

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.27761 of 2017
and Crl.M.P.Nos.15815 of 2017 & 2214 of 2019

1.T.Varadharajan

... Petitioner

Vs.

1.The Inspector of Police,
Sooramangalam Police Station,
Salem District

2.Radhakrishnan

.... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the record which is pending before the Inspector of Police, Sooramangalam Police Station, Salem in Crime No.635 of 2013 dated 25.11.2013 and quash the same.

(Crime No. amended as per the order of this Court dated 12.02.2019 in Crl.M.P.No.2211 of 2019 in Crl.O.P.No.27761 of 2017)

For Petitioner : Mr.Neethidurai

For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For RR2 : Mr.R.Marudhachalamurthy

ORDER

This petition has been filed to quash the FIR in Crime No.635 of 2013 dated 25.11.2013 on the file of the first respondent registered for the offences under Sections 120(b) 384, 176 I.P.C.

2. Mr.Neethidurai, the learned counsel for the petitioner would submit that the petitioner joined in an Office of the HR&CE Department as Assistant Commissioner from 01.02.2010 to 31.07.2012. In the course of his management, he received representation in respect of non payment of rent for temple property. Immediately he had taken action by terminating the electricity connection and directed the local body authorities not to issue any property tax receipts and also initiated eviction proceedings by filing petition under Section 78 and 79 of HR&CE Act, 1959 thereby a number of encroachers were evicted

and the property belongs to the temple was taken possession by the petitioner. He discharged his duty without any delay and dereliction. Therefore, the complaint lodged by the second respondent is a false one and only with vengeance as against the petitioner, the present complaint has been foisted as against him and two others. Further submitted that the offence under Section 176 I.P.C. has been registered as against the Government servant, that too on private complaint by third party. It is not sustainable in view of Section 195 (1) Cr.P.C. Insofar as the offence under Section 384 I.P.C. is concerned, there is absolutely no allegation made against the petitioner about the losses of valuable by anyone and there is no aggrieved person about the losses and valuable property. Without any complaint from any official, for non compliance of the official duty, the first respondent without even conducting any enquiry mechanically registered the case for the offences under Section 176 as against the petitioner. He also relied upon the judgment in the case of State of UP Vs. Mata Bhikh and Others reported in (1994) 4 SCC 95, and the judgment of the Hon'ble Supreme Court of India in Criminal Appeal No.211 of 2019 dated 04.02.2019 in the case of Sh.Narendra Kumar Srivastava Vs. The State of Bihar & Ors.

3. Per contra, Mr.R.Marudhachalamurthy, the learned counsel for the second respondent would submit that while the petitioner was working as Assistant Commissioner of HR&CE Department, he supported all the illegal encroachers upon the temple property. He did not take any action on the complaint sent by the second respondent. In this regard, he lodged a complaint and the first respondent did not take any action and as such he approached this Court in Crl.O.P.No.21634 of 2013 and this Court directed the first respondent to register a case on his complaint. Therefore, the illegality committed by the petitioner is clearly attracted the offence under Sections 384 and 176 I.P.C. as against the petitioner. He along with other two accused persons conspired together and committed the offence. Therefore, he vehemently opposed this petition and prayed for dismissal of the same.

4. Mr.M.Mohamed Riyaz, Additional Public Prosecutor submitted that there are totally three accused in which the petitioner is arrayed as second accused. The second respondent lodged a complaint alleging that one, Arulmigu Senraya Perumal Temple which is under the control of HR& CE Department own landed property in which there are certain encroachers. Therefore, he lodged a complaint before the petitioner / second accused who was working as Joint Commissioner of HR&CE Department and the third accused who was working as Inspector of HR&CE Department. But after receipt of the same, they did not take any action as against the encroachers. Further alleged

that the accused persons collected rent from the encroachers and did not take any action as against them. Further he would submit that they enquired several persons who are encroachers of the said temple land. Therefore he prayed for dismissal of this quash petition.

5. Heard, Mr.Neethidurai, the learned counsel for the petitioner, Mr.R.Marudhachalamurthy, learned counsel for the second respondent and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent.

6. There are three accused persons in Crime No.635 of 2013 registered for the offences under Sections 120(b) 384, 176 I.P.C. in which the petitioner arrayed as second accused. The crux of the complaint is that when the petitioner was working as Assistant Commissioner of HR&CE Department in Arulmigu Senraya Perumal Temple, Salem, he did not take any action against any complaint submitted by the second respondent in respect of the removal of encroachers from the temple property. Further alleged that the accused persons have received rent from the encroachers and did not take any action against them. Therefore, he filed direction petition before this Court in CrI.O.P.No.21634 of 2013 and as per the direction of this Court, the first respondent registered a case against the petitioner and two others.

7. The point for consideration is that the offence under Section 176 I.P.C., omission to give notice or information to public servant by person legally bound to give it. It is mandatory that any such complaint would be made only by higher authority to the petitioner in view of provision under Section 195 (1) Cr.P.C reads as follows:

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence -

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when

such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate"

8. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in Criminal Appeal No.211 of 2019 dated 04.02.2019 in the case of Sh.Narendra Kumar Srivastava Vs. The State of Bihar & Ors.

"20. As already mentioned, clauses under Section 195(1)(b) of the Cr.P.C. i.e. subsection 195(1)(b)(i) and subsection 195(1)(b)(ii) cater to separate offences. Though Section 340 of the Cr.P.C. is a generic section for offences committed under Section 195(1)(b), the same has different and exclusive application to clauses (i) and (ii) of Section 195(1)(b) of the Cr.P.C.

21. In Sachida Nand Singh (supra) relied on by the learned counsel for the appellant, this Court was considering the question as to whether the bar contained in Section 195(1)(b)(ii) of the Cr.P.C. is applicable to a case where forgery of the document was committed before the document was produced in a court. It was held:

"6. A reading of the clause reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. There is no dispute before us that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. There is also no dispute that if forgery was committed with a document which has not been produced in a court then the prosecution would

lie at the instance of any person. If so, will its production in a court make all the difference?

xxx xxx xxx

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)

(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court. Accordingly we dismiss this appeal."

22. In Sachida Nand Singh (supra), this Court had dealt with Section 195(1)(b)(ii) of the Cr.P.C unlike the present case which is covered by the preceding clause of the Section. The category of offences which fall under Section 195(1)(b)(i) of the Cr.P.C. refer to the offence of giving false evidence and offences against public justice which is distinctly different from those offences under Section 195(1)(b)(ii) of Cr.P.C, where a dispute could arise whether the offence of forging a document was committed outside the court or when it was in the custody of the court. Hence, this decision has no application to the facts of the present case.

23. The case in hand squarely falls within the category of cases falling under Section 195(1)(b)(i) of the Cr.P.C. as the offence is punishable under Section 193 of the IPC. Therefore, the Magistrate has erred in taking cognizance of the offence on the basis of a private complaint. The High Court, in our view, has rightly set aside the order of the Magistrate. However, having regard to the facts and circumstances of the case, we deem it proper to set aside the costs imposed by the High Court."

9. The object of the above section is to protect person from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill-will or frivolity of disposition at the instance of private individuals for the offences specified therein. Therefore, it is mandatory that the Court has no jurisdiction to take cognizance of any of the offence mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the section without which the trial under Section 176 I.P.C. becomes void ab initio.

10. Insofar as the offence under Section 384 I.P.C. is concerned, there is no specific allegation or averments made in

the complaint to attract offence under Section 384 I.P.C. as against the accused persons. The offence under Section 384 I.P.C. reads as follows:

"384. Punishment for extortion -

Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

12. The extortion is defined under Section 383 I.P.C. reads as follows:

"383. Extortion -

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

11. On bare reading of the FIR, there is no iota of averments or allegations to attract the offence under Section 384 I.P.C. When the other offence under Section 176 and 384 I.P.C. are not made out, the offence under Section 120(b) also does not made out as against the petitioner as such the entire proceedings is nothing but clear abuse of process of law and it cannot be sustained as against the petitioner.

12. In view of the above discussion, this Criminal Original Petition is allowed and the FIR in Crime No.635 of 2013 dated 25.11.2013 on the file of the first respondent is quashed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

lok
To

Sub Assistant Registrar

1. The Inspector of Police,
Sooramangalam Police Station, Salem District
 2. The Additional Public Prosecutor, High Court of Madras.
- +1 cc to Mr.V.Sugendran, Advocate, S.R.No.15700
+1 cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.15348

Crl.O.P.No.27761 of 2017
and Crl.M.P.Nos.15815 of 2017 & 2214 of 2019

AD(CO)
SSM(28/02/2019)