



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CrI.O.P.No.19777 of 2017 and
CrI.M.P.No.11939 of 2017

D.Suresh Babu

... Petitioner

Vs.

1. The State rep. By the
Station House Officer,
Yanam

2. K.V.V.Satyanarayana

... Respondents

Criminal Original Petition is filed under Section 482 Cr.P.C., to expunge the adverse remarks by which departmental action is directed to be initiated as against the petitioner, pursuant to the order passed by the learned Judicial Magistrate, Yanam in C.C.No.16 of 2013 dated 24.03.2017.

For Petitioner : Mr.E.Anbarasan

For Respondents : Mr.Bharath Chackaravarthy
Public Prosecutor (Pondy) R1

M/s. Pass Associates for R2

O R D E R

The present Criminal Original Petition is filed under Section 482 Cr.P.C., by the petitioner, who is the Investigation Officer in Crime No.139 of 2011 to expunge the adverse remarks by which departmental action is directed to be initiated as against him, pursuant to the order passed by the learned Judicial Magistrate, Yanam in C.C.No.16 of 2013 dated 24.03.2017.

2. The brief facts of the complaint made by the defacto complainant is that one Angara Venkata Varaha Kumar, [hereinafter referred to as A.1] joined the Regency Ceramics Company as Deputy General Manager (HR) on 05.03.2010 and went absconding from duty since 30.06.2011 and the 2nd respondent,



[hereinafter referred to as A.2] was working as Asst. Operator in Regency Ceramics Company from 01.01.1986. While so, A.2, who was also a Trade Union Leader of the said company was suspended for the negligence while on duty. However, A.2 had challenged the said suspension before the Labour Court, the said court held reference in favour of 2nd respondent and ordered payment of 25% backwages and the same was confirmed by this Court. Therefore, A.2 approached A.1 on 24.11.2010 and reported re-joining and demanded A.1 for the payment of back-wages. Later on, based on the recommendation made by A.1, a sum of Rs.3,14,400/- was arrived at as the amount to be paid towards the full and final settlement of back wages A.2. Accordingly, a cheque bearing No.33365 dated 12.01.2011 was drawn on State Bank of India, Yanam for Rs.3,14,400/- and was handed over to A.1. Then, A.1 scanned the original cheque in computer, erased the contents that were filled by the Accounts department in handwriting and then typed the amount in figure and words for a sum of Rs.24,66,506/- in collusion with A.2 with an intention to gain wrongful loss to the company. After A.1 absconded, the fabrication of the cheque by A.1 and A.2 by making material alteration of the cheque for their ulterior motives were brought to the notice of the company, therefore, a complaint was preferred.

3. According to the petitioner / Investigating Officer, on receipt of the complaint, he took the complaint on file and conducted investigation and arrested A.2 on 09.09.2011 at his residence and obtained voluntary confession in the presence of witnesses. Since A.1 was absconding, as against A.2 charge was filed on 21.08.2012 and at the time of framing of charges, the learned Judicial Magistrate was pleased to discharge the 2nd respondent by order dated 24.03.2017 and made adverse remarks with regard to the manner of the investigation conducted by the petitioner and directed the Home Department and Law Department to take suitable action. As against the same, this Petition has been preferred.

4. The learned counsel for the petitioner submits that A.2 in his confession has stated that he along with A.1 fabricated and altered the original cheque issued for Rs.3,14,400/- into an amount of Rs.24,66,506/- by scanning the original cheque in the computer for the purpose of cheating the company. Based on the forged and fabricated cheque and the letter issued by A.1, A.2 has approached the defacto complainant for the backwages dues and the attempt made by A.2 was clearly spoken by the witnesses and on confession, the material objects were seized from the residence of A.2 in the crime number is well within the legal parameters.



5. The learned counsel for the petitioner also submits that the learned magistrate in a pre-trial stage, while framing of charge, has come to the conclusion that the investigation officer has not properly done the investigation inspite of the fact that there was sufficient material gathered by the I.O., to substantiate the charge.

6. The learned counsel for the petitioner contends that the court below has not given any opportunity of hearing before passing expunging remarks, as against the petitioner, as laid down by the Hon'ble Supreme Court. The learned Magistrate has gone beyond the scope and ambit and has gone to the extent of raising doubt on the investigation officer for not questioning the management for not paying the back wages, as per the order of this Court. Further, the learned Magistrate erred in penalising the investigation officer, who has conducted the investigation, as per the Code and there is no specific instance mentioned by the learned Magistrate to say that the investigation officer has maliciously done the investigation.

7. Lastly, the learned counsel for the petitioner pleaded that based on the Judgment passed by the court below, the Home Department is likely to initiate appropriate departmental action, as against the petitioner and hence it will be in the interest of justice to expunge the direction issued by the Judicial Magistrate, Yanam in C.C.No.16 of 2013 and to substantiate his contentions, the counsel for the petitioner has relied on the following Judgments:-

(i) Judgment of Hon'ble Supreme Court reported in 2000 (4) Crimes 171 [Manish Dixit &Ors., Vs. State of Rajasthan]

(ii) Judgment of Hon'ble Supreme Court in Civil Appeal No.4555 - 4559 of 2021 [Neeraj Garg Vs. Sarita Rani and Ors., etc.,]

(iii) Judgment of Hon'ble Supreme Court reported in AIR 1964 Supreme Court 703 (V 51 C 85) [The State of Uttar Pradesh Vs. Mohammad Naim]

8. The learned Public Prosecutor [Pondy] appearing for the 1st respondent submitted that a case in Crime No.139 of 2011 was registered for alleged offences under Sections 468, 471, 511 of IPC r/w Section 34 of IPC against two persons, namely, Angara Venkata Varaha Kumar and K.V.V.Satyanarayana, on complaint from one Vajrapu Manavalayya representing a company, viz., Regency Ceramics Limited, Yanam. Further, one Nookaraj, ASI of Police Yanam registered the case and thereafter, the petitioner, then Sub-Inspector of Police took up the case for investigation, arrested the accused persons, recorded the confession statements of the A.2 and seized the case properties. Subsequently, one K.Shanmugam, SI of Police completed the investigation and filed



charge sheet before the Judicial Magistrate, Yanam on 21.08.2012. In consequence, charge sheet was filed under Sections 468, 471 and 511 of IPC r/w Section 34 of IPC, which was taken on file as C.C.No.16 of 2013. Since A.1 was absconding, the case was split up in C.C.No.7 of 2017 against the A.1. While framing of charges on 24.03.2017, the learned Judicial Magistrate, Yanam found that there were no materials to frame the charge and therefore, discharged A.2 and closed the case. While doing so, the learned Magistrate had made adverse remarks against the investigation officer and observed that action should be initiated against him.

9. The learned Public Prosecutor [Pondy] also submits that the investigating officer has laid the charge sheet on the strength of the statement of witnesses LW 1-4, who are the employees of the company and LW 5 & 6, who are the witnesses to the confession statement and recovery of the case property being the original cheque dated 12.01.2011, letter dated 13.06.2011 (Photocopy), the tampered version of the cheque for Rs.24,66,506/- . Further, the finding of the trial court in Paragraph Nos.13 to 15, as if the cheque cannot be presented to the bank and no offence under Sections 468, 471 are made out and the case is a false case for unlawful gain from the company may not be correct. It is also a matter of fact that no notice was issued separately to the petitioner before passing the adverse remarks.

10. The learned counsel for the 2nd respondent / A.2 has not raised any objection to the observation of the learned Judge in C.C.No.16 of 2013.

11. Heard the learned counsel for the petitioner, learned Public Prosecutor [Pondy] and the learned counsel for the 2nd respondent and perused the documents placed on record.

12. It is pertinent to point out that in the Judgment reported in AIR 1964 Supreme Court 703 (V 51 C 85) [State of Uttarpradesh Vs. Mohammad Naim] relied on by the learned counsel for the petitioner, the Hon'ble Supreme Court, while dealing with the similar issue has laid down the following points to consider: (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. Further, the Hon'ble Apex Court has repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned, he should have

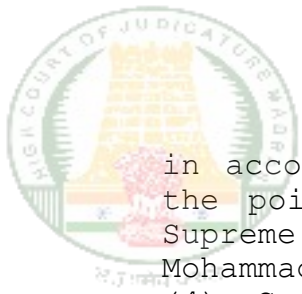


been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, otherwise the offending remarks would be in violation of the principles of natural justice, as per decision of Hon'ble Supreme Court reported in 2000 (4) Crimes 171 (SC) [Manish Dixit and Ors., Vs. State of Rajasthan]

13. On going through the order passed by the court below, it could be seen that the petitioner has seized one original cheque bearing no.333655 dated 12.01.2011 drawn on SBI, Yanam for Rs.3,14,400/-, a letter dated 13.06.2011 addressed to A2 and signed by A1 and the xerox copy of the cheque bearing no.333655 dated 09.04.2011 for Rs.24,66,506/- from A.2 and the documents are recorded as C.P.No.50 of 2011 before this Court. However, the court below opined that, as per the complaint, the original cheque was with A.1 and was not given to A.2, therefore, the original cheque could never be recovered from A2.

14. Further, the alleged occurrence said to have been taken place in the month of April 2011, the complaint was given to the police only on 17.08.2011 hence, there is a delay of more than 45 days. Further, A.1 absconded from the company without intimation on 30.06.2011. Further, the court below opined that the investigating officer has abused his power illegally arrested a person and had put him behind the bars, colluded with the corporate company and had filed a false report. That apart, by following the Judgment of the Hon'ble Supreme Court reported in State of Gujarat Vs. Kishanbai, the court below directed the "learned APP to send a copy of this order to be sent to the Home Department and the Law department puducherry, for initiating suitable action as against the Investigating officer in this case and to intimate the same to the court at the earliest." It could be seen that the court below was of the opinion that proper investigation had not been done by the investigating officer.

15. It is to be noted that the award was passed in the year 1998 for reinstatement of A2 with 25% back wages and as against the said award, Writ Petition was filed by the company and the same also dismissed on 11.07.2008, however, A.2 approached A.1 only on 24.11.2010 for reporting to duty, which nearly after two years. That apart, the Original Cheque bearing No.333655 is for Rs.3,14,400/- and the same is dated 12.01.2011 and the manipulated Cheque bearing no.333655 is for Rs.24,66,506/- and the same is dated 09.04.2011, the cheque has not been presented for nearly three months. Be that as it may, whether there are lapses on the part of the investigating officer can be decided only by the Department and not by this Court. The Department, shall obtain explanation from the petitioner and proceed further



in accordance with law, in view of the guidelines observed and the points narrated by the Hon'ble Supreme Court in AIR 1964 Supreme Court 703 (V 51 C 85) [State of Uttarpradesh Vs. Mohammad Naim] as well as Hon'ble Supreme Court reported in 2000 (4) Crimes 171 (SC) [Manish Dixit and Ors., Vs. State of Rajasthan].

16. This Court being bound by the decisions of Hon'ble Supreme Court mentioned supra, is inclined to direct the petitioner to submit detailed explanation narrating all the facts relevant to the present case within a period of three weeks from the date of receipt of copy of this Order to the Department, viz., the Secretary, Home and Law Department, Puducherry . Thereafter, the said Department, shall pass a detailed and appropriate order without being influenced by any of the observations passed by this Court as well as by the trial court on merits and in accordance with law.

Accordingly, the present Criminal Original Petition is disposed of. Consequently, the interim stay granted in CrI.M.P.No.11939 of 2017 shall stand vacated.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Secretary,
Home Department,
Puducherry.
2. The Secretary,
LawDepartment, Puducherry.
3. The Station House Officer,
Yanam
4. The Public Prosecutor, Puducherry,
High Court, Madras.

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srg 05/10/2021