



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WEB COPY

Crl.O.P.(MD)Nos.71 and 72 of 2018

and

Crl.M.P(MD) Nos.13,14,15 and 16 of 2018

1. The Divisional Engineer
Highways and Rural Works
Trichy Division
T.V.S.Toll gate, Trichy
2. State of Tamil Nadu
Rep. by Secretary to Government
Highways and Rural Works Department
Chennai- 600 009 ... Petitioners in both petitions

Vs

- 1.A.Ankusamy ... Respondent in Crl.O.P(MD No. 71/18
- 2.M.Vannimuthu ... Respondent in Crl.O.P(MD No. 72/18

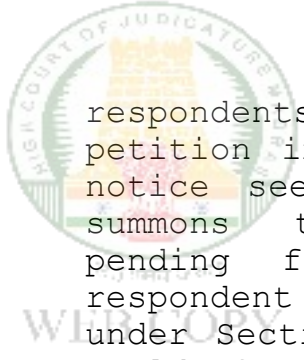
Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C. to quash the impugned private complaints in STC Nos. 873 and 874 of 2017 on the file of the learned Judicial Magistrate No.II, Trichy.

For Petitioners	:	Mr.K.Chellapandian
in both petitions		Additional Advocate General
		assisted by D.Muruganantham AGP
For Respondents	:	No appearance

ORDER

These Criminal Original Petitions have been filed to quash the private complaints in STC Nos.873 of 2017 and 874 of 2017 on the file of the learned Judicial Magistrate No.II, Trichy

2. The learned Additional Advocate General appearing for the petitioners would submit that the petitioners are arraigned as A1 and A2. The respondents filed a private complaint alleging that he was working as NMR Labour in the first petitioner's office and he was not regularised in service. Thereafter he approached the Administrative Tribunal in which there was a direction to the accused person to extend the benefit of the Government Order from the date on which other similarly placed persons were granted such benefits within a period of three months from the date of copy of this order. Even then the said benefit was not extended to the



respondents/defacto complainants. Thereafter he filed contempt petition in Cont.P(MD) No. 562 of 2012 and the respondent issued notice seeking appointment and compensation. On receipt of the summons the petitioners issued reply notice since the issue is pending for adjudication before this Court. Thereafter the respondent lodged a complaint to punish the petitioners for offences under Sections 44 and 166 of IPC by way of private complaint. He would further submit that the learned Magistrate even without looking into the allegations made against the petitioner mechanically have taken cognizance for the offences under Sections 44 and 166 of IPC. He further submitted that the first accused is working as a Divisional Engineer and the second petitioner is working as a Secretary to Government, therefore before taking cognizance the sanction is mandatory under Section 197 of Cr.P.C. Here without obtaining any sanction straight away the complainant has taken cognizance as against the petitioners. He further submitted that the respondent never lodged complaint as against the petitioners to commit the offence. Therefore the complaint itself is not maintainable.

3. Though notice served to the respondents, none appeared on behalf of the respondents.

4. Heard the learned Additional Advocate General appearing for the petitioners.

5. These petitions have been filed to quash the private complaint in STC Nos. 873 and 874 of 2017 for the offences under Section 44 and 166 of IPC. For sake of convenience the offences under Sections 44 and 166 of IPC are extracted hereunder:

"44. Injury. The word "Injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

166. Public Servant disobeying law, with intent to cause injury to any person- Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both".

6. On the perusal of the complaint lodged by the respondents, the allegations are that they have approached the Administrative Tribunal for regularising their services. This Court has directed the petitioners to extend the benefit of the Government Order from the date on which other similarly placed persons were granted such benefits within the stipulated period. Since it was challenged by way of Writ Appeal they did not comply the order. Therefore the respondent/defacto complainant also initiated contempt proceedings and it is pending for adjudication. For non-



compliance of the order passed by this Court the respondent/defacto complainant sought for compensation by issuing legal notice. Hence the complaint.

7. It is seen from the averments made in the complaint that the offence under Section 166 of IPC does not attract. Insofar as the offence under Section 44 of IPC is concerned it is definition clause for injury. In the case of hand even according to the complainant the petitioner have preferred appeal as against the order passed by this Court and it is pending for adjudication. Contempt petition file by the respondent/defacto complainant is also pending for adjudication.

8. As rightly pointed out by the learned Additional Advocate General before taking cognizance no sanction was obtained by the respondents/defacto complainant to prosecute the petitioners. When the petitioners were discharging their duties and there were allegations made and such criminal prosecution against the petitioners were initiated by the respondents is not maintainable without sanction from the State Government. Further it is seen from the complaint that no one is added as accused and both the petitioners were added in the official capacity and not on the personal capacity. It is unfortunate to state that the learned Magistrate even without looking into the name of the accused mechanically has taken cognizance as against the accused persons in the official capacity. Therefore the complaint itself is not maintainable as against the official capacity persons.

9. In view of the above discussions, these Criminal Original Petitions are allowed and the proceedings in STC Nos. 873 of 2017 and 874 of 2017 is hereby quashed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate No.II,
Trichy.

2. The Divisional Engineer
Highways and Rural Works
Trichy Division

<https://hcservices.eco.vts.gov.in/hcservices> District, Trichy



3. The Secretary to Government
State of Tamil Nadu
Highways and Rural Works Department
Chennai- 600 009

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

+1 CC to Mr.P.MURUGANANDAM, Advocate (SR-14940[I] dated
06/09/2019)

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