

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :29.07.2020

PRONOUNCED ON :05.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.23135 of 2017
M.P.Nos.13474 & 13475 of 2017

1.G.Rajaram
2.M.Mahesh @ Maheskumar
3.NSK Abdul Samaad ... petitioners

Vs.

The Station House Officer,
Reddiarpalayam Police Station,
Puducherry. ... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in Final report/Charge Sheet No.38/2016 dated 22.07.2016 on the file of the Judicial Magistrate No.III, Puducherry (STC.No.159 of 2017) and quash the same.

For Petitioners : Mr.M.Gnanasekar

For Respondent : Mr.C.Bharatha Chakravarthy
Additional Public Prosecutor

ORDER

The petitioners, who are accused A1 to A3 facing trial in S.T.C.No.159 of 2017 before the Judicial Magistrate No.3, Puducherry for offence under Section 294 B, 353, 186 read with 34 IPC, have filed this quash petition.

2. The brief facts of the case are that the defacto complainant is a Member Secretary of Puducherry Planning Authority, Puducherry. On 18.02.2016, the defacto complainant lodged a complaint that at about 11.00 a.m., the petitioners and several others representing THOLKAPPIAR LANCHI OZHIPPUPPILAI, entered into the chamber of the defacto complainant, gharoed regarding no action on the construction within the premises of the Mahatma Gandhi Medical College, Puducherry in violation of law. The group shouted against them by using

unparliamentary words. Further, they laid siege of the defacto complainant in his chambers and deterred the other officials, present in the office, from carrying out their official duties. This incident caused fear and disturbance of normal functioning of the office. Based on the complaint given by the defacto complainant, the respondent Police registered a case in Crime No.15 of 2016 and thereafter, on completion of investigation, filed a charge sheet before the concerned Court.

3. The learned counsel for the petitioners submitted that the first petitioner is the General Secretary of Tholkappiar Lancha Ozhippu Iyakkam, Puducherry. As General Secretary and as President of Puduvai Environment and Consumer Protection Forum, he was evincing interest for the protection and improvement of environment of lakes. Since Mahatma Gandhi Medical College and Research Institute, Puducherry at Pillaiyarkuppam Revenue Village, Bahour Commune, was carrying on building constructions without sanction of proper building plan permission from Puducherry Planning Authority, Puducherry, demolition notice was sent by the then Secretary, Mr.Kandar Selvam, Puducherry Planning Authority to Mr.M.K.Rajagopalan, Chairman, Sri Balaji Educational & Charities Trust, Puducherry on 19.01.2015. Thereafter, on his transfer, the defacto complainant had taken charges as Member Secretary. The Association had also sent representation to the Chief Minister of Puducherry and other officials about illegal construction carried at Mahatma Gandhi Medical College. On 18.02.2016, the petitioners visited the office of the Puducherry Planning Authority, requested the Member Secretary to take necessary steps for stoppage of illegal construction. But the defacto complainant adopted dilatory tactics, by giving one reason or other. Thereafter, the petitioners and others left from there, stating that they will take action in accordance with law. Thereafter, a false complaint has been made against the petitioners as though they entered the office, deterred public servants from discharging their official duty.

4.The petitioners further submitted that the first petitioner made a complaint before the Judicial Magistrate No.III, Puducherry, for offence under Section 166, 120B, 217 of IPC read with 34 IPC against the defacto complainant and one Bernath Manual, Junior City Organizer, Puducherry City Organisation, Puducherry for their inaction in implementing the laws and directions of the Government. As a counter blast, a false complaint has been lodged against them. The respondent police, without conducting proper investigation, filed charge sheet against them. He further submits that on going through the final report, it is found that the ingredients of the offence are not made out. This case was made against them to brook vengeance. It is seen that nobody was assaulted and no force was used. Further, the petitioners submit that the above

case is a summons case and therefore, within a period of six months, charge sheet ought to have been filed. If it exceeds six months, investigation will be prohibited under Section 167 (5) Cr.P.C. In this case, charge sheet was filed only on 13.06.2017 and thereafter, summon was sent to the petitioners for their appearance on 13.07.2017. It is seen that the charge sheet has been sent to the concerned Court on 22.07.2016. Hence, for the anomaly the petitioners moved a petition before the Police Complaints Authority, Puducherry. Thereafter, the Police Complaints Authority directed the police to produce the acknowledgment, evidencing such filing of charge sheet on 22.07.2016. But no such acknowledgment was produced by the police. In view of the same, the direction was issued by the Authority to the Police Department to take appropriate disciplinary action against the Investigating Officer Ramesh in this regard by order dated 29.06.2017. Further, it is submitted that the order of the authority would clearly prove the malafide intention of the respondent police. Hence, they prayed for quashing of the complaint.

5.The learned Public Prosecutor, Puducherry submitted that a complaint dated 18.02.2016 was received from the Member Secretary, Puducherry Planning Authority, Puducherry against the petitioners. Immediately, on receipt of the complaint, F.I.R in Crime No.15 of 2016 was registered and the same was despatched to the concerned Court. The Public Authority had clearly stated about the Petitioners, representing on behalf of the THOLKAPPIAR THOLKAPPIAR LANCHA OZHIPPUPP IYAKKAM, entering the chamber of the Member Secretary, Puducherry Planning Authority, Puducherry and deterred the other officials, who were present in the office, from discharging their official duty. On registration of the case, investigation carried out, statement of witnesses were recorded. Apart from the defacto complainant, the Junior Town Planners namely Mr.R.Adinarayanan, Mr.P.Sundaranadarajan, Mr.Bernad Mahuar, M/s.S.Tamil Selvi, who were present in the office, have given a statement in confirmatory to the complaint.

6.After completing of investigation, the charge sheet was filed in this case. Further, the petitioners were involving in such activities earlier as could be seen from the bail order. Thus, the petitioners were in the habit of deterring the public servant, claiming to be the office bearers and Members of the Association with muscle power and force. The 1st petitioner is a retired police personnel. Further, investigation in this case was completed within the stipulated time. Hence, the petitioner cannot take umbrage under Section 167(5) of Cr.P.C and the same is not sustainable. Further, no orders have been passed by the Magistrate under Section 167(5) of Cr.P.C in this case by stopping any further investigation. The filing of the charge

sheet is not hit under Section 468 Cr.P.C. In view of the same, filing of the charge sheet and taking cognizance of the offence by the Magistrate is valid and there is no infirmity. The contention of the petitioner on malafidy is a question of fact, which is to be raised during trial and not in the quash petition. If there is any lapses on the Investigating Officer as contended by the petitioner, the same would not entitle, the petitioner in seeking quashing of the charge sheet. Hence, he opposed the quash petition and further submitted that the case has been taken on file as S.T.C.No.159 of 2017 and for the past three years, there is no progress in the case. Hence, sought a direction to dispose the case within a time frame.

7.Considering the rival submissions and on perusal of the materials, it is seen that the offence took place on 18.02.2016. On the same day, complaint is lodged, and F.I.R registered and despatched to the Court without any delay. In the complaint, there are averments made against the petitioners. It is admitted by the petitioners that on 18.02.2016, they had gone to the office and questioned the defacto complainant for inaction against the Mahatma Gandhi Medical College. The dispute is with regard to usage of abusive language and deterring the public servants from discharging their duty. This is a factual contention which cannot be decided in a quash petition. Further, from the charge sheet produced, it is seen that the Investigating Officer completed the investigation on 22.07.2016. The seal of the Judicial Magistrate is dated 13.07.2017. Who and what is the reason for delay has to be seen during trial. The Police Authority, in its order without going into the merits of the case, had directed the Police Department to take disciplinary action against the Sub Inspector of Police, Ramesh. This direction would not entitle the petitioners in assailing this quash petition. Further, it is seen that there is no order passed by the Magistrate under Section 167(5) Cr.P.C. Stopping further investigation and filing of the charge sheet is within time as per Section 468 of Cr.P.C. In view of the same, the points raised by the petitioner are to be decided during trial and not in quash petition.

8.In view of the same, the Criminal Original petition is dismissed. Considering the case is pending from the year 2017, the trial Court is directed to give priority and dispose of the case within a stipulated period, after lifting of lock down and commencement of normal functioning of the Court.

Sd/-

Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

ssb

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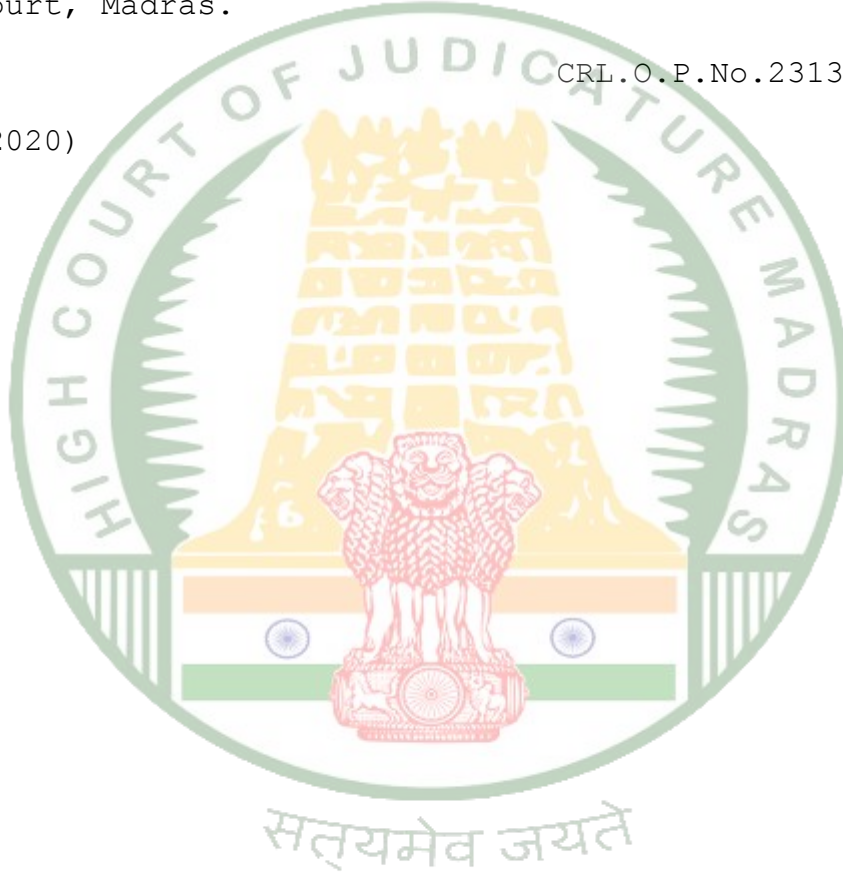
1.The Judicial Magistrate No.III,
Puducherry.

2.The Station House Officer,
Reddiarpalayam Police Station,
Puducherry.

3.The Additional Public Prosecutor,
High Court, Madras.

CRL.O.P.No.23135 of 2017

NAS (CO)
CB(11/11/2020)



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