

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.16671 of 2011

and

M.P.No.1 of 2011

[Orders Reserved on 05.10.2018]

1.P.Jawahar

S/o.A.Peter Pappu

The Inspector of Police

H-5, New WashermenPet Police Station

New Washermenpet,

Chennai- 600 011.

2.S.D.Mohamed Abith

as per complaint his named mentioned as

Habeeb @ Mohamed Habeeb

S/o.M.Y.Sheik Dawood

The Special Sub Inspector of Police

Civil Supply C.I.D

Ambattur, Chennai- 600 053

3.K.Pandurangan

(as per complaint his name mentioned as

Pandu)

S/o.A.Krishnasamy

Special Sub Inspector of Police

Central Crime Branch, (Cyber Crime)

Egmore, Chennai- 600 008

... Petitioners

सत्यमेव जयते
Vs.

Mohammad Abdullah

... Respondent

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to quash the proceedings in C.C.No.1511 of 2005 on the file of the learned Chief Metropolitan Magistrate, Egmore at Chennai.

For Petitioners : Mr.B.Ganesha Moorthy

For Respondent : Mr.Ramesh Kumar Chopra

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ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.1511 of 2005 on the file of the learned Chief Metropolitan Magistrate, Egmore at Chennai.

2. The short facts of the case are as follows:-

The petitioners herein are the members of the Tamil Nadu Police Service in their respective capacity. The petitioners herein along with others had taken the respondent on custody on 25.08.2003 and kept him illegally in P1 Pulianthope Police Station till 02.09.2003 and not even minimum food and water was allowed to be given to the respondent. The complainant filed a petition in CrI.M.P.No.933 of 2003, under Section 156(3) of Cr.P.C., which was forwarded to the Inspector of Police and thereafter a case in Crime NO.627 of 2003 was registered against the petitioners, for the offences under Sections 363, 325, 343 and 506(2) of the Indian Penal Code, on 01.11.2003. Subsequent to the complaint to the higher officials, the complainant was asked to appear before the Assistant Commissioner of Police, Pulianthope District, Chennai, for enquiry. Not satisfied with the enquiry, the complainant preferred the complaint.

3. The learned counsel appearing for the petitioners would submit that earlier the petitioner filed a direction petitioner under Section 156(3) of Cr.P.C., in CrI.M.P.No.932 of 2003, for the offences under Sections 144, 363, 325 and 506(ii) of the Indian Penal Code, on the file of the X Metropolitan Magistrate Court, Egmore at Chennai, and as per the direction of the learned Magistrate, a case in Crime No.627 of 2003, as against the petitioners and investigation is pending. Under this circumstances, the present complaint was purposefully filed as against the petitioners only in order to harass them to wreck vengeance by implicating them in multiplicity of criminal proceedings for the very same alleged occurrence. Further, the respondent did not obtain necessary sanction from the Competent Authority, under Section 197 of Cr.P.C., for prosecuting the Police Personnels. Therefore, the learned counsel, prayed for quashment.

4. The learned counsel appearing for the respondent would submit that the petitioners along with others had taken the respondent under custody on 25.08.2003 and kept him illegally. Till 02.09.2003. During the custody, the respondent was not provided with minimum food and water. The complainant filed a petition in CrI.M.P.No.932 of 2003, under Section 156(3) of the Code of Criminal Procedure, which was forwarded to the Inspector of Police and thereafter a case in Crime No.627 of 2003 was registered against the petitioners. Further, all the accused

caused severe injuries on the buttocks, left arm, both knees of the legs, left hand, index finger and other injuries all over his body. The kicks flowed from the boot legs of A1 caused severe pain on his private party, which is still to be felt. The respondent got admitted himself in the Government Hospital on 02.09.2003 itself after he was set at liberty. On the message received from the said Hospital P1 Pulianthope Police had registered a case in P1 Crime No.627 of 2003 which was closed as mistake-of-fact. Since the offences are serious one, the learned counsel for the respondent prayed for dismissal of the Criminal Original petition. The learned counsel for the respondent drew the attention of this Court to the Judgments of Hon'ble Supreme Court in B.Saha and Others Vs. M.S.Kochar reported in (1979 (4) SCC 177); in Inspector of Police and Another Vs. Battenapatla Venkata Ratnam and Another reported in (2005 (13) SCC 87) and in Surinderjit Singh Mand and Another Vs. State of Pubjab and Another reported in (2016 (8) SCC 722). These citations were relied to show that no sanction is necessary under Section 197 of the Code of Criminal Procedure. The above citations referred by the petitioner are not relevant to the facts and circumstances of the above case.

5.Heard the learned counsel appearing on either side and perused the materials available on records.

6.It is an admitted fact that earlier a complaint was made by the respondent to the learned X Metropolitan Magistrate, Egmore, Chennai, which was taken on file as CrI.M.P.No.932 of 2003 and the same came to be forwarded under Section 156 (3) of the Code of Criminal Procedure to the P1 Pulianthope Police Station and the case was registered in Crime No.627 of 2003 on 01.11.2003 for the offences under Section 144, 363, 325 and 506 (2) of the Indian Penal Code and investigation was going on. During the pendency of the investigation, the above case came to be filed for the same facts against the petitioner. It is also seen that the second complaint is not maintainable for the same set of facts, wherein investigation was going on.

7.Further, it is seen that the Inspector of Police, P1 Pulianthope Police Station registered the case and conducted investigation and closed the case, filed the final report as Mistake of fact on 06.03.2006 before the learned Metropolitan Magistrate, without setting aside the order passed by the Metropolitan Magistrate in the referred charge sheet. The second complaint filed without setting aside the earlier order is not maintainable. This Court had reiterated the same in the following cases:

1.A.Krishna Rao Vs. L.S.Kumar
reported in 1998 (1) MWN Cr 319;

2.Murugesan and Others Vs. Kothandam reported in 1969 SCC Online Mad 268 : 1970 CrI.J 1183; and

3.K.Ramasubbu Vs. The State reported in Manu/TN/0020/1986 : 1987 LW CrI 79 in CrI.M.P.No.7453 of 1986 dated 11.11.1986.

8.Further from the closure report, it is seen that during investigation, the respondent, other witnesses and the petitioners have been enquired, thereafter, only referred charge sheet has been filed. Admittedly, this complaint came to be filed during June, 2005.

9.The respondent involved in the following cases:

SI. No.	Description of the cases and the respondent's rank
1	P - 3 Vyasarpadi Police Station in Crime No.625 of 2003 under Section 379 of the Indian Penal Code (Snatching Case) the respondent is A-1.
2	ICF Police Station in Crime No.511 of 2001 under Section 379 of the Indian Penal Code (Snatching Case) the respondent is the A-1.
3	P - 3 Vyasarpadi Police Station in Crime No.641 of 2003 under Section 397 of the Indian Penal Code the respondent is A-4.
4	P - 3 Vyasarpadi Police Station in Crime No.643/2003 under Section 341, 336, 392, 397 and 506 (ii) of the Indian Penal Code the respondent is A-4.
5	B - 1 North Beach Police Station and in C.C.B. Video Piracy Wing Copy Rights cases are registered as against the respondent herein.

10.The respondent admits that he has received the closure report and he has not challenged the same so far. The respondent herein having involved in several cases for the purpose of creating a defence and to deter the police to take action against him. Further he is involved in chain snatching, property offence and robbery cases. The petitioners are all police personnels to keep away them from the investigation against the respondent, the above case came to be filed, admittedly, the above case has been filed when the investigation in Crime No.627 of 2003 for the same offence was pending.

11.In view of the above the quash petition filed by the petitioners are allowed and the proceedings against them in C.C.No.1511 of 2005 pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai is hereby quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

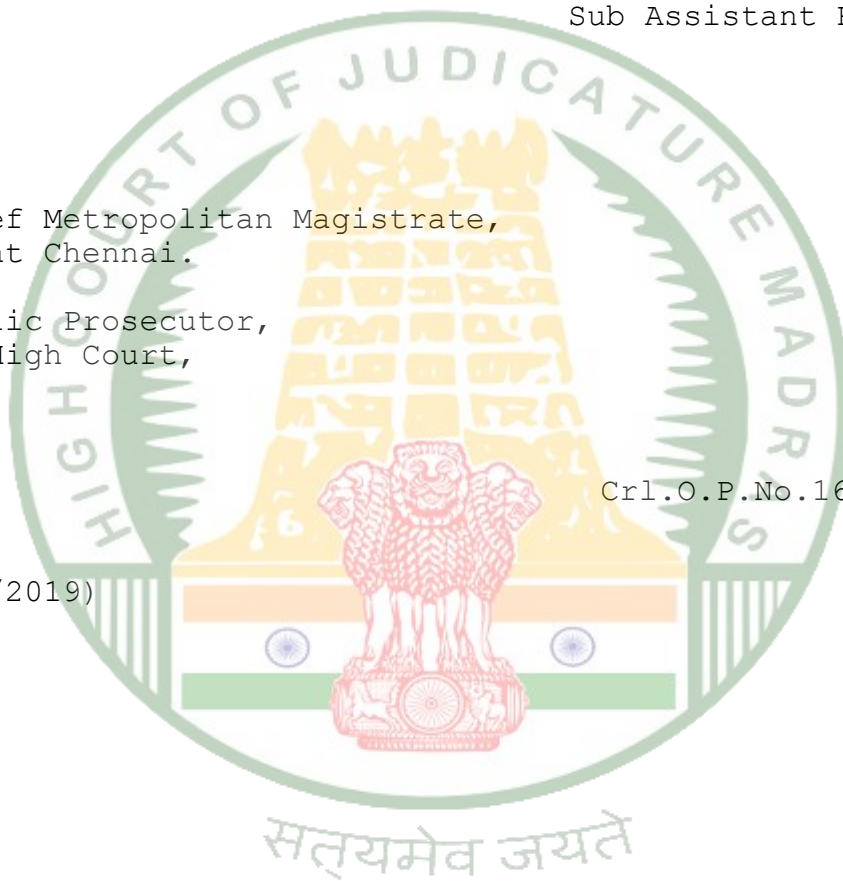
1.The Chief Metropolitan Magistrate,
Egmore at Chennai.

2.The Public Prosecutor,
Madras High Court,
Madras

SV(CO)

RRS (15/04/2019)

Crl.O.P.No.16671 of 2011



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