



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.10.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.18735 of 2016

and

Crl.M.P. (MD) .Nos.9356 and 9357 of 2016

WEB COPY

Muruganandam

... Petitioner

Vs

K.S.Chellappa

... Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to quash the proceedings in C.C.No.159 of 2012 on the file of the Judicial Magistrate, Senkottai.

For Petitioner : Mr.S.Veeraraghavan

For Respondent : Mr.H.Arumugam

ORDER

This petition has been filed to quash the proceedings in C.C.No.159 of 2012 on the file of the Judicial Magistrate, Senkottai, as against the petitioner.

2.The learned counsel appearing for the petitioner submitted that on the complaint lodged by one Selvaraj, the petitioner has registered the FIR in Crime No.128 of 2008, for the offence under Sections 147, 294(b), 325 and 506(i) of IPC against the respondent and nine others, in the said case, the respondent arraigned as A1. He further submitted that when the court below before taking cognizance, the respondent ought to have obtained sanction to prosecute as against the petitioner herein. He further submitted that the respondent's son, who is an advocate, has not allowed the petitioner to discharge his official duty and he has promised that he will surrender his father before the Puliয়ারai Police Station. He further submitted that the respondent's son has not produced his father before the Puliয়ারai Police station, since the respondent is a political influenced person in the said area. He further submitted that the respondent has filed a complaint before the State Human Rights Commission in SHRC.No.9374 of 2008 and the same was dismissed for default. He further submitted that only to escape from the clutches of law, the private complaint has been foisted as against the petitioner herein. He further submitted that the petitioner is being the government servants, without any sanction obtained by the respondent prosecuted the petitioner for the above said offence. The Section 197(1) of Cr.P.C is clearly directed the petitioner as such without sanction the entire proceedings has been initiated and as such it is liable to be set



3.Per contra, the learned counsel appearing for the respondent police submitted that when the petitioner was working as Sub Inspector of Police, Puliyari Police Station, registered the FIR as against the respondent for the offence under Sections 147, 294 (b), 325 and 506(i) of IPC. He further submitted that in pursuant to the FIR, the petitioner trespassed into the house of the respondent and abused him with filthy language by using his caste name and pulled him to the police station and also criminally intimidated him. Therefore, he committed offence under SC ST Act. Though the respondent has filed a complaint before the State Human Rights Commission in SHRC.No.9374 of 2008 and the same was dismissed for default. Thereafter, he has filed another complaint before the State Human Rights Commission in SHRC.No.1194/2008 and the same was ordered with a direction to the petitioner herein to pay a sum Rs.30,000/- as compensation and to take departmental action as against the petitioner herein. He further submitted that admittedly the petitioner is Inspector of Police. Therefore, the immunity under Section 197 of Cr.P.C is not applicable to the petitioner. Therefore, the sanction is absolutely not necessary to prosecute as against the petitioner.

4.In this regard, the learned counsel appearing for the respondent relied upon the Judgment in (2020) 1 MLJ (Crl) 425. The relevant paragraphs are extracted here under:

"12.In this regard, the learned counsel for the petitioners relied upon the unreported judgment in Crl.OP.No.14744 of 2012. The relevant paragraph extracted here under:

"6.It is the admitted case of the petitioner that the Courts below had dismissed the complaint by observing that in the absence of sanction as contemplated under Section 197 Cr.P.C, the proceeding against the government servants cannot be continued. In the present case, the respondents 1, 3 to 5 discharged their duties in the capacity of public servant by entertaining the complaint filed by the sixth respondent before the second respondent. Thereafter, they proceeded the investigation, after registering the case. Hence, the submission made by the learned counsel for the petitioner has no merits and without obtaining any sanction from the government for prosecution, filing case against R1 to R5 is bad in law and the petitioner did not show any miscarriage of justice for entertaining this petition under Section 482 Cr.P.C to interfere with the order passed by the Courts below."

13.This Court held that the sanction under Section 197 of Cr.P.C is attracted only in case



whereby the public servants is removable from his office saved by or with sanction of Government. In the case on hand, the petitioners were working as Sub Inspector of Police and Special Inspector of Police and they are not holding on post where they could not be removed from service except by or with sanction of the Government. Therefore, the judgment relied upon by the petitioners is not applicable to the case on hand.

14.The learned counsel for the respondent relied upon the judgment reported in AIR 1984 SC 722. The relevant paragraph extracted here under:

"6.It is very clear from this provision that this Section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter even if it is held that appellant is a public servant still provisions of Section 197 are not attracted at all."

15.The learned counsel for the respondent relied upon the judgment reported in **AIR 1935 Madras 442**. The relevant paragraph extracted here under:

"...It is not reasonable to suppose that in framing the section it was intended that any such finely drawn distinctions should be observed, and we conclude accordingly that the expression.

"any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority,"

will not include public servants whom some lower authority has by law or rule or order been empowered to remove. In the cases now in point admittedly the Police Officers are removable by such authorities, the police constable involved in Cr.R.C.No.584 by the District Superintendent of Police and the Sub-Inspectors involved in the other cases by the Deputy Inspector-General of Police. The result, is that so far as this point is concerned, the Criminal Revision Petitions fail, and since it is the only point raised in CR.R.P.Nos.54, 765 773 and 829 of 934 we dismiss these petitions.

<https://hcservices.ecourts.gov.in/hcservices/> 16.The learned counsel for the respondent also



relied upon the judgement reported in **2019 (2) MWN (Cr.) 524 (SC)**. The relevant paragraph extracted hereunder:

" 18. No exception can be taken to the proposition as laid down in the above case. We having taken the view that Appellant being not removable by or saved with the sanction of the Government was not covered by Section 197 Cr.P.C. There was no necessity to consider any further as to whether acts of the appellant complained of were in discharge of official duty or not.

17. The Honourable Supreme Court in respect of above said judgments repeatedly held that the expression of any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority has by law or rule or order been empowered to remove.

18. In the case on hand, the petitioners being not removable from their office or saved by or with sanction of the Government is not covered by Section 197 Cr.P.C. Therefore, Section 197 of Cr.P.C is not attracted to the petitioners. The case of the petitioners were not the persons, who were removable from his office saved by or with sanction of the Government. "

5. Heard Mr.S.Veeraraghavan, learned counsel appearing for the petitioner, Mr.H.Arumugam, learned counsel appearing for the respondent.

6. In the case on hand, the petitioner being not removable from his office or saved by or with sanction of the Government is not covered by Section 197 Cr.P.C. Therefore, Section 197 of Cr.P.C is not attracted to the petitioner. Insofar as the other grounds raised by the petitioner has to be considered only during the trial before the trial Court.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and,

therefore, there was no prima facie case made



out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8.Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

9.Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the

<https://hcservices.ecourts.gov.in/hcservices/> Court should see is as to whether there are



allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.159 of 2012 on the file of the Judicial Magistrate, Senkottai. The petitioner is at liberty to raise all the grounds before the trial Court. However, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. Further, since the case is of the year 2012, the learned Judicial Magistrate, Senkottai is directed to dispose of the case, within a period of six months from the date of receipt of a copy of this order.

9. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition in CrI.M.P(MD) No.9356 of 2016 stands closed and CrI.M.P(MD) No.9357 of 2016 stands ordered.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar (CS)



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,
Senkottai.

CrI.O.P. (MD) .No.18735 of 2016
and
CrI.M.P. (MD) .Nos.9356 and 9357 of 2016
14.10.2020

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