

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
10.08.2018	07.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.16097 Of 2008

and

Crl.M.P. No.1 of 2008

V.Kannabiran

Under Secretary

Department of Personnel and

Administrative Reforms

Chief Secretariat

Puducherry

... Petitioner

Vs.

The State Rep. by its

The Inspector of Police

Grand Bazaar Police Station

Pondicherry

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to praying to call for the records in Crime No.211 of 2018, dated 23.04.2008, on the file of the respondent and quash the same.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.D.Bharathachakravathy
Public Prosecutor(Pondicherry)

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in Crime No.211 of 2008, dated 23.04.2008, on the file of the respondent Police.

2. The brief facts leading to filing of the present Criminal Original Petition are as follows:-

The defacto complainant one Mr.Janakiraman filed a complaint before the learned Special Judge, Puduchery, on 15.04.2008

against the petitioner and two others under Section 190 r/w 156 (3) of Cr.P.C., for the offence under Sections 166, 167, 420 r/w 34 of IPC, stating that the accused persons while holding the key positions in the Union Government of Puducherry as Under Secretary, appointed the co-terminus staff of the office of the Council of Minister into the regular Government Employees contrary to the order of this Court. Further, the appointments were made in such a way by preparing incorrect documents and wantonly disobeying the law and thereby causing loss and injuries to several deserving persons, who are waiting in the Employment Exchange list as well as by causing financial loss to the Government. The complainant was taken cognizance and then was forwarded by the learned Chief Judicial Magistrate, by an order dated 22.04.2008 with a direction to the Inspector of Police, Grand Bazaar Police Station, to register the case against the petitioner and to investigate the matter.

3. The learned counsel appearing for the petitioner would submit that when the defacto complainant's earlier complaint given to the Superintendent of Police (North) Puducherry was pending, the defacto complainant again filed the present complaint to the learned Chief Judicial Magistrate, Puducherry and it would reveal the intention of the defacto complainant to harass the petitioner. He would further submit that admittedly, the complaint was made against three persons including the petitioner, but the learned Magistrate found that there is no case made out against the then Chief Secretary and the Chief Minister, but directing the Police to register a case only against the petitioner, that too, without a preliminary enquiry on a second complaint causes great prejudice to him.

4. The learned Public Prosecutor, appearing for State, on instructions, would submit that pursuant to the direction of the learned Magistrate, a case has been registered in Crime No.211 of 2008 has been registered against the accused. In view of the interim stay granted by this Court, the case is still pending, without any progress. Therefore, he prayed for dismissal of the petition.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. On perusal of the record would show that the petitioner had lodged the earlier complaint prior to filing of this complaint before the learned Chief Judicial Magistrate, Puducherry, on 07.04.2008 and he had also filed the same complaint before the Superintendent of Police (North), Puducherry on the same day and enquiry was conducted with regard to the same. Thereafter, on 17.04.2018, the

Superintendent of Police (North), Puducherry, after obtaining opinion from the Director of Prosecution of Law, has closed the investigation. During investigation, he observed as follows:

" It is seen from the documents that the impugned order were made consequent to the decisions arrived and approval during February 2006, before the modified order dated 28.03.2006, and that the order relates to accommodation of persons already in service to common category. It is also evident that the orders pursuant to decision of February 2006 were kept in abeyance only because of the general elections.

Hence no disobedience of law of framing of incorrect document or dishonest inducement to deliver any property as alleged in the complaint, is found to be existing warranting investigation. Since the complainant is not an aggrieved person, Section 420 IPC also will not be attracted and further he is not capable or entitled to compound under the Cr.P.C. There is no sufficient ground for entering on an investigation.

The complainant seems to be endeavouring to set the criminal law in motion to support cases of administrative and civil nature.

The opinion of the Direction of Prosecution, Law Department also is of similar view.

Hence it is decided that no investigation is necessary in this case"

7. In the meanwhile he had approached the learned Special Judge, Puducherry and filed a complaint on 10.04.2008. On perusal and verification of the complaint the Special Judge Puducherry had returned the complaint by an order dated 11.04.2018. The defacto complainant had also filed a complaint before the Station House Officer, Grand Bazaar Police Station on 06.04.2008. On 15.04.2008, the complaint was filed before the learned Chief Judicial Magistrate, Puducherry under Section 156 (3) of Cr.P.C, who had directed the respondent police to register the complaint, by an order dated 22.04.2008, in CrI.M.P.No.717 of 2008.

8. The main contention in the complaint is that as per the W.A.No.2326 of 2005 and W.P.No.596 of 2006 dated 28.06.2006, the High Court had directed the Puducherry Government not to appoint any daily rated workers in suppression of circular and not to renew the employment of the existing daily rated workers, not to regularize and or absorb any of the daily rated workers without prior permission of the Court. It is also clarified that in case, the daily rated workers, who are already engaged or registered with the Employment Exchange, they will be considered

along with other eligible candidates. Earlier to that order dated 23.12.2005, the High Court had directed the State of Puducherry and others "not to make any other appointments on daily workers without permission of this Court".

9. The contention of the petitioner is that in between first order in December 2005 and final order in March 2006, the petitioner along with the Former Chief Secretary and Chief Minister had prepared a note on 16.02.2006 regarding a proposal of the Office of the Council of Ministers to appoint 96 persons working as co-terminus staff in OCM. Though all the applicants had entered into service by back door method at the instance of the Ministers and on political consideration, all these 96 employees may be brought as daily rated employees in accordance with the assurance given in the Assembly. Further, knowing well that the Honourable Lt. Governor has not granted unconditional approval, the petitioner along with the former Chief Secretary had issued an order dated 12.06.2006 stating that "approval of Lt.Governor has been obtained for inclusion of personnel (adhoc)/daily rated workers in OCM on Court terminus basis during 11th Assembly in common seniority list of daily rated employees maintained by DP & AR" and sponsoring them for accommodation against the existing vacancies in daily rated common category (Group-D) posts and orders were issued to various Departments. Hence the petitioner and other have committed the offence.

10. It is seen that High Court on 23.12.2006 had directed not to make any further appointments and had clarified the same in para (iv), which reads as under :

" It is clarified that in case the daily rated workers who are already engaged or registered with the Employment Exchange , they will be considered along with other eligible candidates"

11. In view of the forgoing discussion, the act of the petitioner could not be claimed to attract any offence as made out in the First Information Report. Further, the learned Special Judge had categorically given a finding that there is no prima facie case against the accused. So far as the offence under Section 13(1)(d) of Prevention of Corruption Act is concerned, when there is no proof of corruption, no criminality to be attached. This petitioner at the most had put up a note on the basis of the then Chief Minister giving assurance in the Assembly. In view of the same, the continuation of the First Information Report is nothing but abuse of process of law.

12. Hence, this Criminal Original Petition stands allowed and as a sequel, the proceedings in Crime No.211 of 2008, on the file of the respondent police is hereby quashed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge
Puducherry
2. The Chief Judicial Magistrate
Puducherry
- 3.The Inspector of Police
Grand Bazaar Police Station
Pondicherry
4. The Public Prosecutor,
Puducherry

Copy TO
The Section Officer,
Criminal Section, (Records),
High Court, Madras.

Cr1.O.P.No.16097 Of 2008

GJII(CO)
GN(06/02/2019)