

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2020
PRONOUNCED ON : 23.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.20933 of of 2014

S.Zakhir Hussain Petitioner / Accused
Vs.

1.State represented by ,
The Inspector of Police,
B1, North Beach Police Station
Chennai - 600 001 ... 1st Respondent /
Complainant

2. Srinivas S/o. D. Ramaiah
Superintendent of Customs (SIIB),
Custom House,
Chennai ... 2nd Respondent /
Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to Call for the records in C.C.No.1863/2014 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and quash the same as against the petitioner.

For Petitioner : Mr.K.S.Dinakaran, Sr.Counsel
For Mr.Sankara Subbu

For 1st Respondent : Mr.C.Iyyappa Raj
Addl.Public Prosecutor

For 2nd Respondent : Mr.N.P.Kumar

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.1863 of 2014, on the file of the learned VII Metropolitan Magistrate, George Town, Chennai, as against the petitioner.

2. The case of the prosecution, in nutshell, is as follows:-

(i) The 2nd respondent, on the basis of intelligence report, booked a case of smuggling of cosmetics from Singapore by way of non-declaration and concealment and the consignment was detained on 01.11.2013. The petitioner sent abusive SMS, Blank calls etc., to the 2nd respondent and threatened the 2nd respondent. On 05.12.2013, the 2nd respondent summoned one Mahesh Kumar Singh and his associate Ibrahim U/s. 108 of Customs Act, 1962 and recorded their statements. While the 2nd respondent concluded the semi judicial proceedings under Section 108 of Customs Act, 1962, at about 17.15 hrs., the petitioner rushed inside and started using abusive words against the respondent, physically hurt him and threatened to kill him or kidnap his children, if he did not withdraw from the case.

(ii) Based on the complaint given by the 2nd respondent, the 1st respondent Police registered a case in Crime No.995 of 2013, against the petitioner, for the offence under Sections 448, 341, 323, 332, 355 and 506(ii) of IPC. After completion of investigation, charge sheet was filed in C.C.No.1 of 2014, on the file of the VII Special Judge for CBI cases, George Town, Chennai.

3. The Learned Senior Counsel appearing for the petitioner submitted that the petitioner is a practicing Advocate, who use to represent his clients, during enquiry by the Customs Authorities. The very Registration of FIR filed by the respondent, as against the petitioner is illegal, and out of malafides on the part of the defacto Complainant. The petitioner has accompanied his client one Mahesh Kumar Singh, who was summoned to the Customs Office, as per Section 41D of Cr.P.C., and that the petitioner did not violate any law by being in the premises of the Customs Office. He further submitted that the petitioner was assaulted by the Customs Authorities, which was informed to the remanding Magistrate, the petitioner was taken to Royapettah Government Hospital and Accident Register for injuries sustained was issued. Further, CCTV records of the Customs House not produced, since it would falsify the case. According to the 2nd respondent, the petitioner was detained in the Customs House, handed over to the respondent, on the other hand, the respondent police case is that the petitioner was arrested on the road near Customs House. The petitioner had complained about high-handedness and corrupt practice of the Customs and DRI officials to CBI. Hence, the Customs Officials had given a motivated complaint to brook vengeance. The petitioner had lodged a complaint against the Customs officials, which is a case in counter, which has not been registered and investigated against the dictum of Supreme Court and Law. Advocates are permitted to appear during investigation as per (2017 (345) ELT 323 SC), the petitioner had only assisted his clients Mahesh Kumar Singh and Ibrahim, which is legal and permissible. The petitioner filed CrI.O.P.No.32232

of 2013, seeking direction to the first respondent to take action against the person, who attacked the petitioner and to register the petitioner's complaint, dated 06.12.2013. This Court, by order dated 16.09.2014, directed to furnish the copy the enquiry report till date no such report furnished. Thus to refrain the petitioner from exercising his legal rights and duties, as an advocate, the respondent, with mala fide intention foisted a case on the petitioner. Hence, the petitioner prays to quash the proceedings in C.C.No.1863 of 2014, on the file of the learned VII Metropolitan Magistrate, George Town, Chennai.

4. The learned counsel appearing for the 2nd Respondent / defacto complainant submitted that in 2013, one M/s. ALM Enterprises, rep.by its Proprietors Mahesh Kumar Singh filed Bill of Entry, bearing No.3611465 on 22.10.2013 with the Customs House Chennai, declaring therein the import of 2070 cartons of Air -fresheners, for a value of Rs.6,50,208/- This valuation of the goods was not accepted by the Customs House and the value of goods were assessed by enhancing it to Rs.12,09,386/- and the duty Payable thereon was assessed as Rs. 4,26,981/- . Thereupon , the Customs Department has taken up the Bill of Entry for second check appraisement and examination. During the said course, certain difference in the weight of the consignment was noticed and accordingly, the cargo was detained on 28.10.2013.

5. On 06.11.2013, a letter dated 06.11.2013 was received from the importer to the Customs House that due to an inadvertent mistake, the overseas supplier has dispatched the entire quantity of supplies, which were initially negotiated by the importer, though he asked for only room fresheners to be dispatched for the present. Hence , a revised Invoice, dated 29.10.2013, was filed showing the total value of goods at USD 52339 for 3463 cartons, out of which, 749 cartons were declared to contain air fresheners which the rest of the cartons have contained toiletries and cosmetics like deodorants, sprays, perfumes, shampoos etc.,

6. The learned counsel would further submit that on 07.11.2013 , One L.Y.Ibrahim appeared at SIIB at around 13 hrs., introducing himself as the Managing partner of M/s. ALM Enterprises and submitted a copy of Importer Exporter Code and Power of Attorney. When advised to produce the Importer Exporter Code holder, Shri Ibrahim left. On 07.11.2013 , customs search parties were dispatched to the known addresses of Importer Exporter Code holder and power of Attorney holder. The petitioner/Accused arrived at the premises with a mob dressed in Lawyer's robe and obstructed the Customs officers from executing the search warrant and threatened the officers and sent threatening SMS to the defacto complainant.

7. It is his further contention that the Intelligence Wing of the Customs House viz., SIIB has examined the goods on 11.11.2013 and found the cosmetic goods and kept concealed the

same behind the declared items and drawn a detailed mahazar proceedings for ascertaining the true quantity and description of goods found imported and lying in the container. On 11.11.2013, the Commissioner of Customs (Import), Custom House, Chennai lodged a complainant against the petitioner/ Accused with the Commissioner of Police, Chennai in the course of meeting apprising him of the events and threat to the officer. After drawing the detailed Mahazar on 12.11.2013, the container was seized vide Seizure Mahazar. The Officers of SIIB conducted market enquiry and collected information regarding MRP and market value of the produces found in the consignment and assessed that the assessable value of the consignment is Rs. 1.04 Crores. (Approx).

8. The learned counsel for the defacto complainant further submitted that the petitioner/ Accused used to visit frequently to SIIB unit, along with half - a - dozen of his associates, to intimidate the Investigating Officers and to carry out his threat of physical harm and elimination. Due to continuous threats, the defacto complainant filed a Complaint dated 23.11.2013 with the Commissioner of Police, Chennai against the Petitioner/ Accused about threat of physical harm and elimination.

9. The learned counsel for the 2nd respondent further submitted that in Connection with the above case, the proprietor of M/s. ALM Enterprises and one L. Ibrahim, his Authorized Signatory, were summoned U/ Sec.108 of Customs Act, for enquiry, but they did not comply with the summons. On 04.12.2013, the office premises of M/s. ALM Enterprises, was searched with nil results. At the time of search, the IEC Holder Mahesh Kumar Singh was present. On the same day, summons under Sec 108 of Customs Act were issued to both IEC holder Mahesh Kumar Singh and his Power of Attorney Ibrahim, asking them to appear before Superintendent of Customs on 05.12.2013 at 11 a.m. And 2 p.m.

10. On 05.12.2013 Mahesh Kumar Singh appeared as per the summons issued to him. Throughout the morning session, he refused to record his statement. He stonewalled the question put to him. Later, after arrival of Ibrahim at about 2 p.m., on his advice, Mahesh Kumar Singh started to depose his statement in writing. After that, he refused to elaborate further and stopped deposing. The same was brought to the notice of Deputy Commissioner of Customs (SIIB). Since, Mahesh Kumar Singh was non co-operative, the 2nd respondent concluded the semi judicial proceedings at about 17.15 hrs. At that time, the defacto complainant heard a noise of shouting at the entrance of the room and, when he came out, he saw Zakir Hussain, i.e., the petitioner/ Accused entered into the another room with violently pushing down the Havildhar Sundaramoorthy and used filthy words

against the 2nd respondent, slapped him and kicked him with his shoes in his private part. On hearing his shouts, the other Officers were assembled. He threatened the 2nd respondent and intimidated me with dire consequences. Subsequently, the defacto complainant was admitted in Hospital for the injuries sustained by him on 05.12.2013 and after treatment, he was discharged only on 07.12.2013. Hence the defacto complainant gave a complaint to the 1st respondent Police. Now investigation completed, charge sheet filed, finding prima facie case made, summons sent to the accused, at this stage, no roving enquiry required. This Court cannot act as a trial Court and analyse the evidence in detail. Hence, the learned counsel for the defacto complainant prayed for dismissal of the petition.

11. The learned counsel for the 2nd respondent / defacto complainant further submitted that M/s.ALM Enterprises had filed a Petition in W.P.Nos.30789 and 30790 of 2016 for release of goods, which were dismissed, against which W.A.Nos.821 and 822 of 2016 for retention not to list. This Court confirmed the redemption and directed the goods not to be released. Hence, there is no motive for putting up a false case. Further the learned counsel relied upon the decisions of the Hon'ble Supreme Court reported in Chilakamarthi Venkateswarlu and Ors., Vs. State of Andhra Pradesh and Ors. reported in (2019 (3) Crime SC 265) : (AIR 2019 SC 3913) wherein it is held that there cannot be a roving enquiry and the High Court cannot act as a trial Court in evaluating the evidence.

12. The learned Additional Public Prosecutor appearing for the respondents submitted that the petitioner under the garb of Advocate, obstructed the investigation and the judicial proceedings initiated by the Customs Authorities. Earlier, when the Customs Authorities went search of the importers, they were surrendered by the petitioner along with others, abused them, threatened them, thereafter they were chased away. Latter, on 05.12.2013 when Maheshkumar Singh and Ibrahim had appeared before the Customs Authorities in response to 108 summons and when they were inquired, statements recorded, the petitioner, at the closing hours, had barged to the enquiry room, used abusive words, threatened the defacto complainant and also kicked the defacto complainant on his private part, caused injuries and thereafter, came out from the enquiry room on his own torn the shirt button, raised alarm as though he was attacked by the Customs Officials, latter complaint received, petitioner was arrested, during the remand the petitioner made allegations of assault, the petitioner was taken to Royapettach Hospital, thereafter, remanded.

13. The 2nd respondent had taken treatment as inpatient in Stanley hospital. The medical records collected, statement recorded of the Doctor who had treated him. After

investigation, charge sheet was filed in this case, listing witnesses and documents, the lower Court on perusal of the materials produced taken cognizance of the offence, issued summons to the petitioner. In this case, L.W.1 is the complainant; L.Ws.2 and 3 are the avildars, who were present during commotion and assault; L.W.4 is the Hindi Translator, eye-witness to the occurrence; L.W.5 is the Deputy Commissioner of Customs, on hearing about the commotion, came and made enquiry; L.Ws.6 and 7 are the Mahazar Witnesses; L.W.8 is the causality doctor, who given further treatment to the defacto complainant; L.W.10 is the Investigating Officer. The statements of L.Ws.1 to 4 are corroborates with the medical evidence; L.W.4 and 5 state about the incidents taken place. Thus, the prosecution had collected the materials with the evidence and filed the charge sheet. In view of the same, objected for the quash petition and prayed for dismissal of the same.

14. Considering the rival submissions and on perusal of the materials it is seen that the petitioner had entered into the Customs house, assaulted a public servant, threatened the officers present there, the injured officer was admitted in hospital, given treatment as inpatient. Immediately, the respondent Police was informed, they come to scene of occurrence, received the complaint, collected the materials, arrested the accused and earlier to this incident, the petitioner had also threatened the customs officers regularly. The petitioner had sent a complaint, dated 06.12.2015 to the respondent police, who had conducted an enquiry, summoned the petitioner to appear, the petitioner failed to appear and thereafter, the complaint was closed. This Court while disposing of Crl.O.P.No.32232 and 33097 of 2013, by order dated 16.09.2014 had elaborately dealt and had disposed the Criminal Original Petition. The petitioner being a witness in the CBI cases, does not give a licence to the petitioner to interfere during enquiry and investigation by the customs authorities and interfere in their official act. Further, the petitioner entered into the customs house, assaulting the customs officers, threatening the officers therein have been spoken to by the witnesses and the medical evidence is also in conformity with the case of the prosecution, investigation completed, charge sheet filed, cognizance has been taken, further, the ground of motive is a question of fact to be seen during trial, this Court finds that there are enough materials against the petitioner to be proceeded with. In view of the same, this Court is not inclined to entertain the quash petition.

15. In the result, this Criminal Original Petition stands dismissed. Considering the facts that the proceedings in C.C.No.1863 of 2014, is pending before the learned VII

Metropolitan Magistrate, George Town, Chennai, without trial for the past six years, and finding that there are only 10 witnesses listed, this Court directs the trial Court to complete the trial within the stipulated time, giving top priority, preferably, within a period of four months, from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

MPK

To

1.The VII Metropolitan Magistrate,
George Town, Chennai

2.-do thro-The Chief Metropolitan Magistrate,
Egmore, Chennai-8.

3.The Inspector of Police,
B1, North Beach Police Station
Chennai - 600 001

4.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.20933 of of 2014

GPL (CO)
KKN 20.04.2021

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