the same is pending for trial. Though the earlier matter has been compromised between the daughter-in-law of the respondent/complainant and his family members, only on the instigation of the A2 in the private complaint in P.R.C.No.107 of 2014, the petitioner/A1 had acted misusing her official powers and foisted false case as against the respondent and his family members and his son was also arrested and remanded to judicial custody for not committing any crime. Hence, the respondent/complainant filed a complaint before the learned Judicial Magistrate No.2, Madurai against the petitioner and the father of his daughter-in-law to punish them under Sections 166 and 420 of I.P.C. and and Section 2(d) and 2(e) of the Protection of Human Rights Act, 1993. This complaint is under challenge in this petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner arraigned as A1 and there are totally two accused. The second accused is none other than the father of the daughter-in-law of the respondent/complainant. On the complaint of the daughter-in-law of the respondent/complainant, the petitioner registered a case in crime No.40 of 2013 for the offences under Sections 498(A), 406 and 204(b) of I.P.C. Thereafter, she investigated the matter and laid charge charge sheet and the learned Additional Mahila Judge, Madurai has taken cognizance in C.C.No.59 of 2014 and it is pending for trial. The offence under Section 166 of I.P.C. defines that the public servant disobeying law, with intent to cause injury to any person. Here, the petitioner, on the complaint lodged by the daughter-in-law of the respondent/complainant, registered the case as against him and his family members under the offences of family disputes. In fact, on three occasions, on the complaint lodged by the daughter-in-law of the respondent, there were settlement talks and they are got reunited only at the instigation of the petitioner herein. Therefore, the petitioner is being a public servant never disobeying any direction of the law or she has no intention to cause injury to the respondent/complainant and his family members and hence, the offence are not at all attracted as against the petitioners herein. Even as per the case of the respondent/complainant, the offence



under Section 420 of I.P.C. is not at all attracted and no averments and allegations to attract the offence under Section 420 of I.P.C. as against the petitioner. Insofar as Sections 2(d) and 2(e) and 30 of the Protection Human Rights Act, 1993 are concerned, the learned Judicial Magistrate has no power to take cognizance as against the petitioner and hence, he prayed for quashment of the complaint as against the petitioners.

4.Per contra, the learned counsel appearing for the respondent would submit that in the first complaint of the daughter-in-law of the respondent/complainant, there was a compromise between the family members and they got reunited. Only on the instigation of the petitioner herein, the daughter-in-law of the respondent/complainant again lodged a complaint, on which, the petitioner registered a case in crime No.498(A), 406 and 294(b) of I.P.C. as against the respondent and his family members. Further, she also arrested the son of the respondent/complainant on a false complaint and remanded to judicial custody, thereby, she misused her power and to do some favour in favour of the second respondent, a false complaint has been registered. Therefore, the petitioner violated the human rights of the respondent/complainant and his family members. Further, the learned Judicial Magistrate has rightly taken cognizance for the offences and as such, it has to be gone into a full-fledged trial and it cannot be quashed on question of facts and hence, he prayed for dismissal of the petition.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on records.

6.The challenge made in this petition is a private complaint, having been taken cognizance for the offences under Sections 166 and 420 of I.P.C. and Sections 2(d) and 2(e) and 30 of the Protection Human Rights Act, 1993 in P.R.C.No.107 of 2014 on the file of the Judicial Magistrate No.2, Madurai lodged by the respondent herein. The fact is that the respondent is the father-in-law and on the complaint lodged by the daughter-in-law as against him and his family members, the petitioner registered a case in crime No.40 of 2013 for the offences under Sections 498(A), 406 and 294(b) of I.P.C. In this regard, she arrested the son of the respondent and remanded him to judicial custody. Thereafter, the Additional Mahila Juge, Madurai has taken taken cognizance in C.C.No.59 of 2014 and it is pending for trial. At this juncture, the respondent filed this private complaint for the offences stated above.

7.It is seen from the complaint, it has been stated that when the petitioner was doing her official duty, she misused her powers and on a false complaint that too on the instigation of A2, she registered a case and also arrested the son of the respondent herein. When it being so, the definition under Section 21 of Public Servant read as follows:



"21. "Public Servant" -The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely: -

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Eighth - Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;"

8. In the present case, the petitioner is a public servant and while she was working as Inspector of Police of All Women Police Station, Tallakulam Police Station, Madurai, she registered a case and also arrested the son of the respondent/complainant herein. Since the petitioner is a public servant, sanction under section 197 of Cr.P.C. is required to prosecute her. Section 197(1) of Cr.P.C. reads as follows:

"197. Prosecution of Judges and public servants -

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted."

9. Admittedly, the respondent did not obtain any sanction to prosecute the petitioner for the above said offences. Therefore, directly, the present complaint is hit under Section 197 of Cr.P.C. for not obtaining sanction from the Government.



10. With regard to the offences having been taken cognizance as against the petitioner is concerned, the offence under Section 166 of I.P.C. is extracted herein for convenience.

"166. 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 for a term which may extend to one year, or with fine, or with both."

Even on the face of Section 166 of I.P.C., the petitioner, who is a government servant did not disobey any direction of the law and that too her action is not an intended one as against the respondent/complainant. Though there are three previous complaints to the present complaint and there was a compromise between the daughter-in-law and the respondent and her husband, a case in crime No.40 of 2013 only has been registered by the petitioner herein. It is seen from the complaint that the petitioner never intended to cause injury by personally by registering the case as against the respondent/complainant and his family members. As such, even as per the allegation in the private complaint, the offence under Section 166 of I.P.C. is not made out and there is absolutely no ingredients to attract the said offence.

11. Insofar as the offence under Section 420 of I.P.C. is concerned, it is very unnatural that the offence under Section 420 of I.P.C. has also been taken cognizance by the learned Judicial Magistrate No.2, Madurai. It is seen from the entire averments of the complaint, there is no iota of evidence to have taken cognizance for the offence under Section 420 of I.P.C. as against the petitioner.

12. Further, the offence under Sections Sections 2(d) and 2(e) and 30 of the Protection Human Rights Act, 1993 are concerned, the learned Judicial Magistrate has no power to take cognizance for the said offences as against the petitioner, since Section 30 of the Protection of Human Rights Act, 1993 provides that taking cognizance is only by a Court of Sessions to be a Human Rights Court to try the offences. Section 30 of the Protection Human Rights Act, 1993 would read thus:

"30. Human Rights Courts.- For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Sessions to be a Human Rights Court to try the said offences:



Provided that nothing in this section shall apply if -

(a) a Court of Session is already specified as a special Court; or

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(b) a special Court is already constituted, for such offences under any other law for the time being in force."

Therefore, the Judicial Magistrate has no jurisdiction to take cognizance for the offence under Sections 2(d) and 2(e) and 30 of the Protection of Human Rights Act, 1993. Therefore, this Court is of the view that the learned Judicial Magistrate ought not to have taken cognizance for these offences as against the petitioner.

13. In view of the above discussion, this Court is inclined to quash the criminal proceedings as against the petitioner. Accordingly, this criminal original petition is allowed and the criminal proceedings in P.R.C.No.107 of 2014 on the file of the Judicial Magistrate No.2, Madurai is quashed as against the petitioner alone. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Judicial Magistrate No.2, Madurai

+1 cc to Mr.K.Samidurai, Advocate, SR.No.89974

+1 cc to Mr.P.Thambidurai, Advocate, Sr.No.90009

Arul

SS/SV/SAR 4/11.12.2018/6P/4C

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and

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