



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.14348 of 2014

and

M.P. (MD) No.1 of 2014

Chandrasekaran

... Petitioner/Accused No.1

Vs

A.Anandan

... Respondent/Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records in P.R.C.No.6 of 2014 on the file of the Judicial Magistrate, Karaikudi and quash the same.

For Petitioner : Mr.S.Chellapandian
for Mr.K.K.Ramakrishnan

For Respondent : Mr.D.Venkatesh

ORDER

The petitioner is shown as first accused in P.R.C.No.6 of 2014 on the file of the Judicial Magistrate, Karaikudi. To quash the same, this criminal original petition has been filed.

2. The respondent herein is the complainant. The case of the complainant is that the petitioner was the Inspector of Police, Kallal Police Station in the year 2013 and that, he along with the second accused and others forcibly took him to the station and caused him grievous injuries in order to extract confession from him.

3. The offence, even according to the complaint, is reasonably connected with performance of the petitioner's official duty. Hence, according to the petitioner, sanction of the Government is required for prosecuting him, even in case of police excess/atrocity (**AIR 2015 SC 2022**). The petitioner was the Deputy Superintendent of Police, when the cognizance of the offence was taken.

4. It is true that as per Section 197 of Cr.P.C., if the person concerned removable from his office only by 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 of the Government.

5. It is not in dispute that the Deputy Superintendent of Police is removable from his office by the Government. But a Police Inspector can be removed from his office by the order of the Deputy Inspector General of Police. Therefore, the benefit of Section 197 of Cr.P.C., will be available only in the case of DSP and those ranking higher and not in the case of Inspector of Police or any police official below.

6. The alleged occurrence took place on 17.08.2013. The complaint was lodged on 23.09.2013. The petitioner became the Deputy Superintendent of Police on 29.11.2013. Cognizance of the offence was taken only thereafter. It is true that on the date, when the offence was taken cognizance, the petitioner was the Deputy Superintendent of Police. But it is equally true that the petitioner was only the Police Inspector, when the complaint was filed. Hypothetically speaking, if the offence has been taken cognizance immediately after the complaint was filed, then the contention now urged would clearly not have been available to him.

7. In other words, if before 29.11.2013, the offence had been taken cognizance, the petitioner is not entitled to invoke Section 197 of Cr.P.C. Merely because, there was a delay in taking cognizance, the petitioner is now able to canvas the said point. It is a well settled legal maxim that act of the Court shall harm none "actus curiae neminem gravabit". Likewise, inaction on the part of the Court also shall harm none. In order words, the delay on the part of the Court in taking cognizance cannot prejudice the complainant. It is useful to compare Section 468 of Cr.P.C., in this regard. The said provision engrafts a bar against taking cognizance after lapse of the period of limitation. While interpreting the said provision, it was held that if before expiry of the period of limitation, final report was filed and there was delay in taking cognizance, Section 468 of Cr.P.C., will not be a bar. The same logic can be applied to the case on hand also. Therefore, the petitioner will have to necessarily establish his defence only in the regular trial and not take shelter behind Section 197 of Cr.P.C. Leaving all the other contentions open, this criminal original petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

/TRUE COPY/

Sub Assistant Registrar



To

1 THE JUDICIAL MAGISTRATE, KARAIKUDI.

2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.D.VENKATESH, Advocate (SR-87204[F] dated 17/09/2019)

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JM/10.10.2019/3P/4C