



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE DR.G.JAYACHANDRAN

Crl.O.P(MD)No.13700 of 2017

and

Crl.M.P(MD)No.9216 & 9217 of 2017

Stephen G.R.Jones ... Petitioner/Accused No.1

-vs-

Sumathi ... Respondent/Complainant

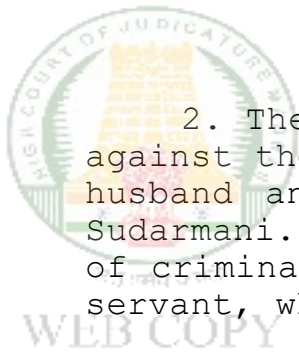
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records pertaining to the case in C.C.No.252 of 2017 pending on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District and quash the same as against the petitioner.

For Petitioner: Mr.R.Anand

For Respondent: Mr.S.Palanivelayutham

O R D E R

This Criminal Original Petition has been filed by the then Inspector of Police, Panagudi Police Station to quash the private complaint given by one Sumathi, W/o.Saravanan, who is the practicing Advocate. The private complaint alleging that the defacto complainant and her 1 ½ year child was forcibly taken to the police station on 09.07.2017 at about 06.00 p.m., and she was kept in the custody of the police till 08.00 p.m., and doing so, abused the defacto complainant in filthy language in front of several persons, including Advocates, and they did not allow the complainant even to feed her child. All this was done by the petitioner herein, when a case was registered against her husband, based on the complaint given by one Sudermani, for alleged offences under Sections 341, 294(b), 387, 506(ii), 379 IPC and Section 3 of TNPPDL Act on 09.07.2017. The Magistrate has taken the complaint on file under Section 200 Cr.P.C., After recording the statement of the defacto complainant and one witness, by name, Subash Thangadurai, a practicing Advocate of Valliyoor Bar, has issued process against the petitioner herein. The quash petition under Section 482 Cr.P.C., has been filed on the following grounds:-



2. The complaint is false and *mala fide* and to wreck vengeance against the petitioner herein, for registering the case against her husband and two others, pursuant to the complaint given by one Sudarmani. This complaint is an after thought with all ingredients of criminal offence prepared by a legal brain to harass the public servant, who discharged his duty in accordance with law.

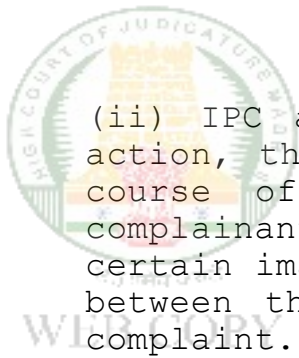
3. The learned counsel for the petitioner would submit that the petitioner is a public servant and the act squarely fall within the definition of the Act done in the course of discharging his official duty, even if the allegations are true. Therefore, before prosecuting the public servant, the sanction to prosecute from the Government is required, as per Section 197 Cr.P.C.,

4. In this case, admittedly, the complainant has sought for sanction vide letter dated 17.07.2017 and on the same day, private complaint was also filed and without sanctioning, the Magistrate taken the cognizance of the offence against the public servant. Besides that the learned counsel would also state that the very content of the complaint is false, born out of *mala fide* to counter blast the case registered against the complainant's husband only for the purpose of wrecking vengeance, this false private complaint has been filed, as an after thought. For an alleged incident occurred on 09.07.2017, a private complaint was filed on 17.07.2017 and on the same day, it was taken cognizance. The manner in which the complaint drafted and it was taken into cognizance without sanction would clearly show the pressure executed by the Bar members upon the Magistrate.

5. This Court after going through the averments made in the complaint, the reason stated by the learned counsel appearing for the defacto complainant for the delay in initiating the law into motion and the absence of sanction to prosecute under Section 197 Cr.P.C., cumulatively leads to the conclusion that the complaint is bereft of truth and bone out of malafide.

6. Before parting, this Court also wishes to record that the protection under Section 197 Cr.P.C., no doubt is meant for any action done in good faith by the public servant in the course of discharging his duty and not beyond that. If any act done by the public servant with malafide or it is illegally done, sanction under Section 197 Cr.P.C., is not required. (Judgment reported in **Surinderjit Sigh Mand and Anr Vs. State of Punjab**, reported in **(2016 (8) SCC 722)**). In this case, it is not a case of any illegal act done by the petitioner herein. It is an allegation of excessive exercise of power by him.

7. Even according to the defacto complainant, the case was registered against her husband by the police in Cr.No.275 of 2017, dated 09.07.2017 for offences under Section 294(b), 387, 397, 506



(ii) IPC and Section 3 of TNPPDL Act. Therefore, as follow up action, the petitioner herein would have taken some action in the course of his investigation, which has prompted the defacto complainant to file this private complaint on 17.07.2017 with certain imaginary facts, therefore, to give quietus to the fiction between the bar and the police, it is appropriate to quash the complaint.

8. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.252 of 2017, on the file of the learned Judicial Magistrate, Valliyoor, stands quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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.

To

1. The Judicial Magistrate,
Valliyoor, Tirunelveli District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P(MD)No.13700 of 2017

03.12.2021

USK (23.12.2021) 3P 3C