

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.249 of 2016

and

Crl.M.P.No.1730 of 2016

Vadivel

... Petitioner

Vs.

The State by
The Deputy Superintendent of Police,
CBCID,
Krishnagiri.

... Respondent

PRAYER: This Criminal Revision Case has been filed Under Section 397 r/w 401 of Cr.P.C to call for the records relating to the order passed by the learned Fast Track Court/Mahila Court of Krishnagiri in Crl.M.P.No.237 of 2015 in Spl.S.C.No.14 of 2015 dated 14.10.2015 and set aside the same.

For Petitioner : Mr.S.Xavier Felix

For Respondent : Mr.R.Surya Prakash

Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed by the petitioner under Section 397 r/w 401 of Cr.P.C. to call for the records relating to the order passed by the learned Fast Track Court/Mahila Court of Krishnagiri in Crl.M.P.No.237 of 2015 in Spl.S.C.No.14 of 2015 dated 14.10.2015 and set aside the same.

2.The respondent Police registered a case in Spl.S.C.No.14 of 2015 against the Revision Petitioner under Sections 341, 392, 323, 354(a), 354(B) of I.P.C. r/w sec. 3(i) (ii) (xi) of SC/ST Act and Section 9 r/w 11 of POCSO Act (2 counts) and Section 4 of Tamil Nadu Prohibition of Women Harassment Act. After investigation, the respondent police laid charge sheet before the learned Fast Track Court/Mahila Court of Krishnagiri and also taken the charge sheet on the file in Spl.S.C.No.14 of 2015. During the pendency of the case, the Revision Petitioner filed a petition under Section 227 of Cr.P.C to discharge the petitioner from the alleged offences in Cr.M.P.No.237 of 2015. The Sessions Judge after hearing and considering the case, dismissed the petition on the ground that as per Section 197

Cr.P.C sanction is not necessary. Aggrieved by the said order of dismissal, the revision petitioner is before this Court.

3.The learned counsel for the petitioner would submit that the learned Sessions Judge misunderstood the scope under Section 197 Cr.P.C. which will not be applicable to this case. The petitioner was working as police officer and as per the Madras Police Standing Orders, Volume I chapter IX clause : 56 and 63 sanction is necessary, which reads as follows:

"Sanction to prosecute Police Officers: No criminal prosecution of a Police officer for an offence committed in his official capacity shall be instituted without the sanction of an officer not inferior in rank to a Superintendent. This does not affect the right of the magistracy or of private individuals to initiate such proceedings."

4.The learned counsel for the petitioner would further submit that as per the Madras Police Standing Orders, the respondent police ought to have obtained the sanction order before filing the charge sheet. The respondent police without obtaining the same registered the case and the said fact was not considered by the learned Sessions Judge. Therefore, the same warrants interference of this Court.

5.The learned Government Advocate (Crl.Side) appearing for the State would submit that on the date of the offence i.e. on 08.10.2014, the case was immediately registered and placed before the competent authority and the petitioner was placed under the suspension by the competent authority by its order dated 21.10.2014. Subsequently, he was removed from the service on 09.10.2014 and the charge sheet filed on 13.02.2015. On the date of filing the charge sheet before the learned Sessions Judge, the petitioner was either a public servant or a police officer. Therefore, under these circumstances, the sanction is not necessary either under Section 197 of Cr.P.C. or under Madras Police Standing Orders, Volume-1. Therefore it is not a ground for discharging the revision petitioner. There is no reason to interfere with the order passed by the learned Sessions Judge.

6. Heard both sides. Perused the records.

7.The allegation against the revision petitioner is that on 08.10.2014 at about 4.00 p.m. near Police Control Room at Bus Stand, Hosur within the limits of Hosur Town Police Station, the petitioner A.Vadivel, Gr.I. P.C. 1182, wrongfully restrained the witnesses Kamalesh, Ramkali, Poonam and Ganga, who were walking along their way for begging, by stopping them and took them to Police Control Room, where, in the guise of interrogation,

misbehaved with them. Therefore, a case has been registered by the respondent police under Sections 341, 392, 323, 354(a), 354 (B) of I.P.C. r/w sec. 3(i) (ii) (xi) of SC/ST Act and Section 9 r/w 11 of POCSO Act (2 counts) and Section 4 of Tamil Nadu Prohibition of Women Harassment Act.

8. In this case prima facie case has been made out against the petitioner, at the time of deciding the petition under Section 227 of Cr.P.C., the Court has to consider the records submitted by the prosecution under Section 173 of Cr.P.C. and not the defence taken by the accused. However, the main contention raised by the learned counsel for the petitioner is that since the sanction has not been obtained under clause 56 & 63 Madras Police Standing Orders the police officer cannot be prosecuted until they get the sanction from the competent authority.

9. As contended by the learned Government Advocate (Crl. Side) on the date of filing of the charge sheet i.e. on 13.02.2015 the petitioner was no longer the police officer or the public servant sanction of prosecution is not necessary either under the Madras Police Standing Orders or under Section 197 of Cr.P.C. Therefore, the contention raised by the learned counsel for the petitioner is not acceptable.

10. On reading of the order passed by the competent authority dated 21.10.2014, it is seen that the petitioner was removed from the service on the date of filing of the charge sheet and he was not the police officer therefore the Madras Police Standing Orders is not applicable to the petitioner. Though the learned counsel for the petitioner would submit that the sanction of prosecution has to be obtained before registering the case. This contention cannot be accepted for the reasons that the sanction of prosecution is necessary only to prosecute the public servant or the police officer not for filing the case or investigation.

11. Therefore, after investigation, the respondent police filed a charge sheet before the learned Sessions Judge on that date since he was not in service the sanction has not been obtained from the competent authority. So in this case before filing the charge sheet, the petitioner was removed from the service and he was not the police on the date of filing charge sheet. Therefore, the Madras Police Standing Orders will not be applicable to the petitioner. At the time of framing of charge the Court has to see the records filed by the prosecution under Section 173 of Cr.P.C. and not the defence taken by the accused. The probative value of the evidence need not be gone in to at this stage.

12. Reading of the charge sheet and records filed by the prosecution under Section 173 of Cr.P.C., prima facie case has been made out against the revision petitioner to proceed further. Therefore, under these circumstances, there is no merit in this Revision and the same is liable to be dismissed.

13. Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ebsi/kas

To.

1. Fast Track Court/Mahila Court,
Krishnagiri.
2. The Deputy Superintendent of Police,
CBCID,
Krishnagiri.
3. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.249 of 2016
and
Cr1.M.P.No.1730 of 2016

nr 29/03/2019

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