



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **21.08.2018**

DELIVERED ON : **27.08.2018**

CORAM:

THE HONOURABLE DR. JUSTICE **G. JAYACHANDRAN**

Cr1.R.C(MD)No.761 of 2017

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A.Chandra

: Petitioner/
Complainant

Vs.

1. Jeevamani Dharmaraj,
The Sub-Inspector of Police,
South Police Station,
Tuticorin.
2. Renish,
The Sub-Inspector of Police,
Office of the District Superintendent of Police
Special Wing,
Tuticorin.
3. Suresh Kumar,
The Inspector of Police,
South Police Station,
Tuticorin
4. Hriharan,
The Inspector of Police,
Muthaiahpuram Police Station,
Tuticorin District.
5. John Pandian (Constable),
6. Maheswari,
The Sub-Inspector of Police,
Tharuvaikulam Police Station,
Tuticorin District.
7. Sham Sundar,
The Sub-Inspector of Police,
Thalamuthu Nagar Police Station,
Tuticorin District.
8. Rajkumar,
Head Constable,
Thalamuthu Nagar Police Station,
Tuticorin.



11.Pattu Esakki
12.Miranda
13.Dhanuskodi

: Respondents/
Respondents

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the impugned returned order dated 10.07.2017 passed by the learned Judicial Magistrate, Vilathikulam, in unnumbered Cr.M.P.No. - of 2017 and consequently to direct the above Court to number the above criminal miscellaneous petition and to try the same in a manner known to law.

For Petitioner : Mr.M.S.Jeyakarthik
For Respondents : Mr.KA.Ramakrishnan
1 and 4 to 8
For Respondents 2 and 10 : No appearance

ORDER

This Criminal Revision Case is filed praying to set aside the order dated 10.07.2017 made in unnumbered Cr.M.P.No. - of 2017 by the learned Judicial Magistrate, Vilathikulam.

2.The revision petitioner herein, A.Chandra, is the mother of John Britto. She has presented a private complaint under Section 200 Cr.P.C. against 13 persons, who are shown as respondents therein, alleging that on 21.04.2015, respondents 1 to 5, 9 and 10 had committed offences under Sections 365, 294(b), 326, 342, 331 and 506(ii) read with 110 IPC and Section 29 of Police Act, 1961. In continuation of previous offence, on 12.11.2016 and 13.11.2016, respondents 1, 6, 7, 8, 11, 12 and 13 had committed offences under Sections 294(b), 506(ii), 365, 342, 326 and 331 read with 110 IPC and Section 29 of Police Act, 1961 and also she has prayed to take up the private complaint as a matter of human rights violation and commit the complaint to the Special Court under Section 30 of Human Rights Act, 1993. Further, she has prayed in the complaint to direct the Police Department to take action against the respondents 1 to 8 for causing torture and mental agony to the complainant's son, John Britto and pay compensation of Rs.10 lakhs.

3.This complaint has been returned by the learned Magistrate pointing out that the allegations made in the complaint had occurred at different places. The last occurrence falls within the jurisdiction of SIPCOT Police Station. Therefore, the complaint may be presented before the appropriate Court, which has jurisdiction over SIPCOT Police Station. The petitioner herein has represented the complaint with the following endorsement:

"The first occurrence place of this case is Vilathikulam. Therefore, Hon'ble this Court has jurisdiction to take cognizance, enquire, inquire, Trial



this case under Sec 178(c) of Cr.P.C. Hence this petition is represented".

The Court below had again returned the complaint on 10.07.2017 with the following endorsement:

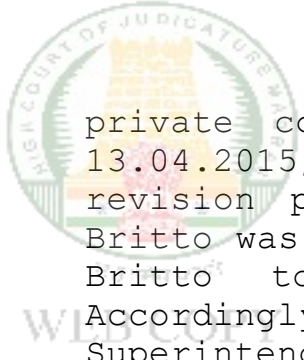
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"The complaint occurrence not within the court jurisdiction. Hence, the complaint is returned to file in proper court".

4. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondents 1 and 4 to 8.

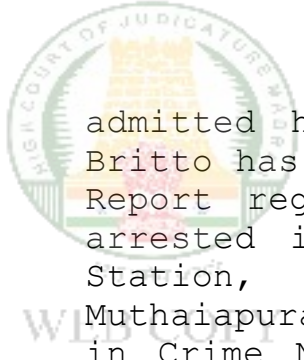
5. The learned counsel appearing for the revision petitioner would contend that the above said order of the Trial Court is unsustainable and untenable. When an offence is a continuing one committed in more than one local area, it could be inquired into or tried by a Court having jurisdiction over any of such local areas. He further contended that the respondents herein have committed continuous offence as against the petitioner's family members. The first occurrence took place at Tharuvaikulam, which falls within the jurisdiction of the Judicial Magistrate's Court, Vilathikulam. Therefore, returning the complaint is arbitrary and unsustainable. Referring to Section 178(c) Cr.P.C., the learned counsel appearing for the revision petitioner would submit that major portion of the cause of action has taken place in Tharuvaikulam Village. Therefore, returning the complaint saying that the complaint occurrence has not been taken place within the jurisdiction of the Court is factually and legally incorrect.

6. Before advert to the merits of the grounds raised in the revision petition, it is pertinent to peruse the complaint filed by the revision petitioner herein. The gist of the complaint indicates that John Britto, while he was 22 years old in the year 2005, was tried as an accused in a murder case. Though the Trial Court has held him guilty and sentenced him to undergo life sentence, on appeal, High Court has modified the sentence and convicted him under Section 304-A IPC and sentenced him to undergo five years rigorous imprisonment. He was released after completion of the period of sentence on 25.07.2012. The fifth respondent herein happens to be the brother-in-law of the deceased Chellam. It is alleged by the petitioner herein that to take a revenge for his brother-in-law's death, the fifth respondent has vowed that he will do away with the son of the petitioner. With that intention, he has instructed the police of various police stations to foist false cases against John Britto, son of the petitioner. John Britto used to be illegally detained by the police persons of various police stations in Tuticorin District. The family members of the petitioner were put to threat and mental agony by the police persons, who are named as accused in the



private complaint. It is alleged in the complaint that on 13.04.2015, unknown persons trespassed into the house of the revision petitioner and searched for John Britto. Since John Britto was not in the house, the petitioner was told to bring John Britto to the office of the Superintendent of Police. Accordingly, she along with John Britto and his wife, met Superintendent of Police, Tuticorin on 15.04.2015. After enquiry, they allowed John Britto to go free. However, again on 21.04.2015, police came and searched for John Britto. Since, John Britto was not in the house, they went to the work spot of John Britto along with some private persons, brutally attacked him and took him to the police station. When she went to Tharuvaikulam Police Station, presuming that the police has taken into Tharuvaikulam, she came to know that her son was taken to some other police station. After enquiry at Thalamuthu Nagar Police Station, North Police Station, Central Police Station, South Police Station and SIPCOT Police Station, she went to the office of the Deputy Superintendent of Police, Tuticorin Town to know about the whereabouts of John Britto. Since, they were not able to locate his whereabouts, a complaint was sent to higher authorities reporting illegal detention. Later, she came to know that John Britto was arrested by South Police Station, Tuticorin on 21.04.2015 itself for alleged offences under Sections 341, 294 (b), 323, 324, 307, 506(ii) IPC and Section 3 of TNPPDL Act and remanded to judicial custody on the same day night at 08.00 p.m. in Crime No.329 of 2015. He was also formally arrested in Crime No.108 of 2015 on the file of Muthiahpuram Police Station alleging extortion of Rs.1,500/- at knife point from one Karthick Raja and another case at South Police Station for damaging cellphone worth Rs.1,500/- belongs to Saravanakumar, which was also registered on the same day against John Britto.

7.The second incident as alleged in the complaint had occurred on 22.09.2016, when the Sub Inspector of Police attached to Tharuvaikulam Police Station, came in search of John Britto. Since, he was not in the house, the police came to the petitioner's house on the next day at 07.00 a.m. On the same day, at 09.00 p.m., the Inspector of Police, Kulathoor Police Station has gone to her house and told her that her son should leave the town till the end of panchayat election. On their instruction, the petitioner, her son John Britto and daughter-in-law have left the town and settled at Coimbatore for two weeks and returned on 24.10.2016. the third incident has occurred on 12.11.2016, when the police came to the house of the petitioner and attacked him brutally, used abusive language and forcibly took him away. They were not able to find to which police station he was taken and after searching all in the police stations at Tuticorin, they complained to the Superintendent of Police on 13.11.2016. On 14.11.2016, the petitioner and her husband, along with some information, they went to the Government Hospital, Tuticorin and found him taking treatment for fractured limb. It is alleged that the police has broken his left hand limb and had



admitted him in the hospital with false information that John Britto has broken his limb by falling down. The First Information Report registered on 13.11.2016 indicates that John Britto was arrested in Crime No.890 of 2016 on the file of South Police Station, Tuticorin, for extorting money at knife point at Muthaiapuram TASMACH shop and her elder son Justin Gopi was booked in Crime No.646 of 2016 on the file of Thalamuthu Nagar Police Station for extorting money from the TASMACH shop. Her husband Arockiyasamy was arrested in Crime No.647 of 2016 on the file of Thalamuthu Nagar Police Station for causing disturbance to the public peace and for using abusive language in public. According to the revision petitioner, all these three cases against the male members of her family were false and foisted at the instigation of the respondents. Thus, by stating incidents in which the family members of the petitioner, more particularly, John Britto has been illegally arrested by the police, the present private complaint has been lodged for the relief mentioned above.

8. On the face of the reading the complaint, though it tends as if the police targeted John Britto and the family members of the petitioner, it could be seen from the averments that all the allegations are connected to the cases registered in various police stations against John Britto. The police has arrested John Britto in those cases and remanded to judicial custody and the legal process is under way. Quoting all the cases registered against John Britto and alleging all these cases right from the complaint registered by South Police Station on 21.04.2015 till the case registered against John Britto on 12.11.2016 by SIPCO Police, on 13.11.2016 by South Police Station against John Britto, the complaint dated 13.11.2016, against Justin Gopi by Thalamuthu Nagar Police Station and complaint against Arockiyasamy by Thalamuthu Nagar Police Station. The present private complaint has been filed alleging that the incident alleged to have been taken place on 21.04.2015 till the incident which took place on 12.11.2016 and 13.11.2016, are all continuous offences. Therefore, under Section 178(3) Cr.P.C. the Court has jurisdiction over any of such local area can enquire into or try. Section 178 Cr.P.C. reads as under:

"178. Place of inquiry or trial.

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed, partly in one local area and partly in another, or

(c) where an offence, is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas".



9. This section provides solution for the difficulty which may arise whether there is a conflict between different areas and there may be some doubt as to which particular Magistrate has jurisdiction to try the case. As far as the contents of the present complaint is concerned, it is neither continuous offence or a doubt regarding the area in which the alleged offence committed. Based on different complaints, the son of the petitioner has been arrested by various police stations in Tuticorin at different point of time. Criminal cases have been registered against him are subjected to judicial scrutiny. The respondents are public servants, viz., police officials, who are exercising their official duty in maintaining law and order. If the petitioner or John Britto, who is shown as accused in those cases, could be able to prove his innocence and also able to establish malicious prosecution, the remedy is elsewhere and not to file clumsy private complaint under Section 200 Cr.P.C. by the mother of John Britto. The allegation of torture, illegal detention, etc. is made in all cases whenever John Britto is arrested by the respondent. This clearly shows the calculated design of the petitioner in order to fix the police officials, those who how acted upon the complaint given by different individuals at different police stations against John Britto.

10. The Court below after perusing the complaint had returned the complaint for want of jurisdiction. May be one or two incidents alleged in the complaint might have been within the jurisdiction of the Judicial Magistrate's Court, Vilathikulam, de hors of that fact, the very complaint alleging human rights violation and abuse of power by the police on 13.04.2015, 21.04.2015, 12.11.2016 and 13.11.2016, which are distinct, separate and unique, by no stretch of imagination, could be considered as a continuous offence. Furthermore, making sweeping allegation against the members of the law enforcing agency, whenever case is registered against a person based on the complaint given by public cannot be entertained since *prima facie* the discharge of official function by the police officers cannot be construed as infringement of human rights to constitute offence.

11. For the above said reasons, since the complaint filed by the petitioner itself is not maintainable, the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-II)



To

The Judicial Magistrate,
Vilathikulam.

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+1cc to Mr.KA.Ramakrishnan, Advocate Sr.No.80451

SMN

VB/SKN/SAR2/06.09.2018/ 7P/ 3C

**ORDER MADE IN
Crl.R.C (MD) No.761 of 2017
27.08.2018**