

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2019
PRONOUNCED ON : 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.16452 of 2017
and
Crl.M.P.No.10126 of 2017, 7926, 7927 and 7928 of 2019

V.Arulmozhi ...Petitioner / Respondent / Accused
/vs./

1.The State of Tamil Nadu,
Represented by Inspector of Police,
Kalpakkam Police Station,
Kancheepuram District.
...1stRespondent/Respondent/Complainant

2.Puwar Dhairypaisinh Narapatsinh
...2ndRespondent /Petitioner
/ De facto Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order of the Judicial Magistrate, Thirukalukundram, made in C.M.P.No.1165 of 2017 dated 13.07.2017.

For Petitioner : Mr.S.Senthilnathan

For R-1 : Mr.C.Iyyapparaj
Additional Public Prosecutor

For R-2 : Mr.Powar Dhairypaisinh
(Party-in-person)

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ORDER

The brief facts of the case are as follows:

(i) The petitioner herein is a Senior Manager of 'Bharatiya Nabhikiya Vidyut Nigam Limited' (hereinafter referred to as 'BHAVINI' for the sake of brevity, clarity and convenience), which is a Government of India Enterprise. The second respondent herein, who is also an employee of BHAVINI had given a complaint before the first respondent in May 2016, primarily alleging certain irregularities in grant of promotion to one of the employees, grant of travel allowances

and other service benefits, etc. The complaint came to be enquired into by the first respondent and the same was closed. As against the closure, the second respondent herein had filed a petition in C.M.P.No.3261 of 2016 before the learned Judicial Magistrate, Thirukazhikundram under Section 156(3) Cr.P.C., which came to be allowed on 06.09.2016 directing the first respondent to register a case, investigate and file a report before the Court. Aggrieved against the order of the learned Judicial Magistrate, Thirukazhikundram, a quash petition came to be filed by the petitioner in Crl.O.P.No.22431 of 2016. Ultimately, when the quash petition was taken up for consideration, the submission of the learned Additional Public Prosecutor that the complaint was investigated and the FIR was closed as mistake of fact on 06.10.2016 was recorded and quash petition came to be closed on 04.11.2016. The second respondent filed a protest petition in C.M.P.No.1165 of 2017 as against the closure of the complaint and by an order dated 13.07.2017, the learned Judicial Magistrate, Thirukazhikundram, had directed the first respondent to further investigate into the complaint. The order dated 13.07.2017 is under challenge in the present quash petition.

2. The learned counsel for the petitioner submitted that the statements in the complaint predominantly pertains to service matters and civil in nature and in the absence of any criminal offence being made, the learned Judicial Magistrate, Thirukazhikundram, ought not to have passed the impugned order for further investigation.

3. The second respondent had filed a detailed written submissions narrating the consequences and the facts leading to registration of the FIR. The overall grievance of the second respondent seems to be on certain irregularities of grant of promotion, travel allowances and service benefits, etc. There are certain vague allegations against top ranking officials of BHAVINI. सत्यमेव जयते

4. I have given careful consideration to the submissions made by respective counsel.

5. This is a clear case, where the second respondent had abused the process of law. Some of the incidental facts to substantiate such a finding by this Court are as follows:

(i) The second respondent herein appears to be an disgruntled employee, who is facing departmental proceedings in BHAVINI. Originally, the second respondent herein, under the guise of Public Interest Litigation [PIL] in W.P.No.11052 of 2016, has sought for certain action against the Chairman and Managing Director of BHAVINI. The Hon'ble Division Bench of this Court, by order dated 28.03.2016, had dismissed the writ petition as withdrawn. It was also observed in the said order that the petitioner sought to withdraw the PIL, after advancing some arguments. In this background, he had given an

online complaint on 06.05.2016 and the same came to be closed by the Tamil Nadu Police observing that the complaint was second respondent's administrative problem and that the first respondent may not be in a position to help him. The second respondent herein was further advised to approach the Central Administrative Tribunal, Chennai, to redress his grievance. After the closure of his online complaint, the second respondent filed an application on 01.08.2016 under Section 156 (3) Cr.P.C., before the learned Judicial Magistrate, Thirukazhikundram, which came to be ordered on 06.09.2016 with a direction to the first respondent to register a complaint, investigate and file a report before the Court. On 23.09.2016, an FIR came to be registered in FIR No.170 of 2016 by the first respondent herein. The petitioner had filed the quash petition in CrI.O.P.No.22431 of 2016 and this Court, by order dated 04.11.2016, had observed as follows:

2. Today, when the petition was taken up for hearing, on instructions from MR.S.Kumaran, Inspector of Police, Kalpakkam Police Station, who is present in Court, Mr.C.Emalias, the learned Additional Public Prosecutor, submitted that pursuant to the directions issued by the learned Magistrate, the 1st respondent police have registered a case in Crime No.170 of 2016 for offences under Sections 120 (B), 403, 166, 177, 189, 199 and 203 of IPC and after conducting a thorough inquiry the 1st respondent police have closed the case as "mistake of fact" on 06.10.2016. He further submitted that the closure report in this regard has also been filed before the learned Magistrate on 04.10.2016 after sending RCS notice to the defacto complainant by post.

3. On a reading of the complaint given by the defacto complainant, it is obvious that he had made reckless allegations against the officials working in the Department of Atomic Energy [DAE], Kalpakkam. It is also seen that the defacto complainant is an employee of the Department of Atomic Energy, Kalpakkam and since he has been denied promotion he is aggrieved by the action of the officials therein and he has launched the private prosecution. Since the police themselves have now closed the FIR, no further order needs to be passed in this petition.'

(ii) A bare perusal of the order reveals that this Court had not only dismissed the Criminal Original Petition on the ground that the second respondent's FIR has been closed as mistake of fact, but also remarked on the reckless allegations

made by the second respondent herein against the Officials working in the Department of Atomic Energy, Kalpakkam. It was also observed in the aforesaid order that the second respondent is aggrieved against his denial of promotion in the same Department and therefore, lodged a private prosecution. Without reference to the aforesaid observations made by this Court in Crl.O.P.No.22431 of 2016, the second respondent had filed a protest petition before the learned Judicial Magistrate, Thirukazhikundram, in C.M.P.No.1165 of 2017.

6. Had the learned Judicial Magistrate, Thirukazhikundram, noticed the observations made by this Court in its order dated 04.11.2016 in Crl.O.P.No.22431 of 2016, probably the impugned order passed in the protest petition, ordering the first respondent to take further investigation may not have been passed. Likewise, if the petition filed in PIL by the petitioner was also brought to the notice of the learned Judicial Magistrate, Thirukazhikundram, a similar situation would not have arisen.

7. Without prejudice to the aforesaid observations made by this Court in the aforesaid order, the case of the second respondent as revealed in the complaint, was looked into. The averments therein do not reveal any criminality that may attract criminal offence. On the other hand, the second respondent herein had complained of certain illegal recruitment causing loss to the exchequer, payment of double dearness allowances to senior officials in their official foreign tour, grant of relaxation in promotions to certain officials in deviation of the norms, irregularity in promotions, irregularity in appointment of Private Secretary to the CMP on transfer basis, etc.

8. The grievances were firstly addressed by way of PIL before this Court in W.P.No.11052 of 2016, which came to be withdrawn by the second respondent, after advancing his arguments; secondly addressed by way of his online complaint in this regard was also closed by the Police Department on 06.05.2016 stating that the grievance cannot be addressed before the police authorities, but rather before the Administrative Tribunals; and thirdly addressed by way of the subsequent complaint registered in FIR was also investigated and dropped as 'mistake of fact' and further more, this Court had also adversely remarked on the conduct of the second respondent.

9. When the averments in the complaint do not prima facie constitute any cognizable offences, the learned Judicial Magistrate, Thirukazhikundram, ought not to have ordered for further investigation, particularly, in the light of the antecedents of this case and the second respondent attempted to abuse the process of law. Nowhere in the impugned order had been indicated about the remarks made by this Court in its earlier order dated in Crl.O.P.No.22431 of 2016, as well as

the earlier PIL filed by the petitioner against BHAVINI, which itself indicates that there were suppressions of material of facts by the second respondent herein before the learned Judicial Magistrate, Thirukazhikundram.

10. For the foregoing reasons, this Court is of the affirmed view that the learned Judicial Magistrate, Thirukazhikundram, had totally erred in ordering for re-investigation through the impugned order and further in view of the fact that the second respondent had abused the process of law, it would not be appropriate to permit the first respondent herein to continue with further investigation in this matter. The impugned order passed in C.M.P.No.1165 of 2017 dated 13.07.2017 on the file of the learned Judicial Magistrate, Thirukazhikundram, is set aside. This Criminal Original Petition stands allowed accordingly. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (JJ Act)

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Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,
Thirukalukundram,
- 2.The Inspector of Police,
Kalpakkam Police Station,
Kancheepuram District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Senthilnathan, Advocate, S.R.No. 131

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Cr1.O.P.No.16452 of 2017

SSI (CO)
GN (21/02/2020)