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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2021

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.25488 of 2016

and

Crl.M.P.No.12368 of 2016

S.Marimuthu
Sub-Inspector of Police,
Maruvathur Police Station,
Perambalur District.

..Petitioner/Accused

Vs.

Elavarasu

..Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and to quash the complaint in C.C.No.46 of 2016 pending on the file of the Judicial Magistrate, Perambalur.

For Petitioner .. Mr.S.Karthikeyan

For Respondent .. Mr.R.Veeramani

ORDER

Heard Mr.S.Karthikeyan, learned counsel for the petitioner and Mr.R.Veeramani, learned counsel for the respondent.

2.The present petition has been filed taking advantage of Section 482 of Cr.P.C., seeking interference with further proceedings in C.C.No.46 of 2016 now pending on the file of the Judicial Magistrate Court, Perambalur.

3.The petitioner who is the accused in the said calendar case is said to have been at that particular point of time in the year 2016, a Sub-Inspector of Police, Maruvathur Police Station, Perambalur District. The respondent/defacto complainant is presumably, still an advocate practising at Perambalur. An incident occurred necessitating the defacto complainant to go over to the police station at Maruvathur. A summons had been issued to one Sekar who had been asked to come over for some



enquiry. The respondent was the advocate of the said Sekar. He went over along with the said Sekar and also another advocate, Kalaiselvan and also with the father of Sekar. They had gone over to Kunnam Police Station on 06.01.2015 at around 7.15 p.m. At that time, the present petitioner was the Sub-Inspector in that Police Station.

4.Naturally, exchange of words took place between the advocate and the police. The advocate wanted to know the gist of the complaint which necessitated issuing notice to the said Sekar and then this was replied according to the complaint by the petitioner herein, that he need not to give a copy of the complaint. The exchange of words which started of in that tone further escalated.

5.It is also stated in the complaint that there was also a previous occasion, when there was a sight altercation between the petitioner and the de-facto complainant owing to a separate incident and the defacto complainant therefore stated that the petitioner herein had an axe to grind against the defacto complainant.

6.Nothing further would have transpired had the words uttered were words which could be uttered at any place and at any point of time.

7.But was has been reduced in the complaint as words spoken are words which should not have been uttered by any police officer during his official duty, wearing his uniform in the police station. The said words in Tamil as stated in the complaint are reduced below:-

“அதற்கு மாரிழுத்து என்பவர் வழக்கறிஞர் இளவரசவைப் பார்த்து
எனக்கு உத்திரவு, போட நீ யாருடா வெளியே போடா நாயே தேவடியா பயலே
என வழக்கறிஞர் இளவரசவை அவமரியாதையான வார்த்தைகளை பயன்படுத்தி
திட்டி”

8.These words are not words which a public servant can utter in the course of his public duty. If he wants to utter such words, then it cannot be construed as discharge of public duty. Whether he had uttered the words or whether he had not uttered the words are subject matter of trial. The petitioner herein cannot claim to hide behind any screen to protect himself. Those words are offensive and would naturally infuriate any person. After uttering such word claiming protection as a public servant, in my opinion cannot be a countenance. There cannot be a claim that a public servant can have every liberty to utter any abusive word to anybody who comes on official purpose to the office of the public servant. This has led to lodging a private



complaint which had been taken cognizance by the learned Judicial Magistrate as C.C.No.46 of 2016.

9.The learned counsel for the petitioner pointed out the order of the Magistrate while taking cognizance.

10.The order dated 24.06.2016 was as follows:

"On perusal of records and Sworn affidavit, and other witnesses, the prime facie case is made out against the Accused. Hence the complaint is taken on file in C.C.No.46 of 2016 for offence under Section 294(b), 341, 506(i) IPC. Issue fresh summons to Accused on process."

11.The learned counsel for the petitioner criticized the said order stating that there is absolutely no application of mind and there is no subjective satisfaction and that the ingredients required for a Magistrate to take cognizance are not satisfied on a reading of the above order.

12.In this connection, learned counsel for the petitioner had relied on (2015) 12 SCC 420, Mehmood Ul Rehman V. Khazir Mohammed Tunda and others, more particularly to paragraph 20, which is as follows,

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."

13.In this connection, the learned counsel for the respondent for good measure had relied on (2012) 5 SCC 424, Bhushan Kumar and Another V. State (NCT of Delhi) and another, wherein, the Hon'ble Supreme Court had held as follows:

"13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate



appeals, MM/South East 02, Patiala House, New Delhi is free to proceed further in accordance with law, uninfluenced by any observation made in these appeals."

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14.Both the learned counsels, had referred to (1998) 5 SCC 749, Pepsi Foods Ltd. V. Judicial Magistrate.

15.Yet another ground seeking to quash the said calendar case is that no sanction had been sought or obtained as required under Section 197 of Cr.P.C., and therefore protection from prosecution is sought on the ground that the petitioner herein is a public servant, functioning as Sub-Inspector of Police. Reliance in this regard is placed on an unreported judgment of a learned Single Judge in Crl.O.P (MD) No.4756 of 2015 dated 24.09.2018 in P.Kalai Kathiravan V. Ramaiah.

16.The facts in that case are certainly distinguishable. A private complaint was given by the defacto complainant against six persons, and allegation was that the investigating officer, had intentionally left out the real accused persons by taking money and had falsely impleaded a relation of the defacto complainant as an accused person. That complaint was lodged post investigation. During the course of investigation, if an officer determines that there a certain person is to be included as an accused, he has every liberty to include him as accused. He also has every liberty to drop a named person in the FIR from being arrayed accused. He has to give reasons in the final report. Filing of a final report is discharge of official duty. Laying a complaint on that ground is with respect to discharge of official duty. When such a complaint is laid then sanction is required, since an official duty had been called into question. The nature of allegations stated in the final report, the names of the accused who had been added in the final report, the names of the accused who had been left out in the final report form part of investigation conducted in the course of official duty by an investigating officer or police official. Such a report are always filed in discharge of official duty. If a private complaint is to be lodged questioning such a final report, then sanction under Section 197 Cr.P.C is certainly required. That was the reasoning given by the learned Single Judge and I have no quarrel about the same.

17.But I wonder whether uttering words / bad words / filthy words / words attacking the purity of the mother of the defacto complainant can be termed as discharge of official duty by a police officer wearing his uniform. This is certainly not discharge of duty. It amounts to exceeding official duty. Therefore, even though it had been laid down by the learned Single Judge that sanction is required when a complaint is



lodged questioning the acts of the public servant, that observation is with respect to the facts of that particular case alone.

18. In the instant case, I hold that uttering words, particularly questioning the purity of the mother of the defacto complainant cannot be termed as discharge of public duty. Therefore, I find no fault in proceeding with the complaint. Sanction under Section 197 Cr.P.C., is required only to protect a public servant with respect to acts done or committed in discharge of public duty and not otherwise.

19. The learned counsel for the petitioner also relied on 2020 SCC OnLine SC 517, D.Devaraja V. Owais Sabeer Hussain, wherein, the Hon'ble Supreme Court had held as follows related to sanction:

"66. 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.

67. 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. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would



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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.

68. 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 the government sanction for initiation of criminal action against him.

69. 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.

70. 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.

71. 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."

20. In the very same judgement, the Hon'ble Supreme Court had carved out an exception when sanction would not be required. The Hon'ble Supreme Court in paragraph 67 referred supra had stated an example, namely, where a police officer assaults a domestic help or indulges in domestic violence. It had been stated that



then he would not be entitled for any protection.

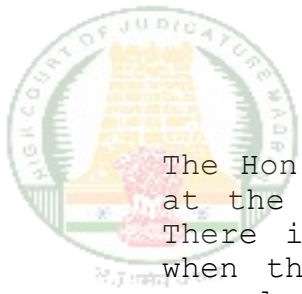
21. A parallel can be drawn to the instant case, where the police official under the protection of his uniform had exceeded his powers by imputing words touching the purity of the mother of the respondent herein. Naturally that act cannot be termed to be discharge of public duty. Therefore, I would also respectfully follow the dictum laid down by the Hon'ble Supreme Court, wherein an exception had been given and I would rely on the peculiar facts of this particular case and state that not obtaining sanction under Section 197 Cr.P.C would not come in the way of taking cognizance of the complaint.

22. Now let me address the issue of taking cognizance. It is often stated that when the Judicial Magistrate, takes cognizance of a final report filed under Section 173 Cr.P.C there should be application of mind. The Judicial Magistrate should examine the opinion given by the investigating officer, should examine whether the offence alleged is made out necessitating issuance of summons to the accused and thereafter, should record the reasons why he had held that the offence had been made out had taken a decision to issue summons to the accused.

23. Procedure under Section 200 of Cr.P.C had been quite clearly given in the provision itself. Issuance of summons is under Section 204 Cr.P.C. On receipt of complaint, the complainant and the witnesses are first examined. Their statements are recorded. The documents which are produced are perused by the Magistrate. Thereafter, if the Magistrate finds that even after examining the statement of the complainant and the witnesses or on perusal of the records, no offence has been made out for issuance of process, the Magistrate can very well dismiss the complaint.

24. On the other hand, if the Magistrate forms an opinion that issuance of process is required to proceed with the case, then if it is summons case, he can issue summons for attendance of the accused and if it is a sessions case, he may issue warrant and the accused may be brought before him or before any other Magistrate having jurisdiction. In either case, the Magistrate should take care to verify whether the complaint has disclosed the list of witnesses and the list of documents on which the defacto complainant relies. It must also be stated that Section 204 Cr.P.C also provides that an opinion must be formed by a Magistrate, whether summons has to be issued to the accused or not.

25. Provision under Section 204 Cr.P.C had directly come for interpretation in 2012 5 SCC 424, Bhushan Kumar referred supra which is relied on by the learned counsel for the respondent.



The Hon'ble Supreme Court had held that an order is not required at the stage of issuance of summons under Section 204 Cr.P.C. There is no compulsion on the Magistrate to give reasons, but when the accused appears on receipt of summons, then there is compulsion on the Magistrate to explain to the accused as to the nature of charges, as to the nature of the complaint and seek answers from the accused whether he accepts the same or objects to the same. If he objects, then further proceedings are initiated.

26.The expression of the word 'summons' had also explained in the said judgments. The judgment reported in (2012) 5 SCC 424, Bhushan Kumar and Another V. State (NCT of Delhi) and another and also the judgment relied on by the learned counsel for the petitioner reported in (2015) 12 SCC 420, Mehmood Ul Rehman V. Khazir Mohammed Tunda and others, base their findings in the judgment reported in (1998) 5 SCC 749, Pepsi Foods Ltd. V. Judicial Magistrate which is still now followed by all Courts laying the foundational guidelines with respect to taking cognizance, particularly also with respect to a private complaint given under Section 200 Cr.P.C.

27.In the instant case, on the basis of the statements recorded by the complainant and the witness, the Magistrate had formed an opinion that process will have to be issued. He proceeded further to issue process.

28.The learned counsel for the petitioner stated that a departmental enquiry had been conducted as against the petitioner and during the course of enquiry a finding was given favourable to the petitioner. It can only be stated that during the course of trial this fact can be pointed out before the Judicial Magistrate who may take it in its true spirit, but that cannot be a ground to quash the proceedings.

29.It is also to be mentioned that even in the judgment relied on by the learned counsel for the petitioner in (2015) 12 SCC 420, Mehmood Ul Rehman V. Khazir Mohammed Tunda and others, the Hon'ble Supreme Court had given a finding that the cognizance taken by the Magistrate suffered for want of application of mind, but finally, the Hon'ble Supreme Court had only directed that the Magistrate may take up the matter for fresh consideration and may take further action if it is taken in accordance with law. The complaint was not at all quashed.

30.Here in the instant case, the matter has proceeded on a complaint entertained by the Magistrate under Section 200 Cr.P.C and finally under Section 204 Cr.P.C., the Magistrate had thought it was a fit case to issue summons.



31. It is obligatory on the part of the petitioner herein to answer summons. Let him face trial. Let the statement of the witnesses been tested during the course of trial and let that proceeding move forward.

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32. In view of the above facts, I am not inclined to quash the proceedings. To repeat, the petitioner herein under the garb of wearing the uniform of a Sub-Inspector of Police, inside the police station has no right to utter words which touch upon the purity of any person's mother. That is just not discharge of any public duty. It has to be condemned and I refuse to quash the calendar case. The present Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

smv

To

1. The Judicial Magistrate Court,
Perambalur.
2. The Public Prosecutor,
Madras High Court.

+1cc to M/s.R.Veeramani, Advocate, S.R.No.50368/21

+1cc to M/s.S.Karthikeyan, Advocate, S.R.No.51078/21

Cr1.O.P.No.25488 of 2016

RP(CO)
RGA(26/10/2021)