



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P (MD)No.15820 of 2016

and

Crl.M.P. (MD)Nos.7594 and 7595 of 2016

WEB COPY

1.P.Jeyakodi,

Inspector of Police (Retd.),,
Nerkuppai Police Station,
Thiruppathur,
Sivagangai District.

2.N.Silambarasan,

Deputy Superintendent of Police,
Vigilance and Anti Corruption Department,
Trichy.

3.Narayanaswamy,

Head Constable,
Kovilpatti West Police Station,
Thoothukudi District.

... Petitioners/Accused No 1,3&4

Vs

C.Subbiah @ Kadambur Jeyaraj

... Respondent/Complainant

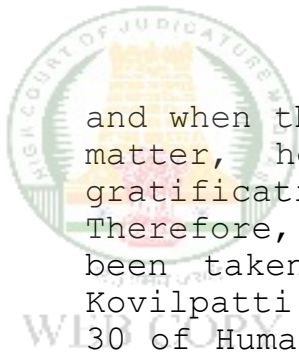
PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records relating to P.R.C.No.33 of 2014 on the file of the learned Judicial Magistrate Court No.II, Kovilpatti and quash the same.

For Petitioners : Mr.T.Antony Arul Raj
For Respondent : No appearance

O R D E R

This criminal original petition has been filed to quash the proceedings in P.R.C.No.33 of 2014, pending on the file of the learned Judicial Magistrate Court No.II, Kovilpatti.

2.The crux of the complaint is that one Lakshmipathy did not lodge any complaint against petitioners on 29.07.2010 from the information received under the Right to Information Act from the Sub Inspector of Police, Kovilpatti West Police Station, through the Additional Superintendent of Police. While being so, the Inspector of Police, Kovilpatti East Police Station, who is arrayed as A2 in this case, without having any territorial jurisdiction arrested the respondent on 25.07.2011 and dragged him to the police vehicle and ill-treated him. Thereafter, the fourth accused also ill-treated and beaten him. Thereafter, at about 12.00 pm., A1, who is being the Inspector of Police, Kovilpatti West Police, came to the station



and when the respondent questioned him about his arrest in the civil matter, he was taken to separate room and demanded illegal gratification for settling the issue between the respondent and A1. Therefore, the respondent lodged a private complaint. The same has been taken cognizance by the learned Judicial Magistrate No.II, Kovilpatti for the offences under Sections 2(d), 2(c), 12(a), 18 and 30 of Human Rights Protection Act r/w. Sections 323, 294(b) and 506 (ii) of I.P.C., in P.R.C.No.33 of 2014.

3.The submissions of the learned counsel for the petitioner is on three fold. Which are as follows:-

(1) *In the complaint lodged by the respondent before the Human Rights Commission, Tamilnadu, a detailed enquiry was conducted and the complaint was closed as it is baseless and false by order dated 26.03.2015.*

(2) *The petitioners are appointed by the Government of Tamilnadu and cognizance ought not to have been taken against them without obtaining sanction by the learned Judicial Magistrate No.II, Kovilpatti.*

(3) *The learned Judicial Magistrate No.II, Kovilpatti ought to have stated the reasons for taking cognizance, whereas, it is seen from the order, it is bereft of reasons and non-application of mind.*

4.Heard, Mr.Mr.T.Antony Arul Raj, learned counsel appearing for the petitioners. Though, the respondent was served notice, he has not chosen to enter appearance either in person or through counsel.

5.It is seen that the petitioners arrayed as A1, A3 and A4 in the complaint lodged by the respondent herein. The first petitioner is a retired Inspector of Police. The second petitioner is working as the Deputy Superintendent of Police, Vigilance and Anti Corruption Department, Trichy. The third petitioner was working as Head Constable and he is now retired.

6.On the complaint lodged by one Lakshmipathy, the first petitioner registered a case in Crime No.205 of 2011 for the offence under Sections 120(b), 294(b), 406, 420 and 506(ii) I.P.C. r/w. Section 35 I.P.C. and Section 25(1)(a) of Indian Arms Act, when he was working as the Inspector of Police, Kovilpatti West Police Station, in which the respondent arrayed as A1. In pursuant to the said crime, the first petitioner arrested the respondent herein on 25.07.2011 and remanded to judicial custody for illegal gratification.

7.On perusal of the order passed by the State Human Rights Commissioner, Tamilnadu, dated 23.06.2015, it is revealed as follows:-

"3. The report of the Superintendent of Police,

<https://hcservices.ecourts.gov.in/hcservices/>



Thoothukudi District reveals that there was a civil dispute between the complainant and one Lakshmipathy; that on the direction of the Learned Judicial Magistrate No.2 in Cr.M.P.No.1901 of 2011, dated 03.03.2011, the Stations House Officer of Kovilpatti West Police registered a case against the complainant herein Mr.Subbiah @ Kadambur Jayaraj in Crime No.205/2011 under Sections 120(b), 294(b), 406, 420, 506(i) IPC r/w 35 IPC, arrested and produced before judicial custody by the Inspector of Police Mr.Jayakodi and that the respondent police officers have taken action against the complainant as per law and the complainant has sent this complaint with a view to escape from the clutches of law.

4. The report of the Director of Vigilance and Anti Corruption, Chennai reveals that the allegations leveled by the complainant are found to be false and motivated one; that the complainant Mr.Subbiah @ Kadambur Jayaraj was arrested in a land grabbing case and his efforts to come out of the case ended in vain he has sent this motivated complaint against these respondent police officials.

5. In view of the said enquiry reports copuled with other attending aspects, this Commission is of the opinion that no further enquiry is required vide Section 17(i) of the Protection of Human Rights Act, 1993 and this complaint can be closed"

8.The findings of the State Human Rights Commissioner is that the respondent lodged a compliant before State Human Rights Commission with a view to escape from the clutches of law in pursuant of crime registered against him in Crime No.205 of 2011. The report received from the Director of Vigilance and Anti Corruption Department, Chennai, also revealed that the allegations levelled by the respondent herein are false and motivated one. He further concluded that respondent was arrested for land grabbing case and his efforts to come out of the case ended in vain, he has sent this motivated complaint against the petitioners.

9.The Director of of Vigilance and Anti Corruption Department, Chennai, conducted a detailed enquiry and by order dated 08.03.2013 concluded the enquiry in the following manner:-

"Enquiry reveals that the allegations leveled by the petitioner Tr.Subbaiah are found to be false and motivated one. As the petitioner was arrested in a land grabbing case and his efforts to come out of the case ended in vain, he has sent this motivated petition against the Respondents. Hence,

<https://hcservices.hccourts.gov.in/hcservices> ended that the action on this petition may be



dropped."

10.It is pertinent to mention here that respondent filed a complaint before the State Human Rights Commission on 16.08.2012. The respondent filed the impugned complaint by suppressing the above complaint. Though the private complaint was filed on 07.01.2013, the learned Judicial Magistrate No.II, Kovilpatti, by order dated 06.06.2013, directed the Deputy Superintendent of Police, Kovilpatti to enquire the complaint without registering a case. After recording the evidence of the respondent herein, cognizance was taken against the petitioner for the offences under Sections 2(d), 2(c), 12(a), 18 and 30 of Human Rights Protection Act r/w. Sections 323, 294(b) and 506(ii) of I.P.C., in P.R.C.No.33 of 2014. Even before the taking cognizance, the report of the Director, Vigilance and Anti Corruption Department, Chennai, dated 08.03.2013 was received. The learned Judicial Magistrate No.II, Kovilpatti, had taken cognizance as against the petitioners without knowing the said report. Therefore, the entire complaint is nothing but a clear abuse of law and it cannot sustain as against the petitioners.

11.In respect of sanction is concerned, admittedly, the alleged occurrence took place while the petitioners were discharging their official duty. When they were discharging their official duty, they are immuned from prosecuting under Section 197 Cr.P.C. The respondent ought to have obtained sanction from the Government to prosecute the petitioners. Admittedly, the respondent did not obtain any sanction from the Government. In this regard, it relevant to rely upon the judgment of the Hon'ble Supreme Court of India in Criminal Appeal No.458 of 2020 in D.Devaraja Vs. Owais Sabeer Hussain. It is stated as follows:-

"68. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government.

69. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure



Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.

70. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a police man assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be

71. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government sanction for initiation of criminal action against him.

72. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

73. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.

74. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act."



12.The Hon'ble Supreme Court of India categorically held that Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. It is further held that the requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure.

13.In the case on hand, when the petitioners were discharging their official duty, the occurrence took place. In this regard, the Director of Vigilance and Anti Corruption, concluded that the entire complaint was a false one against the petitioners herein. The State Human Rights Commissioner conducted enquiry and concluded that the respondent filed the private complaint only to escape from the clutches of law. Therefore, the entire proceedings against the petitioners is vitiated and it cannot be sustained against the petitioners.

14.In view of the above discussions, the impugned proceedings stand quashed and the criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

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/ /2020

Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To: -

The Judicial Magistrate No.II,
Kovilpatti,
Thoothukudi District.

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11.12.2020

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