



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2019

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

CRL.O.P(MD)Nos.1005 and 1541 of 2019

and

CRL.M.P(MD)Nos.431, 432, 789 and 790 of 2019

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CRL.O.P(MD)No.1005 of 2019:

1.R.Kanna Gandhi, S/o.Ramasamy,
Sub Inspector of Police,
Viruvedu Police Station,
Nilakottai Taluk, Dindigul District.

2.Senthil Pandian, S/o.Iyyam Perumal,
Head Constable,
Viruvedu Police Station,
Now, in Pattiveeran Patti Police Station,
Dindigul District. : Petitioners/Accused 1 and 4

Vs.

Ranjith : Respondent/Defacto Complainant

CRL.O.P(MD)No.1541 of 2019:

1.S.Arun kumar, S/o.Selvam,
Sub Inspector of Police,
Saptur Police Station,
Presently working in Valanthur Police station,
Usilampatti Taluk, Madurai District.

2.Mahalingam, S/o.Govindan,
Special Sub Inspector,
Saptur Police Station,
Madurai District. : Petitioners/Accused 2 and 3

Vs.

Ranjith : Respondent /Defacto Complainant

Common Prayer: Petitions filed under Section 482 of Cr.P.C, to call for the entire records in S.T.C.NO.1109/2018 on the file of the learned Judicial Magistrate, Nilakottai and quash the same.



(in both petitions)

For Petitioners : Mr.K.Saravanakumar

For Respondents : Mr.P.Pethu Rajesh

COMMON ORDER

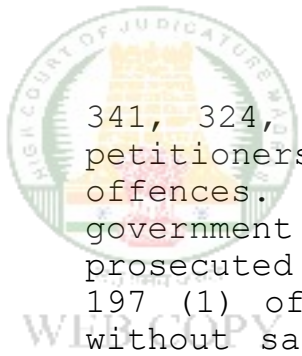
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Both petitions have been filed to quash the proceedings in S.T.C.No.1109 of 2018 on the file of the learned Judicial Magistrate, Nilakottai.

2.The learned counsel for the petitioners submitted that the respondent lodged a complaint before the Inspector of Police, Viruveedu Police Station, Saptur alleged that he was illegally taken into custody by the petitioners herein and they have registered a case against the respondent in Crime No.139 of 2017, for the offences punishable under Sections 341, 294(b), 353 and 506(ii) IPC. The respondent was taken into the hospital for the injuries sustained by the petitioners. The Doctor gave a report 'no external injuries'. Thereafter, the respondent was produced before the learned Judicial Magistrate, Nilakottai and the learned Magistrate remanded the accused to Judicial custody. The Inspector of Police conducted an enquiry and closed the same as 'mistake of fact'. Thereafter, the respondent filed a private complaint before the learned Judicial Magistrate, Nilakottai against the petitioners and other two police officials and the same has been taken cognizance in S.T.C.No.1109 of 2018.

3. The case of the prosecution is that one Murugalakshmi, who is the wife of Nagaraj, gave a complaint stating that her two sovereign gold chain was stolen and a case has been registered by the Sub Inspector of Police, Saptur, in Crime No.144 of 2015 for the offence punishable under Section 380 IPC. Subsequently, they arrested one Ramaraj @ Puli son of Ramakrishnan. On his confession, it was found that the stolen jewels were pledged for the loan to one Sathis Kumar and the said Sathiskumar working in ADR Enterprises (gold loan pawn store) and he was enquired by the police officials. The shop owner, namely, Arun Jothi called his brother, namely the respondent. On the enquiry, the police officials were obstructed by the respondent and also threatened him with deadly weapons with dire consequences. Therefore, on the complaint, the Inspector of Police viruvettu Police Station registered the case in Crime No.139 of 2017 for the offence punishable under Sections 341, 294(b), 353 and 506 (ii) IPC. Thereafter, the respondent was also arrested and remanded to judicial custody, while arresting the respondent the concerned police have followed all the procedure as contemplated under the criminal procedure code.

4.The learned counsel for the petitioners submitted that the petitioners are no way connected with the offence alleged by the prosecution. He further submitted that the offence under Sections



341, 324, 323 and 294(b) are not at all attracted as against the petitioners, since there are no ingredients to attract those offences. He further submitted that the petitioners are being the government servants, without any sanction obtained by the respondent prosecuted the petitioners for the above said offence. The Section 197 (1) of Cr.P.C is clearly directed the petitioners and as such without sanction the entire proceedings has been initiated and as such it is liable to be set aside.

5. In this regard, the learned counsel for the petitioners relied upon the judgment reported in **1987 SC 722** and unreported the judgment in **Crl.O.P.No.16671 of 2011**, dated **06.03.2019** and also **Crl.O.P.No.14744 of 2012**, dated **19.12.2017**.

6. Per contra, the learned counsel for the respondent submitted that there are specific allegations as against the petitioners to attract the offence under Sections 294(b), 323, 324 and 506(ii) IPC/. He further submitted that admittedly the petitioners are Sub Inspector of Police and Special Sub Inspector of Police. Therefore, the immunity under Section 197 of Cr.P.C are not applicable to the petitioners. Therefore, the sanction is absolutely not necessary to prosecute as against the petitioners. The learned Magistrate have rightly taken cognizance as against the petitioners without any sanction. He also relied upon the judgments reported in **AIR 1935 Madras 442**, **2005 CRI.L.J 4665** and **2019 (2) MWN (Cr.) 524 (SC)**.

7. The Honourable Supreme Court and this Court repeatedly held that the sanction under Section 197 of Cr.P.C is not at all applicable to the petitioners. Since the petitioners being not public servants removable from their office saved by or with sanction of Government. He further submitted that the question as to whether the accused persons acted or perpetrate to act in discharge of their official duty need not to gone into. Therefore, the present petitions have been filed only to protract the proceedings and it is liable to be dismissed.

8. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

9. The petitioners in both petitions are arrayed as A1 to A4. The respondent lodged a complaint before the Inspector of Police, Virudveedu Police Station to take appropriate action as against the petitioners. After investigation, the complaint lodged by the respondent dated 21.11.2017 closed as false one. Therefore, the respondent filed a private complaint before the learned Judicial Magistrate, Nilakottai. The learned Magistrate conducted enquiry and have not been satisfied with the allegations and the evidence recorded from the witnesses and taken cognizance for the offence under Sections 294(b), 323, 324 and 341 of IPC as against the



petitioners herein.

10. According to the petitioners, the respondent was arrested by the petitioners in Crime No.139 of 2017 for the offence under Sections 341, 294(b), 353 and 506(ii) IPC and he was remanded to judicial custody. While arresting the respondent, the petitioners have followed all the procedures laid down under the Criminal Procedure Code.

11. The learned counsel for the petitioners would submit that there are no materials to attract the offence has taken cognizance as against the petitioners. The petitioners are Government servants and at the time of alleged occurrence, they were working as Sub Inspector of Police, and Special Sub Inspector of Police in the Saptur Police Station. Therefore, they have been protected under Section 197 of Cr.P.C and as such before taking cognizance the respondent ought to have obtained sanction to prosecute as against the petitioners.

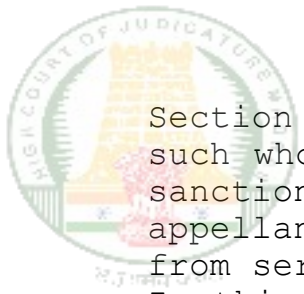
12. In this regard, the learned counsel for the petitioners relied upon the unreported judgment in Crl.OP.No.14744 of 2012. The relevant paragraph extracted here under:

"6. It is the admitted case of the petitioner that the Courts below had dismissed the complaint by observing that in the absence of sanction as contemplated under Section 197 Cr.P.C, the proceeding against the government servants cannot be continued. In the present case, the respondents 1, 3 to 5 discharged their duties in the capacity of public servant by entertaining the complaint filed by the sixth respondent before the second respondent. Thereafter, they proceeded the investigation, after registering the case. Hence, the submission made by the learned counsel for the petitioner has no merits and without obtaining any sanction from the government for prosecution, filing case against R1 to R5 is bad in law and the petitioner did not show any miscarriage of justice for entertaining this petition under Section 482 Cr.P.C to interfere with the order passed by the Courts below."

13. This Court held that the sanction under Section 197 of Cr.P.C is attracted only in case whereby the public servants is removable from his office saved by or with sanction of Government. In the case on hand, the petitioners were working as Sub Inspector of Police and Special Inspector of Police and they are not holding on post where they could not be removed from service except by or with sanction of the Government. Therefore, the judgment relied upon by the petitioners is not applicable to the case on hand.

14. The learned counsel for the respondent relied upon the judgment reported in AIR 1984 SC 722. The relevant paragraph extracted here under:

<https://hcservices.ecourts.gov.in/cse/jites/> is very clear from this provision that this



Section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter even if it is held that appellant is a public servant still provisions of Section 197 are not attracted at all."

15.The learned counsel for the respondent relied upon the judgment reported in **AIR 1935 Madras 442**. The relevant paragraph extracted here under:

"...It is not reasonable to suppose that in framing the section it was intended that any such finedrawn distinctions should be observed, and we conclude accordingly that the expression.

"any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority,"

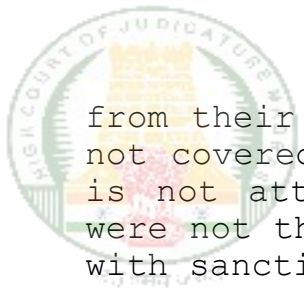
will not include public servants whom some lower authority has by law or rule or order been empowered to remove. In the cases now in point admittedly the Police Officers are removable by such authorities, the police constable involved in Cr.R.C.No.584 by the District Superintendent of Police and the Sub-Inspectors involved in the other cases by the Deputy Inspector-General of Police. The result, is that so far as this point is concerned, the Criminal Revision Petitions fail, and since it is the only point raised in CR.R.P.Nos.54, 765 773 and 829 of 934 we dismiss these petitions.

16.The learned counsel for the respondent also relied upon the judgement reported in **2019 (2) MWN (Cr.) 524 (SC)**.The relevant paragraph extracted hereunder:

" 18. No exception can be taken to the proposition as laid down in the above case. We having taken the view that Appellant being not removable by or saved with the sanction of the Government was not covered by Section 197 Cr.P.C. There was no necessity to consider any further as to whether acts of the appellant complained of were in discharge of official duty or not.

17.The Honourable Supreme Court in respect of above said judgments repeatedly held that the expression of any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority has by law or rule or order been empowered to remove.

18.In the case on hand, the petitioners being not removable



from their office or saved by or with sanction of the Government is not covered by Section 197 Cr.P.C. Therefore, Section 197 of Cr.P.C is not attracted to the petitioners. The case of the petitioners were not the persons, who were removable from his office saved by or with sanction of the Government.

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19. Therefore, the learned Magistrate have rightly taken cognizance for the offence under Sections 294(b), 323, 324 and 341 of IPC as against the petitioners. Insofar as the other grounds raised by the petitioners have to be considered only during the trial before the trial Court.

20. In view of the above, these petitions are liable to be dismissed. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar(CS)

das

To

The Judicial Magistrate,
Nilakottai.

+2 CC to M/s.P.PETHU RAJESH, Advocate (SR-86803[F], SR-86803[F]
dated 16/09/2019)

CRL.O.P(MD)Nos.1005 and 1541 of 2019

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CRL.M.P(MD)Nos.431, 432, 789 and 790 of 2019

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