



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P.(MD)No.7851 of 2014 and

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

WEB COPY

1. Gajendra Babu
2. Chandra Sekar
3. Vijaya

... Petitioners/Accused No.1 to 3

Vs.

Mayandi

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the case in P.R.C.No.18 of 2014 on the file of the learned Judicial Magistrate No.VI, Madurai District and quash the same.

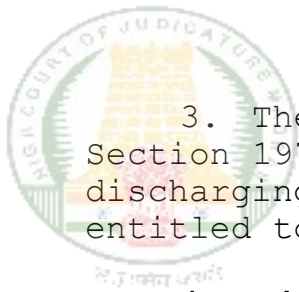
For Petitioners : Mr.R.Anand

For Respondent : Mr.T.Lajapathi Roy

ORDER

The petitioners herein are figuring as accused Nos.1 to 3 in P.R.C.No.18 of 2014 on the file of the Judicial Magistrate No.VI, Madurai. The respondent herein is the complainant. The respondent is an employee of the Tamil Nadu State Transport Corporation, Madurai. The petitioners herein are working as Branch Manager, General Manager and Senior Accountant in the said Corporation. The respondent herein lodged an Information before the E.I, K.Pudur(L&W) police station on 26.05.2013. Since the offence under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act 1989, was also disclosed, investigation was conducted by the Assistant Commissioner of Police, L&O, Anna Nagar, Madurai. The investigation officer closed the case as "Mistake of Fact". The respondent herein was put on notice. The respondent filed a protest petition. In his protest petition, the respondent herein not only arrayed the petitioners as accused Nos.1 to 3, but also the investigation officer as accused No.4. The learned Judicial Magistrate No.VI, Madurai, took cognizance of the offences and issued summons to the accused. The case was committed to the Special Court, in P.R.C.No.18 of 2014. At this stage, accused Nos.1 to 3 have filed this Criminal Original petition.

2. Heard the learned counsel on either side.



3. The learned counsel appearing for the petitioners invoked Section 197 of Cr.P.C. He submitted that the petitioners herein were discharging their official duties and that therefore, they are entitled to invoke Section 197 of Cr.P.C.

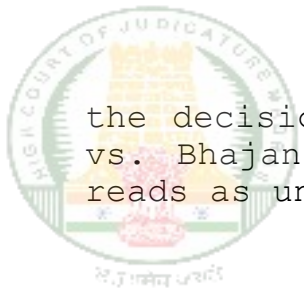
4. This submission of the petitioner's counsel cannot be accepted. As rightly pointed out by the learned counsel appearing for the respondent, the Hon'ble Supreme Court in the recent decision dated 19.08.2019, in C.A.No.503 of 2010(Bharat Sanchar Nigam Limited and others V. Pramod V.Sawant), had authoritatively held that the officials working in public corporations are not entitled to invoke Section 197 of Cr.P.C.

5. The learned counsel appearing for the petitioners however submitted that the impugned proceedings will have to be quashed for two reasons. Firstly, taking cognizance of the offence is vitiated by non-application of mind. Secondly, the impugned proceedings have been lodged as a counterblast and wreck vengeance on the petitioners herein.

6. As rightly pointed out, the respondent is an employee worked in Tamil Nadu State Transport Corporation, Madurai. It is stated that there was a wordy quarrel between the third petitioner/Vijaya and the respondent on 20.07.2012. It appears that the third petitioner who is the Accounts Officer had deducted a sum of Rs.5/- from the pay of the respondent and this was strongly objected by the respondent herein. Thereafter, the first petitioner herein who is the General Manager had issued a charge memo. Disciplinary action was initiated against the respondent. The respondent while cross examining the third petitioner herein had put certain scandalous suggestions to her. This forms the subject matter of one more charge memo. The second charge memo was issued on 07.05.2013.

7. The first information was lodged by the respondent herein only on 26.05.2013. This Court therefore safely comes to the conclusion that the very initiation of the criminal proceedings against the respondent herein is to wreck vengeance of the petitioners herein who are his administrative superiors.

8. It is true that this Court cannot assume the role of the trial Court to appreciate the evidentiary material on record. But then, I am not analysing or appreciating anything. The mere sequence of events speaks for itself. It is not in dispute that the respondent is an employee of Tamil Nadu State Transport Corporation and subordinate to the petitioners herein. It is not in dispute that he was issued with charge memos dated 20.07.2012 and 07.05.2013. His criminal case is clearly later in point of time. In the criminal case also, the respondent speaks about the occurrence that had taken place on 20.07.2012. The complaint has been lodged after a gap of 10 months. It is sufficient to indicate the nature of the complaint. The Hon'ble Supreme Court in



the decision reported in 1992 Supp. (1) SCC 335 (State of Haryana vs. Bhajan Lal) has laid down a set of parameters. One of them reads as under:-

“(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. As rightly pointed out by the petitioner's counsel, cognizance is in respect of the offences and not in respect of the offender. In this case, cognizance of the offence has been taken as many as 4 persons. Of course the fourth accused has not come before this Court. But then, this Court cannot shut its eyes. The fourth accused against whom the private complaint was filed by the respondent herein was none than the investigation officer. He was holding the post of the Assistant Commissioner of Police. The Assistant Commissioner of Police will be removable from his post only by the Government.

10. Even though the petitioners herein cannot invoke Section 197 of Cr.P.C., the fourth accused/ Assistant Commissioner of Police certainly invoke Section 197 of Cr.P.C. In this case, the Assistant Commissioner of Police had investigated into the complaint of the respondent herein and filed final report holding it as “Mistake of Fact”. He was discharging his official duty. It is only while discharging of the official duty the offence in question is said to have been committed. Therefore, without prior sanction from the Government, the impugned complaint could not have been taken on file by the Court below. In this case, it is further seen that the name of the fourth respondent has not been mentioned, he has been referred to only by designation. Yet cognizance of the offence has been taken. This shows the non-application of mind on the part of the Court below. Therefore, for these two reasons, namely, *mala fide* nature of the complaint and non-application of mind on the part of the Court below, I am constrained to quash the proceedings impugned in this Criminal Original petition. The benefit of this order will enure to the non-petitioner/4th accused also.

11. The Criminal Original petition stands allowed. Consequently, connected Miscellaneous petition stands closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

1. The Judicial Magistrate No.VI,
Madurai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.ANAND, Advocate SR-85165.
+1 CC to M/s.T. LAJAPATHIROY, Advocate SR-85351.

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