

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9087 of 2014
and
Crl.M.P.No.1 of 2014

1. A.S.Thahira
Inspector of Police,
All Women Police Station,
Uthukkottai,
Tiruvallur District.
2. Gnana Amudha,
Head Constable, T.P.No.306,
Arani Town Police Station,
Arani, Tiruvannamalai District. Petitioners

Vs.

E.LakshmananRespondent

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.60 of 2014 pending on the file of Judicial Magistrate, Arani, Tiruvannamalai District and quash the same.

For Petitioners : Mr.J.Ashok
For Respondent : M/s.Parigopal

O R D E R

This Criminal Original Petition has been filed by the petitioner seeking to quash the proceedings in C.C.No.60 of 2014 pending on the file of the learned Judicial Magistrate, Arani, Thiruvannamalai District.

2. The petitioners are arrayed as accused in the complaint in C.C.No.60 of 2014, on the file of the learned Judicial Magistrate, Arani, Thiruvannamalai District, for the alleged offences under sections 166 and 506(ii) IPC. The respondent herein, is an accused (i) in Crime No.8 of 2012 on the file of the Inspector of Police, All Women Police Station, Arani, Thiruvannamalai District, (ii) Crime No.66 of 2013 on the file of the Sub Inspector of Police, Arani Town Police Station, Thiruvannamalai District, and (iii) Crime No.520 of 2013 on the

file of the Sub Inspector of Police, Arani Town Police Station, Thiruvannamalai District.

3. The respondent herein married one D.Valli on 05.09.2001. After the marriage, some problems arose between the two with regard to the respondent's demand of dowry on account of his greed. The wife of the respondent is said to have put into cruelty and harassment in the hands of the respondent and hence she had lodged several complaints before the jurisdictional police and to the higher Authorities. Though initially when the complaints were before the first petitioner/Inspector of Police, she dealt with the same in accordance with law. There were also exchange of notices between the two. But, on enquiry, the respondent was found guilty of harassing his wife causing cruelty both physically and mentally. Unable to succeed in his attempts, the respondent started influencing the petitioners to get rid of the criminal cases against him. Since the petitioners did not budge to his illegal demands, the respondent started making complaints against the petitioners herein with false and baseless allegations that the 2nd petitioner has threatened by the respondent on behalf of the first petitioner to withdraw his application under the R.T.I. Act.

4. It is pertinent to note that the respondent had preferred a complaint against his wife vide C.S.R.No.313 of 2013. The petitioners are to state that the said case has been registered in Crime No.49 of 2014 on the file of the Sub-Inspector of Police, Arani Town Police Station, Thiruvannamalai District.

5. The respondent had levelled a false and vexatious allegations that the first petitioner was bribed for not taking necessary steps on the complaint of a third party one Revathy. The petitioners are to state at this juncture, that the said Revathy had preferred a complaint against six accused for the alleged offences under sections 417, 343 and 506(i) of IPC and the same had been registered a case in Crime No.11 of 2013 on the file of the Inspector of Police , All Women Police Station, Arani, Thiruvannamalai District. Since the complainant Revathy had not turned up for enquiry in the above said case, further action was dropped in the said case on 14.06.2013. Though, the respondent is a stranger to the case in Crime No.11 of 2013, he had managed to level allegations about this case in his complaint and hence the petitioners are constrained to disclose about the case in Crime No.11 of 2013.

6. On a reading of the complaint in C.C.No.60 of 2014 on the file of the learned Judicial Magistrate, Arani, Thiruvannamalai District, it is clear that no offence of

criminal nature is made and as such there is no material to substantiate the case of the respondent. No illegal act constituting the offences under sections 166 and 506(ii) IPC are made out in the complaint filed by the respondent. The petitioners being public servants have discharged their duties in a fair manner without inclining to any sides on account of their investigation.

7. The petitioners are to state that they are sheltered under Section 197 of CrPC and as such any complaints against them require legal sanction from the State. In the absence of such legal sanction, the learned Judicial Magistrate cannot take cognizance of such complaints. In the present case, the learned Judicial Magistrate, Arani, though initially returned the complaint on the ground of maintainability had subsequently without appreciating the legal position had gone ahead with the complaint preferred by the respondent herein. On 04.03.2014 passed the order by the learned Judicial Magistrate, Arani, in unnumbered Crl.M.P without even affording an opportunity to the petitioners of being heard thereby violating the principles of natural justice. The learned Judicial Magistrate, Arani ought to have noticed the petitioners calling for their objections in the said unnumbered Crl.M.P. before passing such orders taking cognizance of the complaint filed by the respondent. The learned Judicial Magistrate, Arani misunderstood the legal position of the judgment reported in "2012 (1) LW (Crl) 621" and had without proper application of mind arrived at a conclusion that this was a fit case to take cognizance against the petitioners herein thereby going ahead in stating that prima facie case is made out against the petitioners herein arraying the petitioners as accused for the alleged offences under Sections 166A and 506(i) of IPC.

8. The learned counsel further submitted that the allegations made in the complaint of the respondent does not prima facie constitute any offence falling under any provisions of law and as such there is no material available with the respondent to show that the petitioners are guilty of the aforesaid offences. It is clear that the complaint is absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is a sufficient ground for proceeding against the petitioners. The above facts would clearly show that the respondent had maliciously instituted the complaint with an ulterior motive for wreaking vengeance against the petitioners only with a view to spite them only due to his own private and personal grudge and under these circumstances, it is just and necessary that the complaint in the above C.C. is to be quashed in the interest of justice, failing which the petitioners will be put to irreparable loss and immense hardship. Hence, the circumstances

warrant that the complaint filed in the above C.C.No.60 of 2014 be quashed so as to enable the petitioners secure the ends of justice.

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

10. The petitioners are the accused in the private complaint alleged by the respondent before the learned Judicial Magistrate, Arani, Thiruvannamalai District. Though it was returned for the reason that how the complaint is maintainable before this Court without sanction of the State Government as against the public servant as 197 of CrPC., Thereafter, it was represented with the citation reported in 2012 (1) LW (Cr1) 621, in which this Court to decide to hold that the jurisdiction of the learned Judicial Magistrate with the Chief Judicial Magistrate including other Magistrate also the jurisdiction vested to take cognizance.

11. The said judgment nowhere communicated about the sanctioning to prosecute as against the Government Servant. Therefore, the present complaint has been taken cognizance without any sanction as contemplated under Section 197 CrPC. For the sake of convenience, Section 197 of CrPC is 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 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 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 while 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 sub-section (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, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for 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 (1) 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.

12. However, no sanction has been obtained to prosecute the petitioners by the respondent before initialization of private complaint as against the petitioners. Therefore, the present complaint lodged before the learned Judicial Magistrate, Arani, Thiruvannamalai District, taking cognizance as against the petitioners without sanction under Section 197 of CrPC., Therefore, the entire proceedings are vitiated as against the petitioners and it cannot be sustained as against the petitioners.

13. In view of the above discussion, the Criminal Original Petition is allowed and the entire proceedings in C.C.No.60 of 2014 pending on the file of the learned Judicial Magistrate, Arani, Tiruvannamalai District, is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

msm

To

1. The Judicial Magistrate, Arani, Tiruvannamalai District.
2. The Public Prosecutor, High Court, Madras.

+1 CC to Mr.J.Ashok, Advocate sr 27345.

CrI.O.P.No.9087 of 2014

BS (CO)
SP(07/06/2019)