

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.No.18771 of 2014
and
MP.No.1 of 2014

R.Mani Mohan

Senior Intelligence Officer,
Directorate General of Central,
Excise Intelligence,
Coimbatore Region Unit,
No.53, 1st Main Road,
Meena Estate, Sowripalayam,
Coimbatore 641 028.

... Petitioner/Accused

Vs.

1. State rep. by
Inspector of Police,
B-6, Police Station, Peelamedu,
Coimbatore District.

... Respondent/Respondent

2.M.Satish

... Respondent/Petitioner

Prayer: Petitions filed under Section 482 of Cr.P.C., seeking to call for the records of the Respondent relating to C.C.No.651 of 2013 on the file of the learned Judicial Magistrate VI, Coimbatore and quash the same.

For Petitioner : Mr.Rajinish Pathiyal, ACASC

For Respondents : Mr. C.Iyyapparaj, APP for R1

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ORDER

This criminal original petition has been filed seeking to call for the records of the Respondent relating to C.C.No.651 of 2013 on the file of the learned Judicial Magistrate VI, Coimbatore and quash the same.

2.The second respondent is working under M/s.V.V.Iron & Steel Company, Tuticorin, which is registered under the Companies Act, 1956. For the purpose of enquiry, the second respondent was summoned by the Central Excise Department on 14.5.2013 and accordingly, he went to the office on the said day. The petitioner is employed as Senior Intelligence Officer, Directorate General of Central Excise Intelligence, Coimbatore Region Unit, Coimbatore. In the course of official work, on 04.04.2013 a simultaneous search operation was conducted by DGCEI in several premises in relation to alleged Central Excise evasion and the company in the second respondent was working was also searched. During the course of investigation he sent a Summon to respondent/complainant. Accordingly the respondent/complainant appeared before the Central Excise Department along with his friends namely Subruraj and Charlin Jenish. On their appearance, the petitioner took them to a separate room and demanded huge amount as bribe and threatened the defacto complainant and attacked him and in the said attack the second respondent sustained chest pain and he was admitted in the Singanallur NG hospital and after taking treatment, he made a complaint before the the Head constable B6- Peelamadu police station. Thereafter, FIR was registered in Cr.NO. 773 of 2013 and after investigation they filed a case referring the complaint as mistake of fact, in which the petitioner has filed a petition, after receipt of the report on 14.5.2013, before the learned Magistrate to direct the responded to file complaint. Accordingly the impugned complaint was filed for the said allegations. Challenging the said impugned complaint, the present petition is filed.

3.The learned Counsel appearing for the petitioner submitted that the petitioner is a Senior Intelligence Officer, employed in Directorate General of Central Excise Intelligence, Coimbatore Region Unit, Coimbatore. In the course of his official work, on 4.4.2013, a continuous search operation was conducted by DGCEI in several premises in which the second respondent's Iron and Steel Company was one among them and several incriminating documents and CPUs were seized during the search operation. In the course of investigation several employees of the said M/S. V.V.Iron & Steel Co, Tuticorin were summoned under section 14 of the Central Excise Act, 1947 read with Sections 193 and 228 of IPC (herein after called as Act). One among the persons summoned was one M.Sateesh, who is the defecto complainant herein, working as Stores Assistant of the said company and who was said to have operated one of the CPUs seized during the search operation. After receipt of summons, the defacto complainant appeared on 14.5.2013 and in the presence of two independent witness. The CPU which is said to have been used by the defacto complainant, which was seized from the factory premises, was opened to peruse the data

available therein and take hard copies, if required. In the course of Investigation, the said defacto complainant stated that he did not know the the password of certain sections of the computer which was found to be password protected and without the Cooperation of the defacto complainant, the Mahazar proceedings were completed at 8:30 p.m. on 14.5.2015 and during the course of enquiry, a statement was also recorded from the defacto complainant and the Mahazar proceedings, was furnished to him in Tamil, in which he has stated that he is not aware about the password protected sections of the computer and assured to get the same and intimate within two days. Thereafter he left the office of Central Excise, by 9:30 pm. on 14.5.2013. Thereafter, the petitioner came to know that the defacto complainant was hospitalized in a private hospital at Coimbatore by around 1:30 hours on 15.5.2013 and had filed a private police complaint against the petitioner who is the Investigating Officer/ Senior Intelligence Officer, DGCEI, Coimbatore Regional unit. In this regard, the first respondent registered a case in Cr.NO.773/2013 under Sections 323 and 506 (i) of IPC. During the enquiry the petitioner appeared before the Investigation Officer and stated that the proceedings undertaken by the petitioner, were protected under the Section 40 of the Central Excise Act. Initially the investigation was concluded as mistake of fact, but later registered as crime on the complaint of second respondent to the Jurisdictional Magistrate. Learned counsel appearing for the petitioner submitted that the act of the petitioner in conducting search and filing the complaint is protected u/s 40 of the Central Excise Act, which reads as follows:

"SECTION 40. Protection of action taken under the Act. –

(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made thereunder.

No proceeding, other than a suit, shall be commenced (2) against the Central Government or any officer of the Central Government or a State Government for anything done or purported to have been done in pursuance of this Act or any rule made thereunder, without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof or after the expiration of three months from the accrual of such cause.

Based on the complaint of the petitioner, investigation was carried out by the law enforcing agency, which then referred the complaint as a mistake of fact. However, the petitioner has filed a private complaint, without implicating the petitioner as a party and the court below, taking cognizance of the same has directed registration of the crime, which is per se unsustainable and, therefore, prayed for quashment of the same.

4. Though private notice was ordered, however, service could not be effected on the 2nd respondent. Therefore, direction was issued to the 1st respondent to verify the availability of the 2nd respondent in the said address. However, after verification, it is submitted by the learned Addl. Public Prosecutor that the defacto complainant has left the country and is not available in India. Therefore the only recourse available before this court is to cause paper publication. Even the said course would be a futile exercise, as the de facto complainant is out of India.

5. In the above scenario, this Court is constrained to deal with the matter on merits. It is seen from the materials available on record that initially on the complaint of the 2nd respondent, the investigation agency filed the final report treating the complaint as a mistake of fact. However, the 2nd respondent, without implicating the petitioner, had filed a private complaint before the jurisdictional Magistrate, which was ordered in favour of the 2nd respondent with a direction to investigate the case and file the complaint. In such view of the matter, the investigating agency has once again taken up the investigation and, thereafter, had lodged the report.

6. Section 40 of the Central Excise Act gives protection to the petitioner for the acts done by him in the discharge of his duties. Though it is the allegation of the 2nd respondent that the petitioner demanded bribe and had assaulted him, however, without any materials whatsoever, the complaint was filed before the law enforcing agency, which resulted in the law enforcing agency filing a report closing the matter as mistake of fact, only to be revived by the 2nd respondent by filing a private complaint before the jurisdictional Magistrate. One crucial aspect, which is to be noted here is that, as pointed out by the learned counsel for the petitioner, the petitioner has not been implicated in the complaint. That being the case, it is not open to the jurisdictional Magistrate to have taken up the private complaint and passed the order for reinvestigation. The act of the 2nd respondent in filing the private complaint is only to harass the petitioner for reasons best known to him. Further, the act of the 2nd respondent in not appearing before the Court

and making no arrangements for conducting the trial clearly shows that the act of the 2nd respondent is only vindictive in nature and is unsustainable.

7. For the reasons aforesaid, this Court is of the considered view that the prayer as sought for by the petitioner deserves to be acceded to. Accordingly, the criminal original petition is allowed and C.C. No.651/2013 pending on the file of the learned Judicial Magistrate No.VI, Coimbatore is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

- 1.The Inspector of Police,
B-6, Police Station, Peelamedu,
Coimbatore District.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.Copy to
The Judicial Magistrate No.VI
Coimbatore.

+1cc to M/s.Rajnish Pathiyil, Advocate, Sr.No.11142

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