

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4645 of 2017
and Crl.MP.Nos. 3507 of 2017 & 14053 of 2018

S.F.Akbar

... Petitioner

Vs.

1. The State rep by
The Inspector of Police,
E-3, Teynampet Police Station,
(Law & Order)
Chennai.

2. Siva Elango ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the impugned order and subsequent summons issued by the XVIII Metropolitan Magistrate Court, Saiapet, Chennai in C.M.P.No.1666 of 2016 in C.C.No.975 of 2015 dated 09.01.2017 and set aside the same as illegal.

For Petitioner : Mr.S.Ravee Kumar
for Mr.S.Prabakar

For Respondents

For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.D.Asenthamani

सत्यमेव जयते

O R D E R

This petition has been filed to quash the summon issued in C.C.No.975 of 2015 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. The learned counsel appearing for the petitioner submitted that the petitioner was the State Information Commissioner and superannuated in the year 2015. He had earlier served as the District Judge in the Tamil Nadu State Judiciary. During his tenure in Tamil Nadu State Information Commission in the discharge his official responsibility, the Chief Information Commissioner constituted a Bench along with the petitioner as

State Information Commission to hear and dispose of statutory second appeals filed by the claimants. On 07.01.2015, at the time of hearing of the appeal in case No.34239/2014, the second respondent willfully and deliberately abstained from aiding the commission in the disposal of the case all the while staying back in the enquiry hall-unmoving and immovable. In the effect to that, he prevented the Commissioner to dispose of other case as well as he refused to leave the enquiry hall, even after his case was adjourned for passing orders. The Secretary of the Commissioner was informed and in charge of his responsibility, who appear to have preferred a complaint to the police. In that complaint, investigation completed and charge sheet laid in C.C.No.975 of 2013 and prosecution witnesses over and in fact, the questioning under Section 313 of Cr.P.C. also over. The said case is posted for defence evidence. While being so, the second respondent filed a petition seeking permission to examine the petitioner as a defence witness.

2.1. He further pointed out that the Information Commission is a quasi judicial forum, when the Commissioner adjudicates the right of an individual asking information from the public authorities. As such, the Presiding Officer cannot be called upon to appear as a witness and to speak as a defence witness, in regard to what transpired in the course of quasi judicial enquiry, that too, all the orders passed by the authority is self explanatory.

2.2. Further the learned counsel submitted that the learned Magistrate without considering the provision of Section 243(2) of Cr.P.C., issued summons to the petitioner. The proviso under Section 243(2) of Cr.P.C., clearly stipulates that if the accused after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witnesses for the purpose of examination or cross examination or the production of any witness for the propose of examination or cross examination or the production of any documents or other thing, no Magistrate shall issue such process unless he considers that such application may be refused on that ground. It is clear that any witness shall not be compelled to witness for the purpose of vexation or delay, unless the Magistrate is satisfied that it is necessary for ends of justice.

2.3. He further submitted that in the impugned order passed in C.M.P.No.1666 of 2016, nowhere dealt with the said provision or proviso and the fact on it. He further submitted that the commissioner has passed an order disposing of the second appeal filed by the second respondent under the Right To Information Act and it reached its finality. Therefore, the second respondent wanted to examine indirectly, what he could not do directly from the petitioner. It is also against the provision

of Sections 21 and 23 of Right To Information Act, which saves the bonafide acts performed by the State Information Commissioner in the discharge of their statutory obligations. He also relied upon the judgment reported in AIR 1976 SCC 676 in the case of The Commissioner of Coal Mines Provident Fund Dhanbad and others Vs. J.P.Lalla sons and the judgment of the High Court of Kerela at Ernakulam in Crl.MC.No.2638 of 2008 in the case of P.I.Devasia and another Vs. Unnikrishnan and another.

2.4. The learned counsel further submitted that the petitioner is not in a position to move anywhere and he is suffering with old ailments. He also suffered with Community Acquired Pneumonia with Sepsis, Acute Exacerbation of Copd with severe Wheeze and Hypoxia, Systemic Hypertension, Diabetes Mellitus S/P Open heart surgery for Retrosternal Thyroid on replacement therapy and therefore he is not in a position to move anywhere. Therefore, he sought for quashment of the summon issued by the learned Judge.

3. Per contra, the learned counsel appearing for the second respondent/defacto complainant submitted that the second respondent is an accused in C.C.No.975 of 2015 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai. He filed an application in C.M.P.No.1666 of 2016 to examine the petitioner as defence witness, since at the time of occurrence, he was the Information Commissioner in discharge of his official responsibility, to hear and dispose of the statutory second appeals filed by the claimants. While being so, the second respondent preferred a second appeal before the Commission and the said second appeal was taken up for disposal. At the time of hearing, on false allegations that the second respondent abstain the Commissioner in the disposal of the cases and also refused to leave from the enquiry hall. Therefore, the false case has been foisted as against the second respondent for the offences under Sections 294(b), 353 and 506(i) IPC. Therefore, the petitioner was being an Information Commissioner of Tamil Nadu State, is the person who has seen the alleged occurrence and he is the main witness to the occurrence. In support of his side, the second respondent wanted to examine the petitioner. As such, the learned Magistrate considered the petition and rightly allowed the petition and also issued summon to the petitioner. Therefore, he prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that the application filed before the trial Court contains no provision of law. No particulars have been submitted in that petition and the learned Magistrate also without satisfying with the reason that was stated in the petition, mechanically allowed the petition filed by the second respondent and also issued summon to the petitioner. He further submitted that being an Information Commissioner, the petitioner

cannot be summoned to appear before the Magistrate Court. Therefore, he sought for necessary orders to be passed in this quash petition.

5. Heard Mr.S.Ravee Kumar, learned counsel appearing for the petitioner, Mr.D.Asenthamani, learned counsel appearing for the second respondent and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent.

6. The second respondent is an accused in C.C.No. 975 of 2015, having been taken cognizance, for the offences under Sections 294(b), 353 ad 506(i) of IPC. The case of the complainant is that on 07.01.2015, at the time of hearing of the appeal in case No.34239/2014, the second respondent abstained the Commissioner to pass any orders in the petition and also refused to go from the enquiry hall. The second respondent also scolded with filthy language all the members. In that case, the prosecution witnesses was closed and in fact under Section 313 of Cr.P.C. questioning was also over and now it is posted for defence witnesses. At this stage the second respondent filed an application without mentioning any provision of law. The learned Magistrate without even stating any reasons for his satisfaction, mechanically allowed this petition and also issued summon to the petitioner.

7. As pointed out by the learned counsel appearing for the petitioner, as per Section 243(b) of Cr.P.C., when the Magistrate considered an application filed by the accused, it has to be seen that if it is made for the purpose of vexation or delay or departing the ends of justice. At the same time, the Magistrate necessarily has to be satisfied before issuing summon to the witnesses. It is seen from the impugned order that it is bereft of facts and no reasons mentioned by the learned Magistrate for satisfying to issue summon to the petitioner.

8. The learned counsel appearing for the petitioner relied upon the judgment of the High Court of Kerela at Ernakulam in CrI.MC.No.2638 of 2008 in the case of P.I.Devasia and another Vs. Unnikrishnan and another, which reads as follows :-

"5. I find merit in the plea of the 2nd petitioner. Under Section 254(2) Cr.P.C, the learned Magistrate certainly has discretion to issue summons to any defence witness whom the accused wants to examine. But satisfactory reasons must be shown to exist as to why and for what purpose such witness has to be examined. Without application of mind, no witness can be summoned by a Magistrate under Section 254(2) Cr.P.C. In the instant case, I first

of all take note of the fact that the accused had not issued any reply to the notice of demand. I have been taken through the cross examination of PW1. No specific role is assigned for the wife of the complainant with the transaction in question. Of course, there is a contention that the wife of the complainant had entered into an agreement with the accused. A copy of that agreement was shown to the complainant when he was in the box. But the same was not marked. On my request, a copy of that agreement dated 21.06.2000 is shown to me. The recitals in that agreement show that the cheque involved in this case ie. 678149 has nothing to do with that transaction and the said agreement recites that another cheque bearing No.813678 dated 22.06.2000 was handed over by the accused to the 2nd petitioner in that transaction. That cheque has nothing to do with the cheque involved in this prosecution."

As held in the above judgment, the learned Magistrate passed orders without application of mind and without stating any statutory reasons, mechanically allowed the petition and issued summon to the petitioner. Therefore, the order impugned in this petition cannot be sustained and issuance of summons also liable to be set aside.

9. Accordingly, this Criminal Original Petition stands allowed and the impugned order passed in Crl.M.P.No.1666 of 2016 in C.C.No. 975 of 2015 dated 09.01.2017 and the subsequent summon issued by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai are hereby quashed. Considering the fact that the case is of the year 2015, the learned Magistrate is directed to complete the trial within the period of three months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

rts

To

1. The XVIII Metropolitan Magistrate Court,
Saidapet, Chennai

2. The Inspector of Police,
E-3, Teynampet Police Station,
(Law & Order)
Chennai.

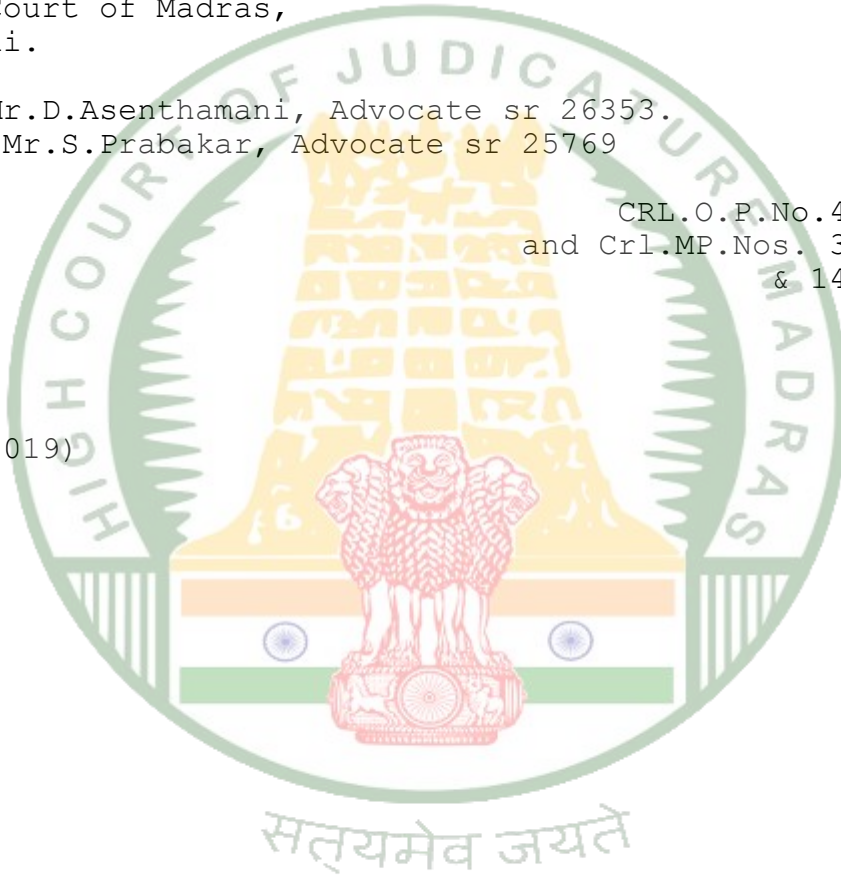
3. The Public Prosecutor,
High Court of Madras,
Chennai.

+1 CC to Mr.D.Asenthamani, Advocate sr 26353.

+3 Ccs to Mr.S.Prabakar, Advocate sr 25769

CRL.O.P.No.4645 of 2017
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GJII (CO)
SP(11/04/2019)



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