



BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED: 06.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.1443 of 2018

and

CrI.M.P. (MD) Nos.619 and 620 of 2018

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R.Shibu Kumar

... Petitioner/4th Accused

Vs

George Vinsly

... Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the proceedings in C.C.No.249 of 2012 on the file of the Principal District Munsif cum Judicial Magistrate, Eraniel and quash the same as illegal insofar as the petitioner is concerned.

For Petitioner : Mr.T.Lenin Kumar

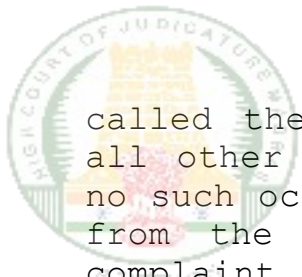
For Respondents : Mr.R.Mariappan

O R D E R

This petition has been filed to quash the entire proceedings in C.C.No.249 of 2012 on the file of the Principal District Munsif cum Judicial Magistrate, Eraniel as against the petitioner.

2.The learned counsel appearing for the petitioner would submit that there are totally 5 accused, who are all police officials, in which, the petitioner arraigned as A4. The allegation in the complaint is that on 13.09.2007, all the accused persons assembled unlawfully and conspired together and trespassed in to the property of the complainant and completely damaged the property. When the same was questioned by the respondent/defacto complainant, they scolded her with filthy language and also threatened her with dire consequences. They also attacked her with latti and the respondent sustained injuries. Therefore, she lodged a private complaint before the learned Chief Judicial Magistrate, Nagercoil as against all the police officials attached with Nanguneri Police Station as well as Karungal Police Station.

3.The learned counsel appearing for the petitioner would further submit that the petitioner while he was working as Sub Inspector of Police, PEW P.S., Nagercoil, Kanyakumari District, there was a complaint from the neighbour of the complainant with regard to the dispute between them. Therefore, the petitioner



called the defacto complainant for enquiry. The petitioner and all other accused persons never trespassed into her premises and no such occurrence was happened. Only to escape from the clutches from the law, the complainant has filed the present private complaint.

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4.The learned counsel would further submit that the admittedly, while the petitioner was discharging his official duty, the said occurrence took place and as such, he has been protected under Section 197(1) of Cr.P.C as before taking cognizance as against the petitioner, the complainant ought to have obtained sanction to prosecute as against the petitioner. Therefore, he prayed for quashment of the entire proceedings.

5.Per contra, the learned counsel appearing for the respondent/complainant submitted that the petitioner along with other accused persons have trespassed into the property of the complainant on 30.09.2007 and caused damage to her entire belongings. He further submitted that all the accused persons have also attacked her and scolded her with filthy language. Further, he submitted that they also threatened her to vacate the entire premises and go somewhere. Since she sustained injury, she had taken treatment in Kuzhithurai Government Hospital on 01.10.2007. For this occurrence, she lodged a complaint on 27.12.2007 before the higher authorities. However, no steps have been taken. Therefore, she was constrained to file the private complaint before the learned Judicial Magistrate, who, considered the facts and circumstances and found there is prima facie to attract the offence and taken cognizance and issued summons to all the accused persons and the trial is going on and hence, he prayed for the dismissal of the quash petition.

6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the materials available on records.

7.There are totally five accused, in which, the petitioner arraigned as A4. While he was working as Sub Inspector of Police, PEW P.S., Nagercoil, Kanyakumari District, he received a complaint from the neighbour of the complainant and therefore, he called for the complainant for enquiry. Admittedly, there is a dispute between the respondent and her neighbour. Therefore, while the petitioner was discharging his official duty, the occurrence took place. In such circumstances, before prosecuting the petitioner and other official accused, the respondent ought to have obtained sanction to prosecute the petitioner and other accused persons.

8.It is relevant to extract the provision of Section 197 of



"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"

9. In view of the above, the previous sanction is mandatory for taking cognizance as against the petitioner under Section 197 of Cr.P.C., which clearly states that no Court shall take cognizance of an offence on a public servant unless without any order of previous sanction. Here, in the case on hand, admittedly, without obtaining any sanction as against the petitioner and other accused, the respondent filed the private complainant and the same has been taken cognizance by the trial Court. Hence, the entire proceedings is vitiated on this ground alone and hence, the impugned complaint cannot be sustained.

10. In view of the same, this petition is allowed and the entire proceedings in C.C.No.249 of 2012 on the file of the Principal District Munsif cum Judicial Magistrate, Eraniel as against the petitioner is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar (CS)



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To

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The Principal District Munsif cum Judicial Magistrate,
Eraniel.

Order made in
CRL.O.P (MD) No.1443 of 2018
06.09.2019

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