

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order
06.10.2021

Date of Pronouncing Order
29.11.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.182 of 2018

J. Jareena Begum

.. Petitioner

Vs.

K.S.Krishnan

.. Respondent

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records in respect of the impugned order dated 10.01.2018 in Crl.M.P.No4682/2017 passed by the Human Rights Court/District Court at Thiruvannamalai and set aside the same.

For Petitioner : Mr. M. Mohamed Riyaz
for Mr. R. Sagadevan

For Respondent : Ms. S. Sridevi,
Legal Aid Counsel

O R D E R

The matter is heard through "Video Conference".

2. The first respondent in Crl.M.P.No.4682 of 2017 is the revision petitioner herein.

3. This criminal revision case is filed challenging the order dated 10.01.2018, passed in Crl.M.P.No.4682/2017, by the Human Rights Court/District and Sessions Court at Thiruvannamalai, whereby, the petitioner herein was called for to face the trial for the alleged Human Rights violation.

4. The respondent herein preferred a complaint before the Human Rights Court/District Court, Thiruvannamalai, to take action against the revision petitioner herein for the alleged



commission of offences under Sections 166 and 506(i) of IPC and in the said complaint, notice was ordered and the same is under challenge.

5. The brief facts leading to the filing of the above criminal revision case are as under:

5(i) One Samundeeswari has filed a suit in O.S.No.112/2014 before the learned District Munsif at Arni, Thiruvannamalai District, seeking permanent injunction and she has also filed an application in I.A.No.333/2014, against one V.Radhakrishnan, K.Selvaraj and the respondent herein/Krishnan, and in the said interlocutory application, ad-interim injunction was granted in favour of the said T.Samundeeswari, which is undisputed and the said order is still in force.

5(ii) In view of the complaint given by one party viz., Savithri, W/o.Krishnan, against Sathasivam and Samundeeswari, FIR in Crime No.764/2017 was registered on 28.12.2017.

5(iii). Pursuant to the said complaint, it appears that the revision petitioner herein, who is newly recruited as Deputy Superintendent of Police, went to the spot and examined the field. At that time, it is alleged that she had violated the human rights by supporting the other party, thus alleging so, the respondent herein lodged the complaint before the Human Rights Court, Thiruvannamalai as stated supra and the same is taken on file.

6. The cognizance taken by the Human Rights Court is under challenge, both on law and on facts, as well.

7. The learned counsel for revision petitioner contended that the cognizance taken by the learned Sessions Court (Special Court for Human Rights Violation) is not in accordance with Section 190 of Cr.P.C., and relied upon the following decisions :

(i) (2005) 1 LW (Cr1) 139 [Dr.S.Sourubarani and another Vs. C.Selve],

(ii) (2007) 1 LW (Cr1) 440 [K.Dhamodharan Vs. R.V.Narbabi],

(iii) (2018) 1 LW (Cr1) 617 [1.Rev.Sister Flora Correspondent, St.Teresa Primary School, West Marianathapuram, Dindigul, 2. Arockia Marry Vs. S.Babiolo viancy].

8. The learned counsel for the revision petitioner further contended that in order to attract the offence under Section 166 of IPC, the public servant should have knowingly disobeyed any 'direction of law'. Besides, the revision petitioner appointed



and working as Deputy Superintendent of Police and hence, she can be removed only by the order of Government, and thus, prior sanction for prosecution is necessary.

9. Further submitted that she only visited the property in connection with law and order issue, for which, the proceedings under Section 145 of Cr.P.C., have already been referred to and she has not disobeyed any 'direction of law'. The petitioner is a Public Officer, was discharging her official duty and she has not committed any violation of law and further contend that the very cognizances was taken is not saved under Section 460(e) of Cr.P.C. but vitiated in view of the mandatory provision of Section 460(k) of Cr.P.C.

10. Heard, Ms.S.Sridevi, learned Legal-Aid-Counsel for the respondent. She has contended that though it is a civil dispute, the police officer went and interfered and supported one party and such an action of police officer is against provision of Order 39 Rule 4 CPC. The learned counsel also referred to the findings rendered by the Human Rights Commission, wherein, compensation was ordered to the other side and the Government Advocate has given a letter not to interfere with the civil dispute and therefore, the action of the revision petitioner amounts to disobedient in the nature or direction of law.

11. At the time of admission of this revision, this Court by order dated 06.02.2018, has granted interim stay, subsequently, extended and the same is in force.

12. The learned counsel for the petitioner relied upon a decision of this Court reported in (2005) 1 LW (Cri) 139 (Dr.S.Sourubarani Vs. C.Selvi), wherein, this Court held as follows:

"the Human Rights Court has no power to entertain the complaint directly without the committal proceedings taken by the Judicial Magistrate concerned".

12(a). Further, the learned counsel relied on a decision of this Court in the case of Rev. Sister Flora Correspondent, St. Teresa Primary School and another Vs. S.BabioloViancy reported in 2017 SCC Online Mad 16887: (2018) 1 LW (Cri) 617.

12(b). The learned counsel for the petitioner also relied on a decision of this Court in the case of Dr.S.Sourubarani and Another-Vs-C.Selvi reported in (2004) SCC OnLine Mad 1082: (2005) 1 LW (Cri) 139, wherein, this Court has held as follows:-

"16. There by curtailing the jurisdiction of the Courts of Sessions taking cognizance of any offence, directly. In other words, the Courts of Session has



no original jurisdiction to take cognizance of any offences, unless committed by a Judicial Magistrate, as contemplated under Section 209 of the Code."

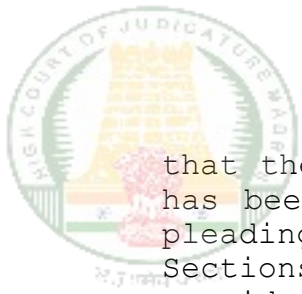
12(c). Further, he relied on a decision of the Hon'ble Supreme Court in the case of A.Goverdhan Reddy Vs. Superintendent of Police, Adilabad District, Adilabad, reported in 1997 SCC OnLine AP 580, wherein, the Hon'ble Supreme Court has held as follows:-

"8.It is not necessary to refer to other provisions of the code as the above leave no manner of doubt that the Human Rights Court, being a Court of Session for trial of offences violative of Human Rights, does not have the power to take cognizance of any offence as a Court of original jurisdiction unless the case is committed to it by a Magistrate."

13. The sum and substance of the above decisions go to show that the Human Rights cases are to be tried by Human Rights Courts designated thereafter. However, as such taking of the case, on file, by the Court of Sessions, which is designated as Human Rights Court, ignoring Provision under Section 193 Cr.P.C., is bad in law and since, the Human Rights Courts constituted under the special statute sans any special procedure enshrined therein necessarily has to fall back on the Code of Criminal Procedure. The definition under Section 2(d) of the Code of Criminal Procedure, 1973, will apply to the complaint preferred alleging the commission of offences arising out of human rights violation also. Section 193 of the Code of Criminal Procedure puts an embargo on the Court of Session to take cognizance of any offence unless the case has been committed to it by a Magistrate under the Code of Criminal Procedure.

14. Thus, I find that the complaint filed by the respondent herein is not saved under the irregular proceedings mentioned in Chapter.XXXV of Cr.P.C., since the complaint filed as such, does not fall under Section 460(e) of the Cr.P.C., and hence stands vitiated under Section 460(k) of Cr.P.C. Hence, the cognizance taken by the learned District Judge (Human Rights Court) is found to be bad in law. Accordingly, I have no hesitation to hold that unless the matter is committed by a learned Judicial Magistrate to the Court of Sessions, which is designated as Human Rights Court, the Special Court (Human Rights) cannot take the complaint on file as if, it has original jurisdiction. It is only committal proceedings and hence, the cognizance taken by the Human Rights Court, is held to be bad in law.

15. On perusal of the order under Challenge, it reveals



that the learned District Judge observed that a prima-facie case has been made out and also mentioned as from the averments and pleadings made in the complaint, it makes out the offences under Sections 166 and 506(i) of IPC. Hence, the point of consideration is whether, pleadings in the Private Complaint makes out a prima-facie case for allegation of offences under Sections 166 and 506(i) of IPC.

16. At this juncture, it is relevant to extract Section 166 of IPC, which reads as follows:-

166. Public servant disobeying law, with intent to cause injury to any person. - Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration: A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this Section.

The bare reading of the above Section makes it clear that the said Section gets attracted when a public servant knowingly disobeyed any direction of law.

17. At this juncture, it relevant to be stated that the phrase "direction of law" as defined by the Hon'ble Supreme Court in the decision reported in (2000) 6 SCC 195 [K.K.Patel and another Vs. State of Gujarat and another] discussed infra. In the instant case, it appears that there is no such 'direction of law' in favour of the complainant/respondent.

18. In the case of Prabhakara Panicker M.B. V. State of Kerala, reported in 2010 CrI.J. 4117 (Ker) : 2010 (3) KLT 209, it is held that

- "(i) The accused was a public servant at the relevant time;
- (ii) There was a direction of law as to how such public servant should conduct himself;
- (iii) The accused had disobeyed such direction;
- (iv) By such disobedience he had intended to cause or knew it to be likely to cause injury to



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any person.

The indispensable ingredient of the offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant, as held in [K.K.Patel and another Vs. State of Gujarat and another] reported in (2000) 6 SCC 195. For the offence under Sections 167 and 219 of I.P.C., the pivotal ingredient is the same as for the offence under Section 166 of IPC.

To make out an offence under this provision, it has to be stated that the public servant knowingly disobeyed any particular direction of the law which he was bound to obey and further that such disobedience would cause injury to any person to the knowledge of the public servant."

19. At the risk of repetition, however, for the sake of clarity, it is to be stated that even before the dispute that arose between the parties herein to the lis, the civil suit in O.S.No.112/2004, was filed by the Samundeeswari, wherein, injunction was granted against the respondent herein on 13.06.2014 itself. The said injunction order granted by the competent civil Court in I.A.No.333/2014 is still in force, even on the alleged date of filing of FIR on 28.12.2017, suppressing the above said order of injunction granted by the competent civil Court, the private complaint appears to have been filed before the Human Rights Court. On a bare perusal of the complaint filed by the respondent before Human Rights Courts, it reveals that the above factum of operation of order of injunction granted by the Civil Court appears to have been purposely suppressed.

20. The "factum of injunction order" granted by the competent Civil Court, which is running against the respondent/private complainant, is a "material fact" and on perusal of the complaint, it is seen that the above said "material fact" has been suppressed and thus, I find that the complaint filed by the respondent herein before the Human Rights Court (District Court) in CrI.M.P.No4682/2017, is "suppression of material fact", as stated supra.

21. The next alleged offence is under IPC:

This Court in the decision reported in (1988) 2 MWN (Cri) 184, in the case of Noble Mohandass v. State, has held as



follows:

"Further for being an offence under Section 506 (2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually.

22. The Hon'ble Supreme Court in the case of Manik Taneja v. State of Karnataka, reported in (2015) 7 SCC 423: [(2015) 3 SCC (Cri) 132: 2015 SCC OnLine SC 51], has held as under:

Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:

"503.Criminal intimidation.-Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.-A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this Section."

23. A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

24. Section 504 IPC comprises of the following ingredients viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients



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of Section 504 are held to be being satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC."

25. After perusing the elements of complaint and the pleadings, I find that even if the content of the complaint is taken at their face value and accepted in their entirety, they do not prima-facie constitute any offence or make out a case under Section 166 and 506(i) of IPC and the very filing of the complaint before the Hon'ble Human Rights Court appears to be is on misconception of law.

26. As the offences under Sections 166 and 167 of IPC have a direct nexus with the commission of criminal misconduct on the part of the public servant, indisputedly, an order of sanction or prosecution is a prerequisite before the learned Sessions Judge or the learned Judicial Magistrate could issue summons upon the accused. On the date of taking cognizance, there should have been a pre-sanction for prosecution. Admittedly, in this case, no prior sanction has been obtained from the Government of Tamil Nadu.

27. The revision petitioner, who is arrayed as respondent in the complaint before the Human Rights Court, is a direct recruited Deputy Superintendent of Police and hence, she is a public servant as defined under Section 21 of IPC.

28. Furthermore, the cognizance of an offence under this Section require sanction under Section 197 of Cr.P.C., if the concerned public servant is not removed from his office, except by sanction of the Government. Admittedly, the petitioner herein is the direct recruited Deputy Superintendent of Police and can be removed from office only by sanctioning of Government and the position is accepted by the learned Government Advocate.

29. The lower Court record reveals that the revision petitioner is directly recruited as District Superintendent of Police in the cadre of Group I Service TNPSC. She is a public servant appointed by the Government of Tamilnadu and hence, prior sanction for prosecution is a mandate. Thus, the complaint filed by the respondent without obtaining necessary prior sanction as contemplated under Section 197 of Cr.P.C., and therefore, I find that in the absence of any prior sanction by the competent Government, the complaint itself is not maintainable. Hence, in view of the allegation and averments in the private complaint, the revision petitioner is a public servant in the rank of Deputy Superintendent of Police and in



the absence of prior sanction for prosecution, the Special Court cannot take cognizance of the complaint and hence, I find that the cognizance taken by the Human Rights Court, as required under Section 197 of Cr.P.C., is bad in law and the prosecution, by way of private complaint, suffers since it sans prior sanction.

30. At this juncture, the learned legal aid counsel would contend that the Civil Court order is not extended till the date of the dispute involved in the incident, however, the records reveals otherwise.

31. After perusal of the docket order passed in I.A.No.333/2014 in O.S.No.112/2014, (filed by Samundeeswari), I find that the order of injunction granted against the respondent herein, in respect of very same land in same survey number was dated 17.06.2014, and the same is still in force. As per the order passed by the Executive Magistrate, in the revenue proceedings initiated under Section 145 of the Cr.P.C., conducted as per the FIR in Crime No.691/2017, dated 25.11.2017, which has referred by Inspector of Police to the revenue authority, to hold the enquiry under Section 145 of Cr.P.C. The 'A' party is arrayed as Samundeeswari, namely the plaintiff, in the above said suit, whereas, 'B' party was arrayed as the respondent herein.

32. It remains to be stated that K.Savithri wife of Krishnan, the respondent herein, filed complaint in Crime No.764/2017, alleging the offences under Sections 294(b), 427, 447, 506(i) of IPC, against Sathasivan and Samundeeswari (viz., the plaintiff) and the order of injunction granted by the competent civil Court was in force that was on 28.12.2017.

33. In view of the filing of the above said FIR on 28.12.2017, it appears that the revision petitioner, a newly recruited Deputy Superintendent of Police went to the spot to thwart happening of unlawful event affecting peace and tranquillity in society. It is to be stated that the above FIR came into registered after two rival FIRs against each other, which have been filed touching upon the very same suit property. Hence, the Jurisdictional Inspector of Police has referred the matter to the Revenue Authorities under Section 145 of Cr.P.C. and the same was pending. Since yet another complaint was given by the wife of the first respondent herein (private complainant), the revision petitioner went to the spot to thwart any unlawful or criminal act.



34. In the order passed under Section 145 of Cr.P.C., the Executive Magistrate cum Tasildhar has categorically rendered a finding that in spite the order of Civil Court, injunction in favour of the Samoondeswari ("A" Party), "B" Party viz., Krishnan and his wife [the first respondent herein and his wife Savitri, who is the complainant in the above referred Crime No. 764 of 2017] had grossly obeyed the order of injunction and tress passed into the land and tried to cultivate the land.

35. It remains to be stated that the wife of the first respondent herein Savithri, now deceased, has earlier lodged a complaint on 21.08.2017, assumes significance. In view of the said complaint, this revision petitioner had gone to the spot as stated supra. On a perusal of the private complaint, it appears that the revision petitioner/Deputy Superintendent of Police went to the spot and got trapped in the stage drama conducted by the Krishnan/first respondent. The Complainant/Savithri and her husband/first respondent herein had conducted a stage drama by themselves, as if, they were in possession of the property and the "A" Party [Samoondeswari] was trying to encroach upon the same and created a scene and took some photographs and filed impugned private complaint before the Sub Court for Human Rights, Thiruvannamalai.

36. As per the finding of the civil Court, the 'A' party and their family members were in possession of the property. In view of the order passed by the competent civil Court, namely District Munsif Court, Arani in I.A.No.333/2014 in O.S.No.112/2020 dated 17.06.2014, which was in force even now and in gross disobedience to the injunction order, the respondent herein (B-Party), (who is the third respondent/third defendant in the injunction order), has trespassed into the suit property as per the finding rendered by the learned Executive Magistrate. As regards the revenue proceedings under Section 145 of Cr.P.C., the wife of the respondent herein camouflaged the entire issue and filed a complaint in crime No.764/2017 in a planned way, thereby inviting the DSP to the spot and created a scene alleged as if she was doing favour to the 'A' party, (who is admittedly protected with the injunction order).

37. Thus, in fine, it appears that the entire case has been twisted by the respondent herein. It appears that the parties referred in the said FIR were frequently indulged in law and order violations in respect of their property dispute. The order under Section 145 of Cr.P.C., has been passed by the learned Executive Magistrate pursuant to the FIR in Crime No.691



of 2017, dated 25.11.2017. Hence, I find that the respondent herein is the law breaker and he has made a drama as if he was in possession and preferred the complaint before the Human Rights Commission.

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38. From the order passed by the Human Rights Commission in SHRC No.10304/2017, dated 25.10.2019, I find that for the reason best known, the order of Civil Court has been totally ignored by the Hon'ble Human Rights Commission. Since the order of Hon'ble Human Rights Commission is under challenge in W.P.No.32759/2019, wherein, the Division Bench of this Court, by an order dated 22.11.2019, in W.M.P.No.33183/2019, has stayed the implementation of the order passed by the SHRC. Since the finding of the Human Rights Commission in the W.P., is pending adjudication before the Division Bench of this Court, I am imposing restriction on myself in dealing with the latches committed by the Hon'ble Human Rights Commission. Except to say that the order of injunction passed by the Civil Court being running and found to be in force on the date of the occurrence, is found to be was totally eschewed by the Hon'ble Human Rights Commission. So also the order passed under Section 145 of Cr.P.C., by the learned Executive Magistrate. The finding of factum of possession of A-Party rendered by the competent civil Court is totally against the respondent/complainant (B-Party) and the finding rendered by the Executive Magistrate under Section 145 proceedings also goes to show that it is in a gross of disobedience to the civil Court order of injunction and the respondent herein has trespassed into the suit property and while doing so, has clearly and cleverly created a scene and stage managed the same and designed a complaint inviting the Deputy Superintendent of Police to the spot and created another stage management to project as if, the revision petitioner/Deputy Superintendent of Police is acting in favour of other party (A-Party).

39. Hence, I find that the action of the revision petitioner is only in support of the Samundeeswari, in whose favour, the order of injunction was granted at the relevant point of time and further, the order under Section 145 proceedings is also in favour of the said Samundeeswari and not in favour of the respondent herein. Moreover, an adverse finding has been rendered by the learned Executive Magistrate that the respondent herein is a law breaker as he has disobeyed the law and taken the law in his hand by trespassing into the property in possession of Samundeeswari and hence, I find that the action of the revision petitioner is only in accordance with the "direction of law" as stated by the Hon'ble Apex Court, in the above said decision. Further, I find that there is no



violation of Human Rights by the revision petitioner, much less, any right of the respondent herein.

40. Hence, I find that for the reasons best known, in the private complaint, the respondent herein has not disclosed the pendency of the civil suit and also the interim order and it amount to suppression of material fact. The learned District Judge, without considering the merits of the allegation and without appreciating the facts in proper prospective as discussed supra, has observed that prima-facie case has been made out against the revision petitioner and took cognizance of the case against the revision petitioner under Sections 166 and 506(i) of IPC and hence, such finding hereby stands vacated.

41. In view of the discussion in preceding paragraphs, it is found that the complaint given by the respondent against the revision petitioner does not make out any violation of human rights and in the absence of any prima-facie case has been made in the complaint, the impugned order dated 10.01.2018 passed by the learned Human Rights Judge/District Judge at Thiruvannamalai, in CrI.M.P.No4682/2017, is liable to be set aside.

42. In fine, the private complaint filed by the first respondent is in violation of Section 197 of Cr.P.C., and cognizance taken by the District Court (Human Rights Court) is not saved under Section 460(e) of Cr.P.C., but stands vitiated under Section 460 (k) of Cr.P.C., and no prima facie case is made out as essential ingredients of Sections 166 and 506(i) of IPC are not made out and the allegations of the violation of Human Rights is found to be absent.

43. In the result, the Criminal Revision Case is allowed. The impugned order passed in CrI.M.P.No.4682 of 2017, by the Human Rights Court/District Court at Thiruvannamalai, dated 10.01.2018 is hereby set aside and stands quashed.

Sd/-
Assistant Registrar(CJ-Conf.)

//True Copy//

Sub Assistant Registrar

AT



To

1. The District Judge,
Human Rights Court/District Court,
Thiruvannamalai.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.S.Sridevi, Advocate, S.R.No.61697

+1cc to M/s.R.Sagadevan, Advocate, S.R.No.61771

Cr1.R.C.No.182 of 2018

KSM(CO)
SU(14/12/2021)