



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 19.09.2018
ORDERS PRONOUNCED ON : 24.09.2018
CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Cr1OP(MD)No.4756 of 2016 and
Cr1MP(MD)Nos.2369 and 2370 of 2016

P.Kalai Kathiravan ... Petitioner/ Accused No.6
Vs
Ramaiah ... Respondent/ Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records in SC No.402 of 2015 on the file of the learned IV Additional District and Sessions Judge, Madurai and quash the same so far as the petitioner is concerned.

For Petitioner : Mr.N.Ananthapadmanabhan
For Respondent : Mr.D.Sasikumar

ORDER

This petition has been filed by A-6 in SCNo.402 of 2015 to quash the proceedings initiated by the respondents.

2.The brief facts of the case are that an incident took place in the residence of the complainant involving murder of his wife Poomari. An FIR came to be registered in Kallikudi Police Station in Crime No.122 of 2009 for the offence under Section 380, 302 and 109 of IPC. This petitioner took up the investigation in the said case and proceeded further with the investigation by examining the witnesses and also sending the finger prints obtained from the scene of occurrence to the finger printing expert. One Keeri surrendered before the VAO and gave a confession statement and properties were recovered based on the confession. A-1 and A-2 were arrested in the said case. When the finger print report came, it was found that the same tallied with that of one Sangaiyah alias Keeri, who is none other than the step brother of the respondent herein. In the meantime the petitioner was transferred from that Police Station and the further investigation was conducted by a different Officer.

3.The respondent filed a writ petition before this Court in WP(MD)No.7111 of 2009 seeking for transfer of the investigation. This court after considering the matter in detail found that the doubt expressed by the respondent is not substantiated and there is not basis for the allegation made by the respondent that the petitioner was responsible for roping in Sangaiyah as an accused person. This directed the Inspector of Police, Mr.S.Raja to



complete the investigation and submit a final report within a period of six weeks.

4. Pursuant to the orders passed by this Court, a final report came to be filed before the learned Judicial Magistrate, Thirumangalam against Sangaiyah and his mother for the offence under Section 380, 302 r/w109 of IPC. In the meantime, the respondent filed WA(MD)No.1033 of 2014 against the order passed in WP(MD)No.7111 of 2009 and the appeal was also dismissed by an order dated 03.09.2014.

5. Thereafter the respondent filed a private complaint before the Judicial Magistrate, Thirumangalam against six persons for the offence under Sections 304, 302, 120(b), 201, 194, 213, 450 of IPC. The learned Judicial Magistrate took the complaint on file and committed the case to the IV Additional District and Sessions Court, Madurai, which has taken cognizance of the private complaint in SC No.402 of 2015. Aggrieved by the same the present complaint has been filed.

6. The learned Counsel for the petitioner would submit that the Court below ought not to have taken cognizance against the petitioner since the allegations in the complaint itself clearly shows that the respondent is aggrieved by the act of the petitioner in discharge of his official duty and therefore, sanction must have been obtained under Section 197 of CrPC. The learned Counsel would further submit that the entire complaint deals with two separate incidents. One set of incident is with regard to the offence committed by the assailants in the murder of the respondent's wife, namely A-1 to A-4 and the other set of offence is against the Police officials who are said to have left out the real culprits and have roped in innocent persons as accused persons. Under such circumstances, the learned Counsel would submit that the Court ought to have applied its mind and should not to have taken cognizance against all the accused persons in entirety for two separate and distinct incidents. The learned Counsel would further submit that the earlier attempts made by the respondent before this Court in filing the writ petition and writ appeal to stall the criminal proceedings, were dismissed and concealing the same, the present private complaint has been filed by the respondent. The learned Counsel also submitted that the entire private complaint is vitiated by mala fides on the part of the respondent.

7. The learned Counsel for the respondent would submit that there are sufficient materials against the petitioner to proceed further with the private complaint and this Court should not interfere at this stage of the case. The learned Counsel would further submit that the same petitioner had filed CrIOP(MD) No.19112 of 2015 at PRC stage and the same was withdrawn and the very same petitioner also filed a discharge petition before the Court below and that was also withdrawn and thereafter the present petition to quash has been filed after the Sessions Court took



cognizance of the case. The learned Counsel also submitted that the petitioner is not a Police Officer of impeccable reputation and there are departmental proceedings pending against him and sanction that is contemplated under Section 197 of CrPC will only for the genuine and innocent public servants. In order to substantiate his submissions, the learned Counsel relied upon the following judgments of the Hon'ble Supreme Court in:-

1. Punjab State Warehousing Corporation Vs Bhusahn Chander and Another in Criminal Appeal NO.159 of 2016, dated 29.06.2016 and

2. Devinder Singh and Others Vs. State of Punjab through CBI, in Criminal Appeal No.190 of 2003 dated 25.04.2016

8. This Court has carefully considered the submissions made on either side.

9. It is an admitted fact that the petitioner was the Investigating Officer in Crime No.122 of 2009, which was registered after the murder of the wife of the respondent. This petitioner after investigation has identified one Sangaiyah, who is the step brother of the respondent and also his mother as the accused persons. When the same was challenged by the respondent, this Court dismissed the writ petition on the ground that the allegation as made by the petitioner was not substantiated. This order was also confirmed in writ appeal. Admittedly, the said Sangaiyah and his mother are facing trial in SC No.21 of 2015 on the file of the IV Additional District and Sessions Court, Madurai. At this stage, a private complaint is filed by the respondent against six persons. The allegations made against this petitioner in the complaint is that he has intentionally left out the real accused persons by taking money and has falsely impleaded his step brother and mother of the step brother as accused persons. The main allegation against this person is that he has misused his authority as Sub Inspect of Police and he has intentionally aided the actual accused persons.

10. It is seen very clearly from the complaint filed by the respondent that the respondent has aggrieved by the act of the petitioner in discharge of this official duty. The petitioner admittedly falls within the definition of Public Servant under Section 21 of IPC and therefore, it is mandatory to follow the provisions under Section 197 of CrPC, which gives a special protection to public servants. The Public Servants are treated as a special class of person enjoying the said protection, so that they can perform their duties without any fear or favour and without threats of malicious prosecution. Sine qua non for the applicability of Section 197 of CrPC is that the offence charged, be it one of commission or omission, must be one which has been committed by the Public Servant either in his official capacity or under the colour of the office held by him. The moment, the act of the Public Servant falls within the above said requirement, the protection given under Section 197 of CrPC starts operating



automatically and there can be no prosecution without obtaining a sanction.

11. This Court does not want to go into the other issues raised by the learned Counsel for the petitioner on merits of the case. This Court is satisfied that the first issue that has been raised in this case namely that the Court below ought not to have taken cognizance of the private complaint without obtaining sanction to prosecute the petitioner, is enough to quash the complaint insofar as the petitioner is concerned. This is more so in this case, since the very same Court is trying SC No.21 of 2015 which is pending trial against the respondent's step brother and mother for the very same occurrence and Investigating Officer in the same case cannot be roped in as an accused in a private complaint, complaining of dereliction of duty of the Investigating Officer during the investigation. The Court below ought to have seriously considered this issue before taking cognizance of the case.

12. This Court is of the considered view that permitting the private complaint against the petitioner to continue, would amount to an abuse of process of Court. Interest of justice requires that SC No.402 of 2015 on the file of the IV Additional District and Sessions Court, Madurai, has to be quashed insofar as the petitioner is concerned.

13. In the result, the criminal original petition is allowed and SC No.402 of 2015 on the file of the IV Additional District and Sessions Court, Madurai is hereby quashed insofar as the petitioner is concerned. Consequently, CrIOP(MD)Nos.2369 and 2370 of 2016 are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. IV Additional District and Sessions Judge,
Madurai

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

+1CC TO Mr.N.Ananthapadmanabhan, Advocate, Sr No.86035

+1CC TO Mr.D.Sasikumar, Advocate, Sr No.85979

order made in
CrIOP(MD)No.4756 of 2016
24.09.2018