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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
16.09.2021	05.10.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NOS.29009 & 29141 OF 2018

R.Ponkarthik Kumar

.. Petitioner in Crl. OP 29009/18

1. M.Amirthalingam

2. Senthil

3.Selvaraj

.. Petitioner in Crl. OP 29141/18

- Vs -

1. The Superintendent of Police
Salem District.

.. R-1 in both Petitions

2. The Inspector of Police
Attur Police Station
Salem District.

.. R-2 in Crl. OP 29009/18

3.Suresh

.. R-3 in Crl. OP 29009/18 &
R-2 in Crl. OP 29141/18

Criminal Original Petitions filed u/s 482 Cr.P.C.
praying this Court to call for the records of the order
passed by the learned Judicial Magistrate-I, Attur, in Crl.
M.P. No.2084/2018 dated 5.12.2018.

For Petitioner : Mr.C.P.Palanichamy
in Crl. OP 29009/18
Mr. Adithya Varadharajan for
Mr. N.Damodaran
in Crl. OP 29141/18

For Respondent : Mr. A.Gopinath, GA (Crl. Side)
for RR-1 & 2 in
Crl. OP 29009/18 & R-1
in Crl. OP 29141/18
Mr. N.Umapathi for R-3
in Crl. OP 29009/18
& R-2 in Crl. OP No.29141/18



COMMON ORDER

The present petitions are filed aggrieved by the order passed by the learned Judicial Magistrate-I, Attur, directing the official respondents to register the FIR on the basis of the complaint filed by the private respondent u/s 156 (3) Cr.P.C.

2. The case of the petitioners, as is revealed from the averments made in the affidavit is that on 5.6.18, at about 7.00 p.m., the private respondent appeared at the office of the Deputy Superintendent of Police, viz., the petitioner in CrI. OP No.29009/18, in an inebriated state, in the two wheeler, driven in a very rash manner in a way of dashing against the 2nd petitioner in CrI. OP No.29141/18 and dropping the vehicle down, the private respondent entered into a quarrel with the Head Constable and used unparliamentary and filthy language against the Head Constable and the other police personnel and tried to enter the office of the Deputy Superintendent of Police, which was warded off by the other police personnel on duty. Thereafter, a complaint was lodged against the act of the private respondent before the Attur Town Police Station based on which a case in Crime No.280/2018 has been registered against the private respondent u/s 294 (b), 353, 506 (i) IPC and Section 4 (1)(j) of the Tamil Nadu Prohibition Act. It is the further averment of the petitioners that to wreak vengeance, the private respondent has lodged the complaint against the petitioners u/s 156 (3) Cr.P.C., for registration of the case, which has been allowed by the court below directing registration of the case against the petitioners. Aggrieved by the said order, the present petitions are filed to set aside the same.

3. The respective learned counsel appearing for the petitioners submit that the act of the private respondent in entering the office of the petitioners and using abusive and filthy language against them, while the petitioners were discharging their official duties, resulted in the filing of the complaint against the private respondent. However, with a view to wriggle out of the said complaint, the present complaint has been preferred u/s 156 (3) Cr.P.C. It is the further submission of the learned counsel for the petitioners that the petitioners were discharging their official duties and it was the private respondent, who had barged into the office of the petitioners and conducted himself in an unruly manner, which resulted in the registration of the complaint. Therefore, the said act of the petitioners was in the course of discharge of their duties and, therefore, without a proper sanction u/s 197 Cr.P.C., no complaint is maintainable against the petitioners. It is the further submission of the learned counsel for the petitioners



that the complaint is barred u/s 53 of the Madras District Police Act, 1959, as the same has not been given within the prescribed period of three months. However, the court below has completely erred and omitted to consider the legal position with regard to entertaining the complaint and, therefore, in view of the bar as envisaged u/s 197 Cr.P.C. and the period of limitation u/s 53 of the Madras District Police Act, the order passed in Crl. M.P. No.2084/18 is wholly unsustainable and the same deserves to be set aside.

4. In support of his above contentions, learned counsel for the petitioners relied on the decision in D.Devaraja - Vs - Owais Sabeer Hussain (2020 (7) SCC 695).

5. Per contra, learned counsel appearing for the private respondent submitted that the issues relating to discharge of official duties warranting sanction u/s 197 Cr.P.C. and the limitation pleaded by the petitioners are triable issues, which cannot be decided at the initial stage, where the complaint is directed to be registered and, therefore, this Court, in exercise of its jurisdiction u/s 482 Cr.P.C. shall not interfere with the order passed by the court below. It is the further submission of the learned counsel for the private respondent that the allegations levelled against the petitioners are grave in nature, which needs to be investigated and setting at naught the registration of the complaint by setting aside the order of the court below would cause grave prejudice and harm to the private respondents and, accordingly, prays for dismissal of the present petitions.

6. In support of his above contentions, learned counsel for the private respondent relied on the following decisions :-

- "i) State of A.P. - Vs - N. Venugopal & Ors. (AIR 1964 SC 33)
- ii) Namdeo Kashinath Aher - Vs - H.G.Vartak & Anr. (AIR 1970 Bom 385)
- iii) Shambhoo Nath Misra - Vs - State of U.P. & Ors. (1997 (5) SCC 326)
- iv) K.Kalimuthu - VS - State by DSP (2005 (4) SCC 512)
- v) Inspector of Police & Anr. - Vs - Battenapatla Venkata Ratnam & Anr.(Crl. A. No.129/2013 - SC)
- vi) Devinder Singh & Anr. - Vs - State of Punjab through CBI (2016 (12) SCC 87)



vii) Thennarasu - Vs - The Asst. Commissioner & Ors. (2017 SCC OnLine Mad 17900)

viii) Seshachala - Vs - State of Karnataka & Anr. (Crl. Ptn. No.7032/2019 - Kar. HC)"

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7. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on by the learned counsel on either side.

8. Time and again, this Court as well as the Supreme Court has cautioned the courts about the necessary precautions to be taken while quashing the charge sheet at the initial stage. Useful reference in this regard can be had to the decision of the Apex Court in State of Haryana - Vs - Bhajan Lal (1992 SCC (Crl.) 426) wherein the Apex Court held as under :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the



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Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis Supplied)

9. The above decision of the Supreme Court unambiguously makes it clear that this Court can exercise the extra-ordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of Code of Criminal Procedure either to prevent abuse of the process of any Court or otherwise to meet the ends of justice. Further, if the charge do not disclose a cognizable offence and make out a case against the accused, and uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the



commission of any offence and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge and where there is an express legal bar engrafted in any of the provisions of the Code, then the Court can interfere with the charge sheet/complaint.

10. In the above backdrop, the pivotal contention of the petitioners is that the alleged offence is said to have been committed by the petitioners during the course of discharging their official duty and, therefore, sanction as prescribed u/s 197 Cr.P.C. requires to be obtained.

11. To address this contention, it is but necessary, to refer to Section 197 Cr.P.C., and the same is quoted for immediate reference :-

"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 it 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:

* * * * *

12. However, the stand of the private respondent is that the offence has been committed by the petitioners not during the discharge of their official duties and, therefore, Section 197 Cr.P.c. would not stand attracted. The issue with regard to object of sanction for prosecution, as is provided u/s 197 Cr.P.C., has been deliberated by the Hon'ble Supreme Court umpteen number of times and recently, the Hon'ble Supreme Court had occasion to consider the said issue in the aftermath of the various decisions on this aspect in the case of D.Devaraja - Vs - Owais Sabeer Hussain (2020 (7) SCC 695) wherein, the Hon'ble Supreme Court held as under :-



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"65. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.

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 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



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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."

13. From the above dicta laid down by the Hon'ble Supreme Court, it is unequivocally clear that the act alleged in a complaint purported to be filed against the policeman is reasonably connected to the discharge of official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained u/s 197 of the Code of Criminal Procedure.

14. In the case on hand, it is the categorical case of the petitioners that the private respondent entered the office premises of the petitioners in an inebriated state and indulged in unruly acts and used abusive, offensive and filthy language against the petitioners and also tried to attack the petitioners, which was warded off by the petitioners, which led



to the filing of Crime No.280/18 on the file of the Attur Police Station for the offences u/s 294 (b), 506 (i) IPC and Section 4 (1) (j) of Tamil Nadu Prohibition Act. It is the undisputed case of either side that the occurrence had taken place on 5.6.2018 and the complaint was laid before the court below on 30.11.2018 by way of sworn statement by the private respondent.

15. A perusal of the sworn statement of the private respondent reveals that he is a convenor of a political party and that he had made very many allegations against the petitioners to their superior officers. The private respondent has also averred in the sworn statement that there are cases registered against him for various offences and that he was also under remand in certain cases, though according to the private respondent that those cases are false cases, which have been fabricated against him.

16. Be that as it may. It is the averment of the private respondent in the sworn statement that he had given a complaint to the Deputy Inspector General of Police against the petitioners on 5.1.18 to take action against the petitioners and also to other superior officers. The private respondent has further averred in the said sworn statement that to know about the status of the complaint given by him to the Deputy Inspector General of Police, the private respondent had gone to the office of the Deputy Superintendent of Police on 5.6.18 at about 7 p.m. and had made enquiries with one of the petitioners herein at which time he was abused by the petitioners in filthy language.

17. It is the further averment of the private respondent that thereafter, on the directions of the Deputy Superintendent of Police, who is one of the petitioner, direction was given to the other petitioners to do away with the private respondent, some of the petitioners were called from Attur Police Station and after their arrival, the private respondent was beaten black and blue and was restrained illegally in the patrol van.

18. From the above statement of the private respondent, it is evident that it is the private respondent, who had gone to the office of the Deputy Superintendent of Police for enquiring about a complaint, which he had given to the Deputy Inspector General of Police.

19. Be that as it may. It is further evident from the said sworn statement that on the directions of the Deputy Superintendent of Police, some of the petitioners were asked to come from Attur Police Station and, thereafter, the private respondent was attacked. The above statement of the private respondent is not only too synthetic to believe, but also behind the comprehension of this Court to accept and understand. If



really some of the petitioners were called from Attur Police Station to come to the office of the Deputy Superintendent of Police, which would definitely have taken some time, what was the necessity of the private respondent to have stay put at the office of the Deputy Superintendent of Police. The said statement of the private respondent, without an iota of doubt, could very well be termed to be a falsehood fabricated for the purpose of pulling the petitioners into the circumference of criminal prosecution.

20. As pointed out above, the private respondent had gone to the office premises of the petitioners. The petitioners are alleged to have been on duty at that time in the office of the Deputy Superintendent of Police. Therefore, for all purposes, the petitioners should be deemed to have been on duty and were discharging their duty at the time when the private respondent went to the office of the petitioners. Such being the case, without obtaining sanction as contemplated u/s 197 Cr.P.C., no complaint can be entertained against the petitioners. The trial court, without advertting to the necessity of sanction u/s 197 Cr.P.C. has forwarded the complaint of the private respondent for registration of the case, without appreciating the ambit of Section 197 Cr.P.C.

21. The observations of the Hon'ble Supreme Court in Devaraja's case (supra) that 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 Supreme Court has further held that it is sine qua non to providing 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.

22. As pointed out above, the private respondent having gone to the office premises of the petitioners, it is the normal inference that the petitioners would have been on duty at that time in their office and unless some material to the contrary is shown, a negative inference cannot be inferred. Further, it is to be pointed out that it is the admitted case of the parties that the private respondent had gone to the office premises of the petitioners for making certain enquiries. Therefore, it can be safely concluded that the petitioners were discharging their duties at their office and, therefore, for all purposes it is to be presumed that they were on duty and, therefore, they would stand protected under the cover of Section 197 Cr.P.C., and, therefore, sanction of prosecution is a must for proceeding against the petitioners.



23. However, from the above sequence of events, the materials and the facts placed before this Court, not only sanction is a must for proceeding against the petitioners, but the private respondent has also miserably failed to establish that such an act, as alleged by the private respondent, has really been committed by the petitioners. Except for bald allegations, there is nothing on record to show that the petitioners have committed such acts as alleged by the private respondent. However, the materials on record, prove the contrary to what has been alleged in the complaint. That being the case, not only the complaint falls like a pack of cards as the complaint ought to have been thrown out at the threshold, but in the absence of any sanction as required u/s 197 Cr.P.C., the registration of the case on the basis of the complaint u/s 156 (3) cannot be sustained.

24. The other point that is canvassed by the petitioners relates to the bar u/s 53 of the Madras District Police Act, as no complaint could be entertained beyond the period of three months from the date of commission of the alleged offence, provided that the said offence is committed during the course of discharge of his official duties.

25. This issue stands squarely covered by the decision of the Andhra Pradesh High Court in the case of N. Venugopal & Ors. - Vs - State of A.P. (AIR 1961 AP 370), wherein, deliberating on an identical point relating to the necessity of sanction u/s 197 Cr.P.C. for prosecution for an offence alleged to be committed by a police officer in the discharge of his duties vis-a-vis, the limitation prescribed u/s 53 of the Madras District Police Act, the Division Bench, on a reference of the issue before it on the aforesaid aspects, held as under :-

".... In effect an act done mistakenly but in the discharge of the duty would be covered by Section 53 the Act. The other test that might be borne in mind in this connection is that if the act complained which constitutes an offence, by its very nature could not have been done by the officer while acting or purporting to discharge his official duty and further that act could have no necessary connection with the duties he was performing, such an act would not be covered by Section 53 of the Act

12. Section 21 of the Act prescribes the duties of a police officer of which detection and bringing offenders to justice is one. Section 44 prescribes the penalties for violation of duty



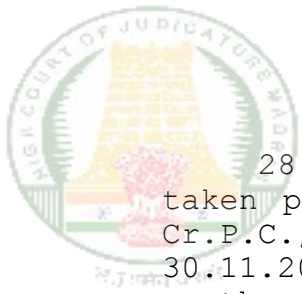
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and for abuse of powers and makes it an offence for the police officer to offer any unwarranted personal offence to any person in his custody, so that when Section 53 refers to acts done or intended to be done, it envisages prosecutions for abuse of his power among others in detecting and bringing offenders to justice and for offering any unwarranted personal offence to any person in his custody. Similarly, it also refers to any abuse of power conferred under any law. Sections 21 and 44 lend support to the view that the prosecutions with respect to acts done or intended to be done which constitute offences must relate to the discharge of duties under powers conferred on the police officers.

13. We would, therefore, answer the first question referred to us by saying that the bar of limitation prescribed by Section 53 of the Act would be available to an accused officer only when the act complained of has been committed in the discharge of his official duties. We have already laid down that the question as to whether a particular act would be regarded as having been done in the discharge of one's duties would have to be determined on the facts and particular circumstances of the case."

26. The private respondent has placed reliance on the appeal against the said order in Venugopal's case (supra), but the said appeal relates to the final adjudication of conviction and sentence passed by the High Court and had not deliberated on the law settled by the Division Bench of the Andhra Pradesh High Court on the aforementioned points. Therefore, this Court is not deliberating much on the said issue. Insofar as the other decisions relied on by the learned counsel for the private respondent is concerned, they are not in any way attractable to the case on hand and are not on the point in issue and, therefore, this Court has not dealt with the same in detail.

27. From the above, it is abundantly clear that so long as the alleged offence is committed in the discharge of official duties, not only sanction for prosecution as provided u/s 197 Cr.P.C., is mandatory, but the said act having been committed in the discharge of official duties, the limitation provided u/s 53 of the Madras District Police Act would squarely stand attracted and the bar would operate and no complaint could be entertained beyond the period of three months from the date of the occurrence.



28. In the case on hand, the occurrence is said to have taken place on 5.6.2018, but the private complaint u/s 156 (3) Cr.P.C., came to be lodged before the court below only on 30.11.2018, which is well beyond the prescribed period of three months provided u/s 53 of the Madras District Police Act. This Court having already held that the petitioners, at the relevant point of time, were discharging their official duties, the offence alleged, if at all, has been committed by the petitioners could be said to have been committed only in the course of discharge of official duties and, therefore, the bar u/s 53 of the Madras District Police Act would stand attracted.

29. For the reasons aforesaid, the order passed by the learned Judicial Magistrate-I, Attur, in Crl. M.P. No.2084/2018 dated 5.12.2018 deserves to be set aside and, accordingly, the same is set aside and this criminal original petitions are allowed.

Sd/-
Assistant Registrar(CS II)
//True Copy//

Sub Assistant Registrar

GLN

To

1. The Judicial Magistrate No.I
Attur.
2. -do- Through The Chief Judicial Magistrate,
Salem.
3. The Superintendent of Police
Salem District.
4. The Inspector of Police
Attur Police Station, Salem District.
5. The Public Prosecutor
High Court, Madras.

+1CC to Mr.N.Umapathi, Advocate, Sr.No.52185

+1CC to Mr.C.P.Palanichamy, Advocate, Sr.No.51779

+2CCs to Mr.N.Damodaran, Advocate, Sr.No.51938

PRE-DELIVERY ORDER IN
CRL.O.P.NOS.29009 & 29141 OF 2018

KSM (CO)

K.RK. (01.11.2021)