



RESERVED ON: 29.03.2021
DELIVERED ON : 30.04.2021
CORAM:

THE HONOURABLE MR.JUSTICE **G. ILANGO VAN**
CrI.O.P. (MD)No.22553 of 2016
and
CrI.M.P (MD) No.11775 of 2016

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- 1.Thiru.Krishnasamy
- 2.B.Kannan
- 3.M.Raja
- 4.G.Ayyadurai
- 5.S.Jayakrishnan
- 6.A.Sathishkumar

... Petitioners/Accused

Vs.

M.Perumal

... Respondent/DefactoComplainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the C.C.No.113/2015 for offences on the file of the learned Judicial Magistrate, Sankarankovil and quash the same.

For Petitioner : Mr.K.Samidurai
For Respondents : Mr.R.Babu Jaganath

ORDER

This Criminal Original Petition has been filed to quash the C.C.No.113/2015 on the file of the learned Judicial Magistrate, Sankarankovil

2.The respondent herein filed a private complaint before the trial Court under Section 200 r/w Section 190 (1) (b) of the Cr.P.C., against these petitioners on the following facts and circumstances:-

(i) he is a retired Army Man and now, he is working as a Security at Thermal Power Station, Tuticorin. A suit in O.S.No.246 of 2014 is pending between his wife and her brothers before the learned Munsif Court, Sankarankovil. On 26.10.2014, at about 6.00 p.m., his wife informed him that the first accused asked her to come to Police Station for an enquiry and she informed the first accused that she would come on the next day. On 27.10.2014, at about 07.00 p.m, the respondent and his wife along with one Mupidathi, Manikandan, Rajaram, Udhayakumar, Seenikumaran went to Thiruvankadam Police Station, Sankarankovil Taluk, Tirunelveli District. At that time, the brother of the complainant's wife namely Muthusamy and Velsamy present, the Panchayat President one Kollappan Nayakar and Chellapandi were also present. The Sub Inspector of Police, namely Krishnasamy was supporting the brother of the complainant's wife and

also abused her in filthy language and forced her to make compromise.

(ii) On seeing this incident, he went into the police station and told the first accused to treat his wife properly, for which, the first accused abused him in filthy language and forced to sign in a paper and threatened that if he refuses to sign, he will foist a false case against him. He also attempted to assault him with lathi. The second accused assaulted him on his left cheek and other accused persons abused him in filthy language. The first accused directed the other accused to kill him. The other accused namely accused Nos. 2 to 6 assaulted him with hands and the first accused assaulted in his mouth with lathi and caused bleeding injury. On seeing this assault, his wife and others shouted and they were pushed out of the Station. The Accused Nos.2 to 6 pushed him down and they ordered to sit on the knees and his hands were held behind. The first accused assaulted him with his boots on his private parts and also slapped him on the chest portion. Because of the assault, he sustained injury all over the body. He requested water and the same was not supplied, he fainted. On the next day, when he woke up, he found himself inside the cell in undergarments. The first accused threatened him to inform the Magistrate that he sustained injury due to fall. He also registered a case in Crime No.273/2014 under Section 294(b), 353 and 307 of I.P.C., and was remanded to judicial custody.

(iii)At the time of remand, he informed the Magistrate about the assault and injury sustained by him and it was recorded by the Magistrate and asked the first accused to send him to the hospital. He was taken to the hospital and at that time the first accused, Kollappan Nayakar and Chellapandian came to the hospital and asked him to inform the Doctor that he sustained injury due to fall, so that the case, registered against him, can be dropped. He was remanded to prison for 14 days.

iv) With these allegations, he filed a private complaint before the Trial Court making allegation against the petitioners and they have committed the offence punishable under Sections 120(b), 147, 211, 220, 294(b), 342, 325, 382 and 506(i) of I.P.C., Based upon the complaint, the trial Court recorded the statement of the complainant and other witnesses and by an order, dated 22.05.2015, the trial Court satisfied with the grounds made in the complaint has taken cognizance. The case was taken on file and the summons were issued to the petitioners.

3. Seeking quashment of the private complaint, this petition has been filed by the petitioners mainly on the ground that on 27.11.2014, when the petitioners came out from the Police Station for patrolling duty, at that time found the respondent engaged in a wordy quarrel with his brother-in-law. So, they advised them to enjoy the property as per the settlement agreed between them. Agitated by, respondent caught hold of the hands of the petitioner

and threatened and attempted to kill him. On seeing this, other policemen have secured the complainant and registered a case in crime No.273 of 2014 for the offences under Sections 294(b), 353 and 307 of I.P.C. Thereafter the complainant gave a complaint before the Superintendent of Police, Tirunelveli District, which was closed on 13.12.2015 after enquiry. Moreover, sanction is required to prosecute the petitioners, since they were in official duty at the time of alleged occurrence.

4. Heard both sides.

5. As set out in the preamble portion, specific allegation has been made by the respondent herein that the first petitioner under the guise of conducting an enquiry in the complaint given by his brother-in-law, assaulted and criminally intimidated him. Whether the assault, as set out by the respondent really took place or not cannot not a matter for discussion in this petition. Because it is a factual matter that got to be thoroughly tried in the Trial Court proceedings in so far as the first petitioner is concerned since prima facie ground is available against him to proceed. So, I am not going into those factual aspects. But, the back ground of the case must also be kept in mind.

6. On a particular day, that is 27.10.2014, an enquiry was undertaken by the Inspector of Police, Thiruvankadam Police Station, Sankarankovil Taluk, Tirunelveli District, who is the first petitioner herein, based on a complaint given by the brother-in-law regarding property dispute .

7. On that date, according to the respondent, his wife was abused and threatened. When the same was questioned by him the Police Team assaulted him and thereafter, against him and other persons, a case in Crime No.273 of 2014 for the offences punishable under Sections 294 (b), 353 and 307 IPC has been registered and the accused were remanded to judicial custody.

8. It is the specific case of the respondent that because of the assault made by the Police Team, he suffered severe injury and this fact was also informed to the Magistrate, who remanded him to judicial custody. The copy of the entire records were submitted by the Trial Court. The statement recorded by the Remand Magistrate is enclosed in the typed set of papers filed by the respondent. The respondent was produced before the concerned Magistrate, on 28.10.2014. But, at that time, he informed the Magistrate that the first petitioner herein, attacked him with lathi. As a result of which, he sustained injury on his lip and tooth and he submitted a written complaint to the concerned Magistrate and he was taken to the hospital for treatment.

9. So, it is seen that specific allegations have been made by the respondent to the effect that he was assaulted by the first

petitioner. In the above said case also when he was remanded, informed that he was also assaulted by the Police. So, the private complaint, lodged by the respondent was taken on file by the Magistrate on being satisfied that *prima facie* materials are available to proceed against these petitioners. On 22.05.2015, the Magistrate has concluded that on the basis of the oral evidence given by the five witnesses and the materials produced, he satisfied that there is ground that the accused would have committed the offence by recording the *prima facie* satisfaction, the case was taken on file under Section 120 (b), 147, 211, 220, 294(b), 342, 325, 382 and 506 (I) IPC. Summons were also issued.

10. So, in the back ground of the available records, the simple question that arises for consideration is whether sanction is required under Section 197 Cr.P.C and whether materials are available to proceed against all the petitioners?

11. The learned counsel for the petitioners would rely upon the judgment of the Hon'ble Supreme Court reported in **D.T.Virupakshappa Vs. C.Subash in CrI.A.No.722 of 2015** and a judgment in **CrI.OP(MD) No.1533 of 2015 dated 10.10.2018**.

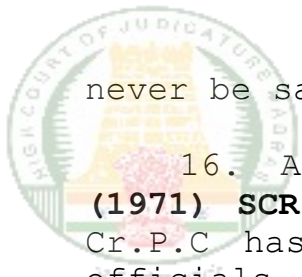
12. Per contra, the respondent would submit that the judgment of the Hon'ble Supreme Court reported in **Choudhury Parveen Sultana Vs. State of West Bengal and Another S.L.P.(CrI.)No.2864 of 2007**.

13. In the first case cited by the petitioners, it has been observed by the Hon'ble Supreme Court that for the purpose of deciding the issue, three points must properly be discussed.

- " i) *Whether, the act complained of was directly connected with his official duties*
- ii) *It was done in the discharge of his official duties*
- iii) *It was so integrally connected with or attached to his office as to be inseparable from it (K.Satwant Singh)."*

14. Further observation of the Hon'ble Supreme Court is to the effect that if the particular officer acted in excess of his duty, but if there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the protection given under Section 197 Cr.P.C.

15. So, according to the Hon'ble Supreme Court, the act must be directly connected to the official duty. So, from the judgment of the Hon'ble Supreme Court, it is seen that if an act complained of his committed in excess of the discharge of an official duty, protection can be extended. In **Choudhury Parveen Sultana Vs. State of West Bengal and Another** (cited supra), it has been observed that all sorts of acts which are done by the public servant in the course of his discharge of official duty cannot be brought under the protection. But, on the other hand, misuse, abuse of powers can



never be said as part of the official duty.

16. As decided in **Bhagwan Prasad Srivastava Vs. N.P.Misra (1971) SCR (1) 317** the object of the protection under Section 197 Cr.P.C has been clearly stated the object for which the public officials should be protected is against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the officials.

17. A combined reading of the decision of the Hon'ble Supreme Court, the above said two judgments will clearly set out the principles underlying Section 197 Cr.P.C. The main object as mentioned by the Hon'ble Supreme Court in **Bhagwan Prasad Srivastava Case** (cited supra) is to protect the officials from the complaints by unscrupulous persons.

18. So, now, the question which arises for consideration is whether these principles will be attracted to the facts of the present case.

19. As mentioned earlier, even at the time of remand, the respondent made complaint that he assaulted by the first petitioner. The second accused in that case was also informed that he was also assaulted. It is a settled law that assaulting any person will not be considered to be an act which is connected with the discharge of official function. Assault by one person on another person is liable to be prosecuted under the penal provisions. Unless, the act is protected or prosecution is barred by any law.

20. So, I am of the considered view that the facts and circumstances of the case, will not give the protection to the petitioners under Section 197 Cr.P.C. So, on this ground, the quashment cannot be ordered.

21. The next point that was urged by the learned counsel for the petitioners is that the private complaint has been launched only to make vengeance upon the Police Officials for having registered a case in Crime No.273 of 2014, against this respondent and other persons.

22. According to the learned counsel for the petitioners, only the respondent and others have assaulted the Police Officials and tried to kill them, which is also evident from the copy of the Accident Register enclosed along with typed-set of papers, but, whereas, the health screening pro-forma of the prisoners namely the respondent and one Rajaram, attached with the typed-set of papers found at page Nos.15 and 16, does not disclose any injury on the body of the respondent and another. So, according to him, no injury was suffered by the respondent and Rajaram and only to wreck vengeance, the private complaint has been filed. As mentioned earlier, whether it is a case of vengeance or real occurrence can be decided only during the course of trial.



23. Even though, the Trial Court Magistrate, satisfied that *prima facie* case has been made out as against the petitioners, the first petitioner only played main role in the said occurrence. But reading of the statement of the witnesses recorded during the enquiry and as well as the earlier statement of the complainant, it is seen that specific allegation have been levelled only against the first petitioner and not against other petitioners. It seen that the entire police station officers are roped in the complainant. Against petitioners 2 to 6 only vague allegations are made. So, I am the considered view that the petition filed by the petitioners 2 to 6 is liable to be allowed and dismissal so far as the first petitioner is concerned.

24. So, this petition is liable to be dismissed insofar as the first petitioner is concerned. Insofar as the other petitioners 2 to 6 are concerned, this petition is allowed and the proceedings in C.C.No.113 of 2015 on the file of the learned Judicial Magistrate, Sankarankovil, is quashed. Consequently, the connected miscellaneous petition is closed.

25. Since the first petitioner is a Police Official, his personal appearance before the Trial Court is dispensed with and he shall file an affidavit of undertaking that he will appear before the Court as and when necessary and required. He must also affix his photograph duly attested by his respective counsel in the affidavit. However, the first petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

dss



The Judicial Magistrate,
Sankarankovil.

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-18312[F] dated 03/05/2021)

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Pre-delivery order made in

Crl.O.P. (MD)No.22553 of 2016

GS (9.06.2021) 7P 3C