



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.R.C.(MD) No.44 of 2018

B.Selvam

... Petitioner / Petitioner

vs.

1.Murugeswari

District Manager
TASMAC (South)
Kappalur, Madurai-625 008
Now working as
Manager, TAHDCO
DRDA Complex
Madurai-625 020

2.D.Saravanan

Assistant
District Manager Office
TASMAC (South)
Kappalur, Madurai-625 008
Now working at
District Manager Office
TASMAC Ltd., IMFS Depot
Krishnapuram Road
Thummakurichi Village & Post
Namakkal District

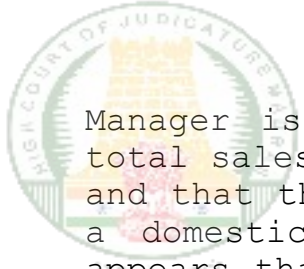
... Respondents / Respondents

PRAYER: Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records from the Lower Court and set aside the order in Cr.M.P.No.1740 of 2015, dated 21.11.2017, passed by the learned Judicial Magistrate, Thirumangalam.

For Petitioner : Mr.N.Sathish Babu

O R D E R

The petitioner was working as Supervisor in TASMAC Shop No.5278, Thirumangalam and that on 23.08.2014, the total sales for the said TASMAC Shop was Rs.1,15,630/- and accordingly, he sent an S.M.S., to the District Manager, in whose jurisdiction the said TASMAC Shop comes, informing about the sales. However, the District



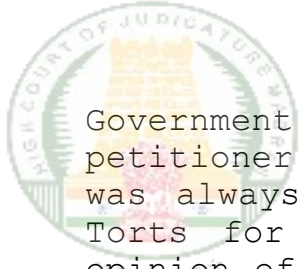
Manager issued a charge memo to the petitioner alleging that the total sales for the said TASMACH Shop on 23.08.2014 was Rs.1,43,800/- and that there has been misappropriation of money. In this regard, a domestic enquiry was conducted against the petitioner and it appears that the petitioner was exonerated in the domestic enquiry. Thereafter, the petitioner filed a petition in Cr.M.P.No.1740 of 2015, under Section 156(3) Cr.P.C., before the learned Judicial Magistrate, Thirumangalam, seeking for a direction to the Police to register a case against the District Manager and the Assistant District Manager. The said petition was dismissed by the learned Judicial Magistrate, Thirumangalam, by order dated 13.04.2015. Aggrieved by the same, the petitioner filed a revision in Cr.L.R.C. (MD) No.574 of 2015, before this Court and this Court, by order dated 02.08.2017, set aside the order passed by the learned Judicial Magistrate, Thirumangalam and remanded back the matter to the Trial Court for fresh consideration. Thereafter, again, the learned Judicial Magistrate, Thirumangalam, by order dated 21.11.2017, dismissed the petition in Cr.M.P.No.1740 of 2015. Challenging the same, the present revision has been filed.

2. Heard Mr.N.Sathish Babu, learned counsel appearing for the petitioner and perused the materials filed in the form of typed set.

3. Mr.N.Sathish Babu, learned counsel for the petitioner submitted that the accused in this case were witch-hunt the petitioner by creating false records as if there was a deficit in the sales of the petitioner's TASMACH Shop on 23.08.2014. The learned counsel further submitted that the accused had created a mobile phone number that was not belonging to the petitioner and had generated an S.M.S., as if the petitioner had sent a message on 23.08.2014 to the effect that the sales in the petitioner's TASMACH Shop on that day was Rs.1,43,800/- and thereby, the accused had committed the alleged offences under the Indian Penal Code.

4. This Court gave its anxious consideration to the submissions of the learned counsel for the petitioner.

5. The fact remains that the petitioner was proceeded departmentally for certain charges by the accused. The allegation against the petitioner was that he has shown a lower sales figure for 23.08.2014, when in fact the sales figure was higher. The issue of actual sales cannot be decided by mere S.M.S.Message and that can be decided only based on the sales records and the stock register available in the TASMACH Shop. Hence, the allegation that a wrong S.M.S. was sent by the petitioner pales into insignificance. Initiation of departmental proceedings against the subordinates by the Superior Officer is in his official capacity. Just because the delinquent, against whom departmental proceedings were initiated, was exonerated in the departmental proceedings, criminal prosecution cannot be launched against superior officers as that would run down the morale of the administration. That is why sanction to prosecute is a shield available in law to protect the action taken by



Government servants in discharge of their official duties. If the petitioner had been subjected to harassment by a false charge, it was always open to him to have initiated action under the Law of Torts for damages. The criminal prosecution, in the considered opinion of this Court, is misconceived. Hence, this Court does not find any infirmity in the impugned order passed by the Trial Court warranting interference from this Court.

6. In the result, the criminal revision is devoid of merits and it is dismissed. It is needless to state that whatever stated above is only for deciding the present revision and it shall not prejudice the rights of the petitioner, if any available, otherwise.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To:

The Judicial Magistrate,
Thirumangalam.

Copy to:-

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai

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RL/4C/3P/MR/SAR2/9/2/2018

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