

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.5195 of 2011
and
M.P.No.1 of 2011

[Orders Reserved on 24.08.2018]

Ashok Kumar
Then Deputy Superintendent of Police,
Omalur,
Now working as Asst. Commissioner of Police,
Salem West,
Salem
... Petitioner

Vs.

K.Murugan
... Respondent

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.44 of 2010, on the file of the Chief Judicial Magistrate, Salem, quash the same.

For Petitioners : Mr.S.kalyanaraman

For Respondent : (No Appearance)

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.44 of 2010, on the file of the Chief Judicial Magistrate, Salem.

2. The facts of the case in brief reads as follows:-

The petitioner is the Senior Police Officer. The complainant / respondent herein had filed a private complaint against the petitioner and the then Deputy Superintendent of Police, Omalur, alleging that he had suffered injustice at the hand of the Police Officers, attached to Devattipatty Police Station, Omalur Division. Therefore, the complainant herein had given a complaint regarding illegal activities of the Police Officers, to the Deputy Superintendent of Police, Omalur. Since

no action had been taken on the complaint, the respondent preferred a petition before the Revenue Divisional officer, who in turn, directed the Deputy Superintendent of Police, Omalur, to take action on the complaint filed by the complainant and intimate the same to him. Even thereafter, no action had been taken and therefore, the petitioner, on 27.12.2005, had submitted a petition to the Superintendent of Police, who ordered the Deputy Superintendent of Police, Omalur, to take action on the complaint given by the respondent herein. Despite the same, no action has been taken, the respondent preferred a complaint before the Inspector General of Police, West Zone, who in turn also directed the Deputy Superintendent of Police, to take action according to law. Since all his efforts ended in futile, he filed a petition before the learned Chief Judicial Magistrate, for taking action against the officer concerned, under Section 166 IPC. The learned Chief Judicial Magistrate recorded the sworn statement of the complainant and took cognizance of the offence on 02.09.2010. Aggrieved over the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner would submit that the order passed by the superior officers of the petitioner, directing the petitioner to take action on the petition of the complainant is not a statutory order and as such, even if such order is not given effect to would not constitute an offence falling under Section 166 IPC. In the absence of sanction from the competent authority, especially, when the petitioner is a Police Officer, the Court below cannot take cognizance of the offence against the petitioner, since the same is barred under Section 197 Cr.P.C., In the instant case the specific allegation is that the petitioner had committed the offence in the course of his duties and therefore, sanction for prosecution is must. Therefore, he prayed for quashment

4. When the matter is called today, there is no appearance, on behalf of the respondent.

5. This Court heard the submission made by the counsel for the petitioner and perused the materials available on record.

6. At this juncture, it is relevant to extract Section 166 of the Indian Penal Code, before dealing with the matter:-

"Public Servant disobeying law, with intent to cause injury to any person. - Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by

such disobedience, cause injury to any person, shall be punished with simple imprisonment of a term which may extend to one year, or with fine, or with both."

7. As regards the allegations made in the complaint, it was submitted that for the purpose of constituting an offence under Section 166 of the Indian Penal Code, a public servant should knowingly disobey any direction of law as to the way in which he is to conduct himself as such public servant intending to cause, or knowing it to be likely that he will, by such disobedience cause injury to any person. The sum and substance of the contention of the complainant is that the petitioner, being a public servant, knowingly disobeyed the order of higher authorities, caused injury to him. Is true that the Superintendent of Police, Salem, had sent a letter, dated 21.08.2009, to the Chief Judicial Magistrate, Salem, stating that Cases in Crime No.361 of 2015 and Crime No.200 of 2007 are pending against the petitioner and therefore, there was vandalism between the complainant and the petitioner, which lead to filing the private complaint. On perusal of the records would show that there was some action taken on the complaint given by the petitioner and therefore, Section 166 IPC., would not be attracted, in the considered opinion of this Court. Further, on perusal of the report of the Superintendent of Police, dated 21.08.2009, would reveal the fact that the complainant has the habit of sending petitions against others one after another.

8. In view of the foregoing discussions and in the facts and circumstances of the case, this Criminal Original Petition is allowed and the entire proceedings in C.C.No.44 of 2010, pending on the file of the learned Chief Judicial Magistrate, Salem, is hereby quashed. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

MPK

To

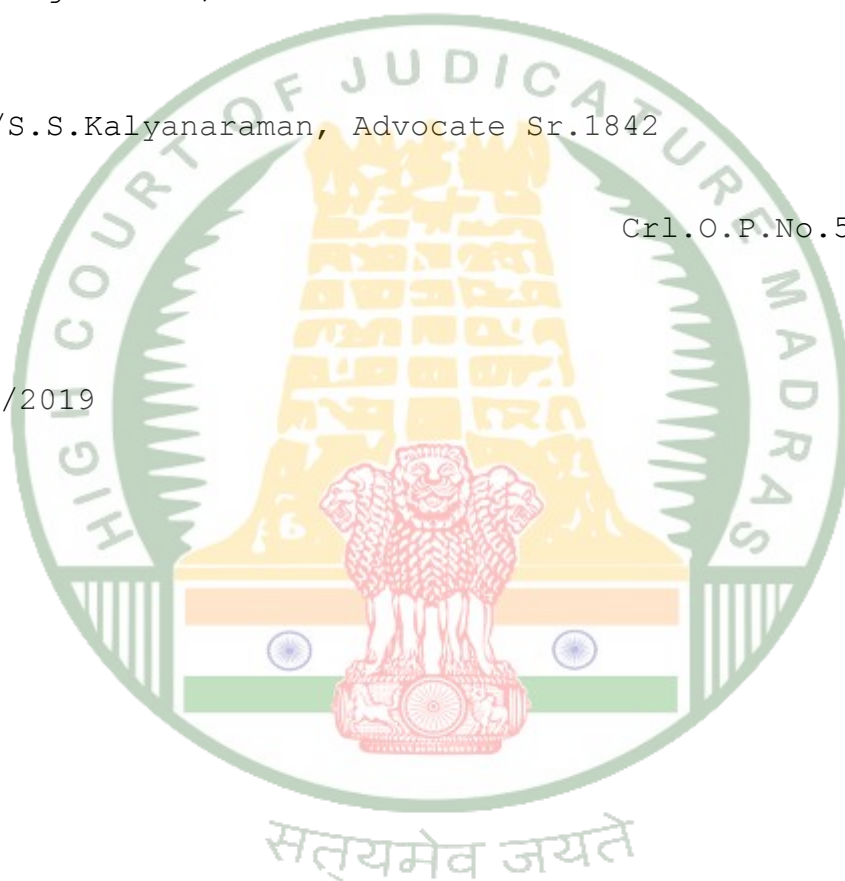
1.The Chief Judicial Magistrate,
Salem.

2.The Public Prosecutor,
Madras High Court,
Madras.

+1cc to M/S.S.Kalyanaraman, Advocate Sr.1842

CrI.O.P.No.5195 of 2011

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srg 05/02/2019



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