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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

CORAM

THE HON'BLE MS. JUSTICE R.N.MANJULA

CrI.O.P.No.5241 of 2019
and CrI.M.P.No.3040 of 2019

1.Bhuvaneshwari
2.Purushothaman
3.Manojkumar
4.Varunkumar

... Petitioners/Accused 1 to 4
Vs.

1.State rep. by

The Sub-Inspector of Police,
C-1, Sriperumbudur Police Station,
Kanchipuram District in Cr.No.618 of 207

... Respondent/Complainant

2.C.L.Sujatha

Inspector of Posts,
Sriperumbudur Sub Division, Sriperumbudur - 602105,
now working as Inspector of Posts,
Walajapet Sub Division,
Arakkonam Divison, Vellore District.

... Respondent/Defacto Complainant

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.152 of 2018, pending on the file of the learned District Munsif cum Judicial Magistrate, Sriperumbudur and quash the same.

For Petitioners : Mr.S.Vadivel Murugan

For Respondents : Mrs.G.V.Kasthuri for R1

Additional Public Prosecutor

No Appearance for R2

ORDER

(Heard through Video Conferencing)

This Criminal Original Petition is filed calling for the records in C.C.No.152 of 2018, pending on the file of the learned District Munsif cum Judicial Magistrate, Sriperumbudur and quash the same.

2. The facts of the case are:-

The defacto complainant is the Inspector of Posts,



Sriperumbudur Sub Division, Postal Department. Presently, she is working as an Inspector of Posts, Walajapet Sub Division. The first petitioner is the Post Master of Thandalam Branch Office. The petitioners 2 to 4 are the husband and sons of the first petitioner. The Thandalam Branch Post Office is housed in the house of the first petitioner. The second respondent being the superior of the first petitioner, had inspected the Thandalam Branch and found certain letters were kept pending without delivery to the addressee. Hence, the second respondent questioned the first petitioner for the lapse in her duty. This has resulted in exchange between the petitioner and the second respondent and during that course, her husband, the second petitioner and her sons 3rd and 4th petitioner came in support of the first petitioner and abused the second respondent in filthy language and confined her in their house by locking her inside the house. In this connection, she has lodged a criminal complaint and on which the first respondent Police has registered an F.I.R. in Crime No.618 of 2017 under Sections 341, 294(b), 353 IPC and Section 4 of Tamil Nadu Prohibition Harassment of Woman Act, 2002.

2.1 In the said case, investigation has been completed and charge sheet has also been filed before the learned District Munsif cum Judicial Magistrate, Sriperumbudur and the same is taken on file in C.C.No.152 of 2018. During the pendency of the said case, the petitioners have filed this original petition under Section 482 Cr.P.C. to quash the proceedings.

3. The learned counsel for the petitioners submitted that the first petitioner is the Post Master of Thandalam Branch. In order to take criminal action against the first petitioner, sanction ought to have been got from the Government; in this case, without getting any sanction, the case has been registered against the first petitioner and the charge sheet has also been filed. He would further submit that there is no evidence to show that the first petitioner had kept several letters in her custody without effecting due delivery. It is submitted that there is no prima facie material available in this case to maintain the criminal proceedings and the proceedings pending in C.C.No.152 of 2018 should be quashed.

4. The learned Additional Public Prosecutor submitted that the materials available on record is more than sufficient to make out a case against these petitioners and they have prevented the second respondent from executing her public duty. She has further submitted that the grounds raised by the petitioners are factual matters and they have to be raised before the trial Court.

5. Before venturing into the allegations and finding out a prima facie materials, it is essential to clarify about the



requirement of the sanction as contemplated under Section 197 Cr.P.C. For the purpose of convenience, Section 197 Cr.P.C. is extracted as below...

197. Prosecution of Judges and public servants.—

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction (a)

in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government; (b) in the case

of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166-A, section 166-B, section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 370, section 375, section 376, [section 376-A, section 376-AB, section 376-C, section 376D, section 376-DA, section 376-DB] or section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any



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offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the Contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.] (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

6. The words employed in the above provision makes it clear that sanction is required only for the acts/offences alleged to have been committed by a person while acting or purporting to act in the discharge of his official duty. To abuse the second respondent in filthy language or to harass her without respecting her womanhood or to confine her by locking the door etc., are not the acts coming under the purview of discharging the official duties of the first petitioner. The allegations made by the second respondent against the first petitioner and other petitioners, are offences falling under Chapter 14 and 16 of Indian Penal Code. They are very much personal in nature and does not have any official character to clarify them as acts or course of acts done while discharging the official duties. It has nothing to do with the powers and functions of the first petitioner in her capacity as the Post Master of Thandalam Branch.

7. It is to be noted that for the alleged acts committed by the first petitioner, she has been kept under suspension and after sometime she has been reinstated. The disciplinary proceedings against her for the alleged misconduct is said to be still pending. The allegation in the very complaint itself has



got more than sufficient prima facie material to make out a case against the first petitioner and others. The submissions made by the learned counsel for the petitioner at its best can serve as his defence, provided if those facts are established before the trial Court. The second respondent is none other than the victim of the offences committed against her. It is alleged that she has been harassed at the house of the first petitioner. The other petitioners being men and they are alleged to have involved in abusing the second respondent and harassing her. The second respondent being the victim and her statement which contains prima facie allegation is sufficient to make out this case. Rest of the submissions made by the learned counsel for the petitioners are all questions of fact which have to be proved or disproved only by substantiation before the trial Court. Therefore, I find no reason to invoke the inherent power of this Court to quash the proceedings.

In the result, this Criminal Original Petition is dismissed. Connected criminal miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

- 1.The District Munsif cum Judicial Magistrate,
Sriperumbudur.
- 2.The Sub-Inspector of Police,
C-1, Sriperumbudur Police Station,
Kanchipuram District.
3. The Inspector of Posts,
Walajapet Sub Division,
Arakkonam Divison, Vellore District.
- 4.The Public Prosecutor.
High Court,
Madras.

+1CC to Mr.D.Raghupathy, Advocate, Sr.No.55003

Cr1.O.P.No.5241 of 2019

SVI (CO)
SB(17/11/2021)