

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9218 of 2018
and Crl.M.P.Nos.4744 and 4848 of 2018

1. Natarajan
2. Shankar
3. S. Sonaimuthu
4. S. Vimalrajan

.... Petitioners/Accused 1 to 4

Vs.

K.A. Santhalingam Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.7681 of 2013 on the file of the learned X Metropolitan Magistrate, Allikulam (Egmore), Chennai and quash the same.

For Petitioners : Mr.P.Prince Premkumar

For Respondent : Mr.A.Arasu Ganesan

O R D E R

This Criminal Original Petition has been filed by the petitioners seeking to quash the proceedings vitiated in C.C.No.7681 of 2013, pending on the file of the learned X Metropolitan Magistrate, Allikulam (Egmore), Chennai.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

3. The petitioners are arrayed as A1 to A4 in C.C.No.7681 of 2013, pending on the file of the learned X Metropolitan Magistrate, Allikulam (Egmore), Chennai, have been initiated by the respondent/complainant by way of private complaint under sections 190(1)(a) and 200 CrPC., for the offences punishable under sections 341, 342, 363, 323, 324, 326, 392, read with section 34 IPC as against the petitioners.

4. The crux of the complaint filed by the respondent is that on 01.08.2013 at about 8.30 p.m. when he was proceeding in his two wheeler bearing Registration No.TN-05-J-8915 along with

his two friends viz., Mani-PW2 and Sakthi-PW3 from Chekilipalayam, Chennai, after completing his day shift work. While the complainant proceeding through 8th street at S.A.Colony, Vyasarpadi, the complainant's vehicle was stopped by the petitioners 1 and 2, they got down and started beating the complainant by their hands and lathi. However, the other two persons witnessed the incident were sent away after beating them with lathi and took the complainant forcibly him along with his motorcycle to the Police Station. All the petitioners 1 to 3 pushed the complainant out of the vehicles and forced him to fell on the rough ground resulting in which the complainant sustained injury all over the body. They have been falsely foisted against him. The 4th petitioner had forcibly by using criminal force and physically beating the complainant, took away a sum of Rs.1,000/- which he kept in his pocket and also threatened him to sign some blank papers and also affixed his finger prints. Thereafter, the complainant was detained unlawfully at the police station for about two hours and thereafter, the complainant had admitted to Stanely Medical College and Hospital, Chennai, for treatment from 02.08.2013 to 05.08.2013.

5. Admittedly, the first petitioner is the Inspector of Police, the second and third petitioners are working as Police constables and the fourth petitioner is the Sub-Inspector of Police, attached to the P5, MKB Nagar Police Station, Chennai - 600 039. While discharging their official duty, the second respondent along with his two friends viz., Mani-PW2 and Sakthi-PW3 from Chekilipalayam, Chennai, had come their motorcycle by the trio. When they were stopped by the petitioners and the respondent police have registered a case in Crime No.1055 of 2013 for the offences punishable under section 75 of the City Traffic Police Act. In fact, the respondent has also admitted his guilt and also paid a sum of Rs.2,200/- as fine amount before the learned XXI Metropolitan Magistrate in N.M.P.C.No.33025 of 2013 on 23.11.2013. Thereafter, the present complaint has been foisted and private complaint by the respondent as against the petitioners. The petitioners admittedly, the alleged occurrence that took place while the petitioners were discharging their official duty. Therefore, the previous sanction is mandatory for taking cognizance as against the petitioners under section 197 CrPC., it is the relevant portion of Section 197 CrPC., extracted hereunder:

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been

committed by him while acting or purporting to act in the discharge of his official duty no court shall take cognizance of such offence except with the previous sanction-

(a) In the case of it person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union whole acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of subsection (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, whenever they may be serving, and thereupon the provisions of that sub-section will apply as if lot the expression "Central Government" occurring therein, the expression "State Government were substituted.

[(3A) Notwithstanding anything contained in sub-section (3), no court shall take

cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (I) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the court before which the trial is to be held.

6. However, Section 197 CrPC., very clearly states that no court shall take cognizance of an offence on a public servant unless without any order of previous sanction.

7. Admittedly, without any obtaining sanctioned as against the respondent, he has also filed a private complaint and the same was also taken cognizance by the Trial Court. Hence, the entire proceedings is vitiated no sanction to prosecute them on

this ground alone, the present impugned complaint cannot be sustained as against the petitioners.

8. In view of the above discussion, this Court is inclined to allow this Criminal Original Petition and the entire proceedings in C.C.No.7681 of 2013, pending on the file of the learned X Metropolitan Magistrate, Allikulam (Egmore), Chennai is hereby quashed.

9. Finally, the Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

msm
To

The X Metropolitan Magistrate,
Allikulam (Egmore), Chennai.

+1cc to Mr.P.Prince Premkumar, Advocate Sr.40096

CrI.O.P.No.9218 of 2018

nmi[co]
srg 31/05/2019

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