

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.Nos.28290 & 8113 of 2019
and
Crl.M.P.No.4384 of 2019

Crl.O.P.No.28290 of 2019

P.Narayanan

...Petitioner

Vs

1. The Superintendent of Police,
Tiruppur District, Tiruppur.
2. The Deputy Superintendent of Police,
Palladam Range, Palladam,
Tiruppur District.
3. The Inspector of Police,
Palladam Police Station,
Palladam.

....Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to direct the 1st respondent to take further action on the complaint date 04.04.2019 by the 1st respondent.

For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.S.Karthikeyan

Additional Public Prosecutor

Crl.O.P.No.8113 of 2019

P.Narayanan

...Petitioner

Vs

1. The Principal Secretary to Government,
Home Department,
Secretariat, Chennai - 600 009.

2. The Director of Prosecution,
No.5, Kamaraj Salai,
Chepauk, Chennai - 600 005.
3. The District Collector,
Tiruppur District, Tiruppur.
4. Thiru.S.Sivakumar,
Assistant Public Prosecutor, Grade-I,
Judicial Magistrate Court,
Palladam, Tiruppur District.
5. The Regional Director of
Municipal Administration,
Tiruppur Region,
J.G.Nagar 1st Street,
Kumarananthapuram,
Tiruppur - 2.

...
Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to direct the respondents 1 to 3 to take criminal action against the 4th respondent for having indulged in acts in blackmails against the petitioner and his wife, misbehavior, threatening, abusing his official position for his personal gain.

For Petitioner : Mr.M.Gnanasekar
For Respondents : No appearance for R1 to R3.
Mr.L.Mouli for R4.

C O M M O N O R D E R
(through Video Conference)

The Criminal Original Petition in CrI.O.P.No.28290 of 2019 has been filed by the petitioner seeking direction to direct the first respondent who is the Superintendent of Police, Tiruppur District to take further action on the complaint dated 04.04.2019. Similarly, Criminal Original Petition in CrI.O.P.No.8113 of 2019 has been filed seeking direction to direct the respondents 1 to 3 to take criminal action against the 4th respondent for having indulged in acts in blackmails against the petitioner and his wife, misbehavior, threatening, abusing his official position for his personal gain. Since both the petitions have been filed by a petitioner viz., P.Narayanan, this Court jointly heard the petitions and pronounced the following common order.

2.Heard Mr.Gnanasekar, learned Counsel appearing for the petitioner in both the petitions and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondents 1 to 3 in Crl.O.P.No.28290 of 2019 and Mr.L.Mouli, learned Counsel appearing for R4 in Crl.O.P.No.8113 of 2019.

3.On perusal of both the Criminal Original Petitions which have been filed by the same petitioner, it is seen that during the relevant point of time, when the petitioner in both the petitions was working as Commissioner in Palladam Municipality, the petitioner herein lodged a complaint against the accused and upon the same, a case has been registered in Cr.No.759 of 2014 under Sections 332 and 506 (ii) of Indian Penal Code. Thereafter, police filed a charge sheet and the same is taken on file in C.C.No.17 of 2016 on the file of Judicial Magistrate, Palladam. Subsequently, the petitioner herein being the defacto complainant entered into compromise with the accused Mr.Saravanan and filed a petition before the said Court under Section 320 of Criminal Procedure Code. Since the alleged offence stated in the above case is non-compoundable in nature, the said application filed by the petitioner was dismissed.

4.In due course, in the said case, the petitioner herein was examined as PW1. During the time of recording chief examination, he has not supported the case of prosecution and therefore, the learned Assistant public Prosecutor, Grade-I, now arrayed as fourth respondent in Crl.O.P.No.8113 of 2019 treated the petitioner as a hostile witness. Subsequent to the same, during the time of cross examination and also at the time of re-examination, the petitioner was delicated and threatened by the fourth respondent as a result of which, the petitioner herein approached the Superintendent of Police, Tiruppur district for taking action against the fourth respondent.

5.Now in the said circumstances, the Petitioner herein is before this Court with these petitions for the reliefs stated supra.

6.In the petitions filed by the petitioner, in Crl.O.P.No.8113 of 2019 he has prayed for the relief of direction, directing the respondents 1 to 3 to take criminal action against the fourth respondent. It is seen that the respondents 1 to 3 are the Principal Secretary to Government, Director of Prosecution and the District Collector of Tiruppur. Accordingly, the petitioner filed the present application under Section 482 of Criminal Procedure Code without impleading the police officer. Therefore, in the absence of any police officers, we cannot direct the respondents 1 to 3 to take criminal action against the fourth respondent.

7. More than that, in the affidavit filed by the petitioner, he has narrated the incident which had happened during the time of giving evidence in C.C.No.17 of 2016. On close scrutiny of the records which have been submitted by the petitioner, disclosed the fact that the case pertains to C.C.No.17 of 2016 has been registered based on the complaint given by the petitioner, further, the said complaint has been given by the petitioner in his official capacity.

8. In the said circumstances, I do not know that after lodging complaint in the official capacity, how the complainant who is the petitioner herein entered into compromise with the accused without getting proper permission from the appropriate authority. In fact, for the said act committed by the petitioner, he is alone liable for disciplinary action. It is the duty vested upon the fourth respondent that during the time of recording evidence before the Judicial Authority, if the witness examined on the side of prosecution turns hostile, it is for the Assistant Public Prosecutor to cross examine the said witness after placing the case of prosecution. The circumstances narrated by the prosecution reveals that misunderstanding between Petitioner and the respondent arose only at that time. If really the allegation raised by the petitioner is true, only the Magistrate who had recorded the evidence is the competent forum to take action against the erring person. Here it is case that by suppressing all these aspects, now the petitioner has approached this Court by way of this petition without impleading necessary parties and also without any grounds stating that the fourth respondent committed an offence which is punishable under the Penal Code. Therefore, the petition filed by the petitioner is liable to be dismissed.

9. Accordingly, the petition in Crl.O.P.No.8113 of 2019 is dismissed.

10. In respect of Crl.O.P.No.28290 of 2019, the petitioner herein prayed to direct the 1st respondent to take further action on the complaint dated 04.04.2019 given by the petitioner. In respect of the same, the learned Additional Public Prosecutor appearing on behalf of the respondents 1 to 3, on instructions, would submit that in respect of the complaint dated 04.04.2019 given by the petitioner, the respondents police conducted enquiry in R.C.P1/1162/882/2019 and closed the same on 05.11.2019.

11. Further, the learned Counsel appearing for the petitioner fairly conceded that after closing the enquiry, the petitioner has not approached the judicial Magistrate and filed a complaint under Section 156 (3) of Criminal Procedure Code. At this juncture, it is relevant to see the case of G.Prabakaran vs.

Superintendent of Police, Thanjavur District and another reported in 2018 (5) CTC 623, in which the Division Bench of this Court held as follows:

"(i) Section 482 Cr.P.C. cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156 (3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C.

(iv) A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.

(vi) An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the complaint or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere."

Further the said view taken by this Court was affirmed by our Hon'ble Apex Court in the case of M.Subramaniam and Others vs. S.Janaki and Others reported in 2020 (5) CTC 464.

12. Therefore, the ratio laid down in the above referred two Judgments by our Hon'ble Apex Court and this Court is very clear that if the police officer has refused to entertain the complaint given by the petitioner, the only remedy available to him is to approach the concerned judicial Magistrate and file a complaint under section 156(3) of Cr.P.C.

13. But, here it is the case that without approaching the judicial Magistrate, the petitioner directly came and filed this Criminal Original Petition praying to take further action on the complaint dated 04.04.2019 given by the petitioner which is against the settled proposition of law.

14.Thus, the petition filed by the petitioner is devoid of merits. Accordingly, the petition in CrI.O.P.No.28290 of 2019 stands dismissed. Consequently, connected miscellaneous petition is closed.

15.However, the petitioner is at liberty to file a fresh complaint before the concerned Judicial Magistrate within a period of one months from the date of receipt of this order.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate, Tiruppur.
2. The Judicial Magistrate, Palladam.
3. The Superintendent of Police,
Tiruppur District, Tiruppur.
4. The Deputy Superintendent of Police,
Palladam Range, Palladam,
Tiruppur District.
5. The Inspector of Police,
Palladam Police Station,
Palladam.
6. The Principal Secretary to Government,
Home Department,
Secretariat, Chennai - 600 009.
7. The Director of Prosecution,
No.5, Kamaraj Salai,
Chepauk, Chennai - 600 005.
8. The District Collector,
Tiruppur District, Tiruppur.
9. Assistant Public Prosecutor, Grade-I,
Judicial Magistrate Court,
Palladam, Tiruppur District.

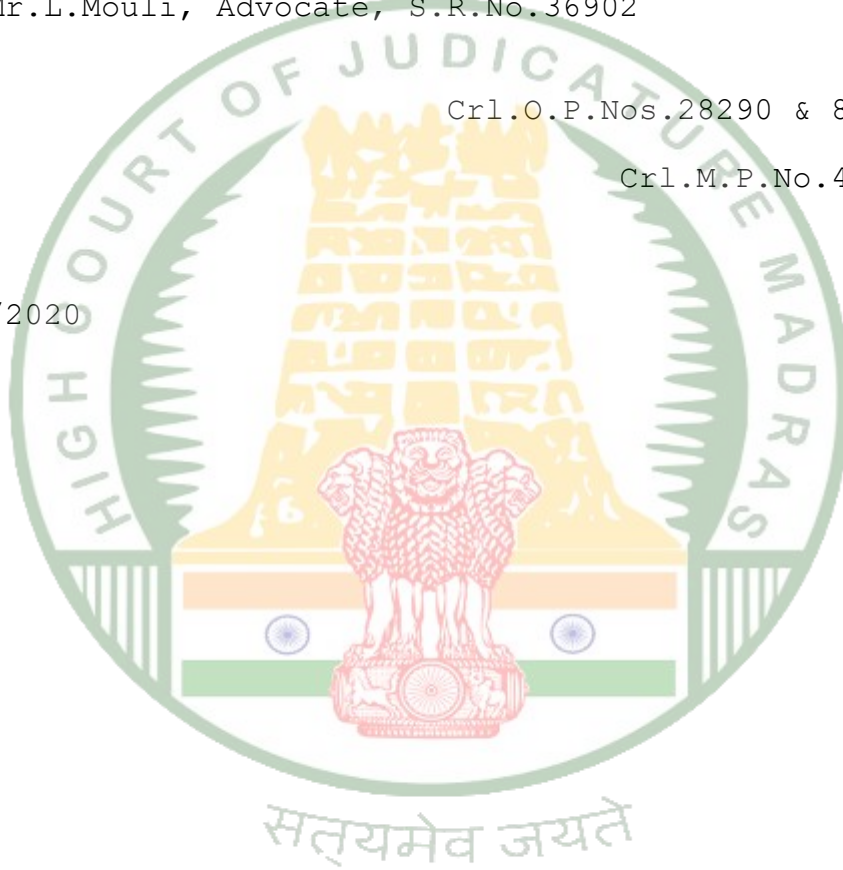
10. The Regional Director of
Municipal Administration,
Tiruppur Region,
J.G.Nagar 1st Street,
Kumarananthapuram,
Tiruppur - 2.

11. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.L.Mouli, Advocate, S.R.No.36902

CrI.O.P.Nos.28290 & 8113 of 2019
and
CrI.M.P.No.4384 of 2019

GJ(CO)
KKV/19/12/2020



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