



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 18/11/2019

WEB COPY

PRESENT

THE HON`BLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD).No.13422 of 2015
and
M.P(MD).No.1 of 2015

1.Sabu Jacob
2.Vijayakumar
3.Periyakaruppan
4.Narayanan
5.Madhappan
6.Vallinayagam
7.Jayaraman
8.Manikandan
9.Kumaravel
10.Shenbagaselvan
11.R.Balasubramani
12.K.Mohan
13.R.V.Raja
14.M.Sugumaran
15.V.Sekar
16.P.Ganesan
17.K.Latheef
18.R.Mathialagan
19.R.Kumar

... Petitioners/Accused Nos. 1 to 19

Vs

Sarbudheen

... Respondent/Complainant

PRAYER : Petition is filed under Section 482 of Cr.P.C to call for the records and quash the proceedings in PRC.No.9 of 2013 pending on the file of the learned Judicial Magistrate VI, Trichy.

For Petitioners : Mr.N.Ananthapadmanaban
For Respondent : Ms.J.Maria Roseline

ORDER

The petitioners herein are personnel attached to Railway Protection Force (RPF). They are shown as accused in the private complaint filed by the respondent herein. The same has been taken up for committal in PRC No.9 of 2013 on the file of the learned Judicial Magistrate No.VI, Trichy.



2.The case of the respondent is that the petitioners herein forcibly entered into his shop on 10.05.2007 at about 07.30 p.m., and demanded payment of Rs.2,00,000/- (Rupees Two Lakhs only) as bribe amount. The respondent is dealing in Iron scrap. The petitioners are said to have told the respondent that unless he satisfied their demand for payment of illegal gratification, the respondent would be falsely implicated as if he is in unlawful possession of railway property. The respondent is said to have refused to submit to the illegal demand of the petitioners herein. Therefore, the respondent and two others were abused and forcibly taken away in their vehicle. A sum of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) was also taken by the petitioners herein. The respondent's brother thereupon sent a telegraphic complaint to the local Magistrate on the very next day i.e., 11.05.2007. As a counterblast, the respondent was implicated in Crime No.2 of 2007 registered under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966. To quash the said private complaint, this original petition has been filed.

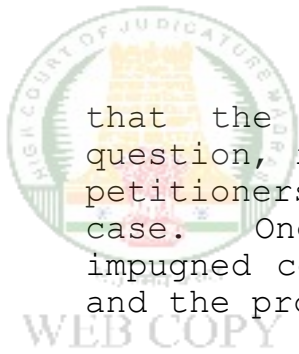
3.Heard the learned counsel on either side.

4.The learned counsel appearing for the petitioners submitted that when the criminal case registered against the respondent herein is still pending trial, the impugned prosecution could not have been entertained. He also took shelter behind under Section 20(3) of the Railway Protection Force Act, 1957.

5.Per contra, the learned counsel appearing for the respondent/complainant took me through the facts and pointed out that even though the occurrence report was given against the respondent herein on 12.05.2007, there is a complete silence about what happened on 10.05.2007. She drew my attention to the fact that the petitioners have admitted having raided the shop premises of the respondent on 10.05.2007, but then the occurrence report does not even refer to it. The learned counsel appearing for the respondent/complainant wanted me to draw appropriate interference against the petitioners from this. She also would point out that the brother of the complainant sent a telegraphic complaint on the very next day and therefore, this Court must hold that the criminal prosecution had already been initiated within three months from the occurrence. She also submitted that the case has serious human rights implication and that therefore, this Court should be slow to quash the impugned proceedings by invoking its inherent power.

6.I carefully considered the rival contentions.

7.It is not in dispute that the respondent is facing trial in C.C.No.48 of 2008 on the file of the learned Chief Judicial Magistrate, Pudukkottai for the offence under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966. The respondent is first accused. The respondent also would point out



that the respondent's brother, who had sent the telegram in question, is also figuring as accused in the said case. Some of the petitioners herein are figuring as prosecution witnesses in the said case. One cannot dispute that there is a direct nexus between impugned complaint/private complaint given by the respondent herein and the prosecution pending against the respondent.

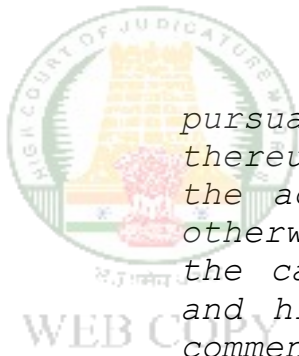
8.I am therefore of the view that unless the prosecution initiated against the respondent herein comes to a close, a counter complaint against the police personnel concerned would really be pre-mature. If complaints of the instant nature are entertained, in every case where an accused is facing prosecution, he would launch a counter complaint against the prosecuting official. Such a state of affairs cannot be entertained. Therefore, in the very nature of things, the respondent will have to wait till the conclusion of C.C.No.48 of 2008 on the file of the learned Chief Judicial Magistrate, Pudukkottai. It is always open to both the parties herein to adduce evidence as to what actually happened. If the learned trial Judge trying C.C.No.48 of 2008 is convinced that the offences have been committed against the person and property of the respondent, he can certainly direct prosecution against the erring officials. It is not as if the petitioners is having committed a crime will to go scot-free. All that, I am holding is that the respondent will have to wait for the logical outcome of C.C.No.48 of 2008 on the file of the learned Chief Judicial Magistrate, Pudukkottai.

9.I also find considerable force in the other contention urged by the learned counsel appearing for the petitioners. Section 20 of the Railway Protection Force Act, 1957 is a protective umbrella for the Railway Protection Force personnel. Section 20 of the RPF Act reads as under:

'20. Protection of acts of members of the Force-(1) In any suit or proceeding against any member of the Force for any act done by him in the discharge of his duties, it shall be lawful for him to plead that such act was done by him under the orders of a competent authority.

(2) Any such plea may be proved by the production of the order directing the act, and if it is so proved, the member of the Force shall thereupon be discharged from any liability in respect of that act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such order.

(3) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any member of the Force for anything done or intended to be done under the powers conferred by, or in



pursuance of, any provisions of this Act or the rules thereunder shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such proceeding and of the cause thereof shall be given to the person concerned and his superior officer at least one month before this commencement of such proceeding.'

10. Section 20(3) of the Railway Protection Force Act, 1957 clearly states that before launching any prosecution against the police personnel for the acts done by them, under the Act, two conditions will have to be satisfied. First one is that notice will have to be issued to the Superior Officer at least one month before commencing the prosecution. The other one is that the proceedings should have been initiated within three months after the complaint was committed. In this case, the impugned private complaint was lodged only in November 2009. The occurrence had taken place in October 2007. Thus, the impugned complaint was clearly instituted after the lapse of the limitation period. Of course, the complainant's counsel would seek to overcome the said technical argument by pointing out that when the occurrence took place on 10.05.2007, the complaint was given on the very next day to the jurisdictional Magistrate. But, I am not however impressed by the said argument. Of course, as pointed out by the complainant's counsel, a complaint as per under Section 2(d) of Cr.P.C can be an oral allegation or a written one. Therefore, she wants me to expansively interpret the said provision by including the complaint now given by the brother of the respondent herein. But then Section 2(d) of Cr.P.C will have to be read along with Section 200 of Cr.P.C. Chapter XV of Cr.P.C is all about complaints to Magistrate. Section 200 Cr.P.C speaks about the examination of complainant. One can therefore come to the safe conclusion that complaint will have to be made in person before the Magistrate concerned. In this view of the matter, sending of telegram to the Magistrate cannot constitute a complaint within the meaning of Section 2(d) of Cr.P.C.

11. I posed a specific and direct question to the learned counsel for the respondent as to whether any notice was given to the superior officer. In fact, when this case was taken up for hearing on 13.11.2019, 15.11.2019 and today (18.11.2019), the learned counsel appearing for the complainant was only in possession of some acknowledgment cards and she is not in a position to produce a copy of the notice sent to the superior officer. Therefore, I am of the view that the impugned complaint is hit squarely by Section 20(3) of the Railway Protection Force Act.

12. The impugned proceedings stand quashed and the Criminal Original Petition is allowed. It is necessary to reiterate that allowing of this criminal original petition will not have any bearing on the outcome of C.C.No.48 of 2008 on the file of the Chief



Judicial Magistrate, Pudukkottai.
merits and in accordance with
Miscellaneous Petition is closed.

It will be dealt with on its own
law. Consequently, connected

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Rmk

To

1.The Judicial Magistrate VI, Trichy.

2.The Chief Judicial Magistrate, Pudukkottai

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-99259[F] dated
19/11/2019)

ORDER IN
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Date : 18/11/2019

MK (18.12.2019) 5P 4C