



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.08.2018

Pronounced on : 07.09.2018

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CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .Nos.949, 3782 and 3783 of 2014

and

M.P(MD) .Nos.1 , 1 and 1 of 2014

|                      |                                            |
|----------------------|--------------------------------------------|
| Venkadachalapathy    | ..Petitioner/A1 in<br>Crl.O.P.No.949/2014  |
| C.Solomon Sevathaiah | ..Petitioner/A3 in<br>Crl.O.P.No.3782/2014 |
| S.T.Ramalingam       | ..Petitioner/A4 in<br>Crl.O.P.No.3783/2014 |

Vs.

1.State rep. by  
The Inspector of Police,  
Railway Police Station,  
Madurai Cr.No.279/13

2.V.Gunasekaran ..Respondents in both petitions

**PRAYER:** These Criminal Original Petition have been filed under Section 482 of Criminal Procedure Code, to call for the records the records relating to the proceedings in crime No.279 of 2013 on the file of the first respondent and quash the same.

|                 |                                                                                                                                                                                           |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioners | : Mr.N.Anantha Padmanabhan<br>in Crl.O.P.No.949/2014<br>Mr.S.Manohar in Crl.O.P.Nos.<br>3782 and 3783/2014                                                                                |
| For Respondents | :Mr.A.P.G.Ohm Chairma Prabhu,<br>G.A.(Crl. Side) for R1 in<br>both petitions<br>Mr.R.Ramu, for R2 in<br>Crl.O.P.No.949/2014<br>Mr.K.Sudalayandi for R2 in<br>Crl.O.P.Nos.3782 & 3783/2014 |

**COMMON O R D E R**

These petitions are filed to quash the FIR in crime No.279 of 2013 on the file of the first respondent insofar as A1, A3 and A4 are concerned.

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2.The case of the prosecution is that the second respondent/complainant lodged a complaint before the third accused, alleging that the first accused made a false representation as if his father died and obtained privilege pass for his brother Thiru.Karumaran, who arraigned as A2 to travel in First Class by Train. On verification, it was found that on the date of issuance of privilege pass, the father of A1 and A2 viz., Pichandi was very much alive and therefore, they cheated the railway department and also railway department sustained huge loss. The third accused was the Station Manager, who has to lodge a proper complaint before the first respondent as against the first accused. However, even after the receipt of the said complaint, the third accused did not lodge proper complaint as against the first accused. Therefore, the second respondent/complainant filed an appeal before the fourth accused for a direction, directing the concerned railway officer to lodge a complaint as against the first accused. Though the officials were in possession of all documents in respect of the offences committed by the first accused, they did not take any steps to lodge a complaint before the first respondent. Hence, the second respondent lodged a complaint before the first respondent directly. However, after receipt of the same, the first respondent also did not register the same. Therefore, the second respondent approached this Court for direction under Section 482 of Cr.P.C. and this Court directed the first respondent in CrI.O.P.(MD) No.4989 of 2013, by order dated 29.04.2013 to go through the contents of the complaint and if it disclosed the commission of cognizable offence, they are duty bound to register the first information report and investigate the same in accordance with law and file the final report. On such direction, the first respondent registered the case in crime No.279 of 2013 for the offences under Sections 177 and 420 of I.P.C. as against the petitioners and another.

3.The learned *counsel appearing* for the petitioners would submit that there are totally four accused in this crime number, in which, the petitioner in CrI.O.P.(MD) No.949 of 2014 is arraigned as A1, the petitioner in CrI.O.P.(MD) No.3782 of 2014 is arraigned as A3 and the petitioner in CrI.O.P.(MD) No.3783 of 2014 is arraigned as A4.



4. The learned counsel appearing for the petitioners would raise the following grounds to quash the first information in crime No.279 of 2013:

(i) The second respondent has no locus standi to lodge a complaint that too for the offences under Sections 177 and 420 of I.P.C. against the petitioners. Already, the railway department initiated disciplinary proceedings as against the first accused, in which, he was awarded punishment of reversion for a period of 5 years from the post of Passanger Guard to Good Guard and it was subsequently reduced to three years period. Further, he also suffered with reduction of his basic salary viz., increment cut for three years. All these proceedings were completed in the year 1997 itself. The railway department did not prefer any complaint as against the first accused. After the period of 23 years from the date of alleged occurrence took place, the present complaint has been lodged by the second respondent. The delay in lodgment of complaint has not been explained by the second respondent and the delay in lodgment of first information report is fatal to the case of the prosecution.

(ii) Because of the alleged occurrence, nobody was put into any wrongful loss and at the same time, the petitioner also did not make any wrongful gain. Therefore, the ingredients for the offences under Section 420 of I.P.C. would not attract as against the first accused. The second respondent is also being a railway staff and only to get vengeance against the first accused, the present complaint has been lodged and as such, it is liable to be quashed.

(iii) As far as A3 and A4 are concerned, they are superior officers of the first accused and there is absolutely no allegations as against them in respect of obtaining privilege pass on the death of the father of the first accused. Even in the complaint itself, the ingredients of the offences under Sections 177 and 420 of I.P.C. has not at all been made out as against A3 and A4. The only allegation attributed as against A3 and A4 is that they did not take action on the representation submitted by the second respondent/complainant to take appropriate action against the first accused.

(iv) A3 and A4 had taken department proceedings as against A1 and his service was reversed and his increment in basic pay also was cut down for three years and the first accused already suffered with punishment.

Therefore, he prayed for quashing the complaint made against the petitioners.



5.The learned counsel appearing for the second respondent/complainant filed his counter and contended as follows:

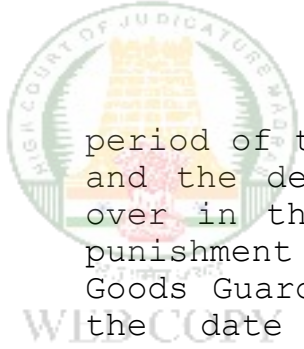
(i) The second respondent has locus to lodge a complaint since the offences under Sections 177 and 420 of I.P.C. are cognizable one. As such, anybody can set the criminal law in motion. The complaint is very much maintainable as against the accused. Further, he contended that the disciplinary proceedings and the criminal proceedings are parallel one. At any cost, the disciplinary proceedings would not curtail the first respondent for taking criminal action against the accused. The criminality done by the first accused is categorically proved by the departmental action and his service was reversed and his increment was also cut down for three years. Therefore, he is liable to be prosecuted and it cannot be quashed on its threshold.

(ii) As far as A3 and A4 are concerned, after receipt of the complaint from the complainant, they simply slept over and did not take any steps to lodge a complaint before the police. Though they have all particulars and records insofar as the offences committed by the first accused, only to support the first accused, they did not take any action against the first accused. Therefore, they are also equally responsible for the offence committed by A1 and hence, he prayed for dismissal of the quash petitions.

6.The learned Government Advocate (criminal side) appearing for the first respondent would submit that the first information has been registered on the direction of this Court in CrI.O.P.(MD) No.4983 of 2013. Further, he contended that the allegations made in the complaint would attract some of the provisions of I.P.C. Therefore, at this stage, it cannot be quashed and brushed aside the allegations made in the complaint and as such, he also prayed for dismissal of the quash petitions.

7.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the second respondent and also the learned Government Advocate (criminal side) appearing for the first respondent State and also perused the materials produced before this Court.

8.Admittedly, as against the first accused, departmental action has been taken and he was awarded with the punishment of reversion in his post for a period of 5 years from the post of Passengers Guard to Good Guard by the Chief Operation Manager of Southern Railway by order dated 25.07.1996. Further, he was also punished with reduction of his pay scale by increment cut for a



period of three years. The occurrence took place in the year 1990 and the departmental action and the appeal proceedings was also over in the year 1997 itself. A1 suffered with the above said punishment and thereafter, he continued in service in the post of Goods Guard in Southern Railway. After a period of 23 years from the date of occurrence, the second respondent/complainant submitted his representation to take action on the offences committed by A1. Since the departmental action was over even in the year 1997, representation of the second respondent was not considered and rejected. However, suppressing the said facts, the second respondent filed direction petition before this Court by way of filing Crl.O.P.(MD) No.4983 of 2013 and on the general direction issued by this Court, the first respondent mechanically registered the case that too as against A3 and A4 also, who are the officials of Southern Railway.

9.It is very unfortunate to state that the first respondent without even looking into the allegations of the complaint, mechanically, without conducting enquiry, registered the case as against the officials of Southern Railway officials as if they have committed the offences under Sections 177 and 420 of I.P.C. The basic ingredients of the said offences are not at all attracted as against A3 and A4. The only allegation made against them is that after the receipt of the representation from the second respondent, they did not take any action to lodge a complaint as against A1. Therefore, it is nothing but clear abuse of process of law and the FIR against these petitioners has to be struck down.

10.Insofar as the first accused is concerned, he already suffered with departmental action and suffered with punishments also. Though there is no bar to proceed under the criminal action, the present complaint has been lodged after a period of 23 years from the date of occurrence. Admittedly, the second respondent/defacto complainant is also an employee of Southern Railway. Though he has locus to set the criminal law in motion, he ought to have lodged the complaint immediately after the occurrence. However, the same has been filed after a period of 23 years from the date of occurrence. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court reported in **(2010) 8 Supreme Court Cases 775 - Kishan Singh V. Gurpal Singh**, wherein, the Apex Court has held as follows:

"21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the



FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. [vide: Sahib Singh Vs. State of Haryana, AIR 1997 SC 3247].

22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide : Chandrapal Singh & Ors. Vs. Maharaj Singh & Anr., AIR 1982 SC 1238; State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604; G. Sagar Suri & Anr. Vs. State of U.P. & Ors., AIR 2000 SC 754; and Gorige Pentaiah Vs. State of A.P. & Ors., (2008) 12 SCC 531)."

In view of the above, it is evident that though the said FIR was registered with inordinate delay and there has been no plausible explanation for the delay. Thus, it is evident that the FIR has been lodged with the sole intention to harass the petitioners and enmesh them in long and arduous criminal proceedings. Therefore, this Court is of the view that such an action on the part of the second respondent/complainant would not be bonafide and the criminal proceedings initiated by him against the petitioners amounts to an abuse of process of law and hence, the



FIR in crime No.279 of 2013 on the file of the first respondent is liable to be quashed against these petitioners.

11. In the result, these criminal original petitions are allowed. The criminal proceedings in crime No.279 of 2013 on the file of the first respondent is quashed against these petitioners alone. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1. The Inspector of Police,  
Railway Police Station,  
Madurai.

2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC To MR.S.RAMU, Advocate SR. NO.83018  
+1 CC To MR.N.ANANTHAPADMANABAN, Advocate SR. NO.83168  
+1 CC To MR.S.MANO HAR, Advocate SR. NO. 83268

**Pre-delivery order made in  
Crl.O.P. (MD) .Nos.949, 3782 and 3783 of 2014  
and  
M.P (MD) .Nos.1 , 1 and 1 of 2014**

**07.09.2018**

ARUL

TR/PM/SAR-III (24.09.2018) 7P 6C