



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 01.02.2021

DATE ON WHICH PRONOUNCED : 26.02.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.7571 of 2017

and

Crl.MP(MD)No.5187 of 2017

A.Vanitha ... Petitioner/Accused No.1

Vs.

Mariappan ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Criminal Procedure Code, to call for records relating to C.C.No.8 of 2017, pending on the file of the learned District Munsif-cum-Judicial Magistrate, Veda sandur and to quash the said proceedings as against the petitioner.

For Petitioner : Mr.M.Karunanithi

For Respondent : Mr.S.C.Herold Singh

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.8 of 2017, pending on the file of the learned District Munsif-cum-Judicial Magistrate, Veda sandur.

2.The brief facts of the case is as follows:-

(i) The case of the complainant before the Trial Court is that the petitioner is running a Transport Company. The first respondent, who is the petitioner herein was working as Sub Inspector of Police, Veda sandur Police Station, Dindigul, at the relevant point of time. The second respondent is working as a driver in Tamil Nadu Transport Corporation, Dindigul. The second respondent used to demand money from the complainant's employees for adjusting the starting time of the Bus. Moreover, the first respondent, who is the petitioner herein, compelled the complainant to come and meet her. But, the complainant did not obey her command.

(ii). On 15.12.2015, at about 04.30 p.m, when the complainant was driving his Car near Veda sandur Bus Stand, the second respondent drove the bus and hit against the complainant. So, the complainant



stopped his Car on the left side of the road. When he challenged the action of the second respondent, he abused him with filthy language and tried to assault him with a tyre lever. Because of the quarrel, there was a traffic jam.

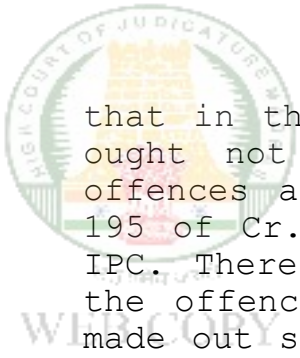
(iii) At that time, the first respondent came to the place of occurrence and demanded the complainant to take the Car. The complainant explained the position to her. In spite of that, she threatened him. Later, the complainant filed a complaint before the first respondent. But, she refused to register the same and also insulted him.

(iv) On a particular day, at about 12.30 p.m, when the complainant was on the way to Bangalore, the first respondent called him through phone stating that the second respondent has given a complaint against him and so, she compelled him to appear before the Police Station immediately. The complainant informed her about his travel. But, she refused to respond and also threatened him.

(v) On the next day, when the driver of the complainant's Transport Company was driving the Bus bearing Registration No.TN-57AE-1599, the first respondent threatened him and took the Bus to the Police Station. In spite of request made by the complainant, the Bus was not released. So, the matter was taken up to the Deputy Superintendent of Police by the Advocate of the complainant. An enquiry was made by the Deputy Superintendent of Police. The first respondent falsely registered a case, as if, the Bus was driven in over speed. Moreover, she received a false complaint from the second respondent and registered a case in Crime No.484 of 2015 for the punishable offences under Sections 341, 294 (b), 353 and 506 (i) IPC. The complainant filed an anticipatory bail application before the Principal Sessions Court, Dindigul, in Crl.MP.No.3401 of 2015 and that time, the first respondent falsely informed the Court that the complainant was already involved in another case in Crime No.449 of 2015 for the offences under Sections 353 and 506 (i) IPC. So, the anticipatory bail application of the complainant was dismissed by the District Court. So, the complainant approached this Court for anticipatory bail in both the cases. But, perusal of Crime No.449 of 2015 shows that the case was registered against one Boopathi Rajan and not against the complainant. So, the first respondent has given a false information to the Court and so, the anticipatory bail application filed by the complainant was dismissed by the Principal District Judge, Dindigul.

(vi) So, with this allegation, the complainant filed a private complaint before the Trial Court, for punishing the accused for having offences under Sections 294 (b), 427, 506 (ii), 167, 193, 217, 218 and 219 of IPC.

3. Seeking the quashment of the private complaint, the first respondent Vanitha filed this petition, mainly on the ground



that in the absence of any *prima facie* materials, the Trial Court ought not have taken cognizance of offence. No ingredients of offences alleged in the complaint are made out. Moreover, Section 195 of Cr.P.C bar, the cognizance of offence under Section 193 of IPC. There is no allegation against the petitioner with regard to the offence under Section 427 of IPC. The other offences are not made out since the ingredients of those offences have not been set out in the complaint.

4. Reading of the complaint filed by the respondent before the Trial Court shows that the dispute arose between himself and the second accused namely, Ramachandran. What is the real cause for quarrel is not for, this Court to make any discussion. So, without going into these factual aspects, whether the ingredients of the offences alleged against the petitioner are made out in the complaint is the only question to be decided. In the complaint, the complainant has not stated the specific offence alleged to have been committed by the individual accused. Before we go into the question, one important aspect, to be taken into account is, the petitioner was not arrayed in her individual capacity. It appears that she has acted in her official capacity with regard to the registration of First Information Report in Crime No.484 of 2015 against the complainant. The allegation that she received a false complaint from the second accused and foisted a false case cannot be gone in this petition since this is a factual aspect.

5.The next allegation is that the petitioner threatened him on 15.12.2015 to take or move his Car, which was hit by the second accused stating that the following words:-

“ஒழுங்கா சொன்னா எடுக்கமாட்ட, காண இப்ப எடுக்கலைன்னா மரியாதை கேட்டு வீடும், வந்து என்னைப் பார்னா பார் க்கமாட்ட. இப்ப என்கிட்ட வந்துதானே ஆவனும், நான் என்ன செய்யறேன் பார்”

6. So, these allegations only shows that verbal challenge has been made by the petitioner and that will not amount to criminal intimidation as defined under Section 503. Offences under Sections 294 (b) and 427 are not alleged against the petitioner. The next allegation is that the petitioner has committed an offence under Section 167 of IPC.

7. Reading of the above said provisions shows that it will apply only to public servants while acting under and by virtue of public office. According to the defacto complainant, the petitioner has committed all those offences and so, same is liable to be proceeded. According to the petitioner, if a complaint is made out by a person stating that a public servant, while discharging the duties as a public servant has indulged such nature of offence, sanction is required from the Government under Section 197 of Cr.P.C, which reads as under:-

“(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 person who is employed, or, 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, or the State Government;"

8. Reading of the above said provision shows that except those offences, which are excepted, in all other matters involving the discharge of a public duty requires sanction from the Government. But, reading of the complaint shows that no such sanction was obtained by the complainant before filing the private complaint. Similarly, there is also no records to show that he has regressed the Government seeking sanction for prosecuting the petition.

9. So, I am of the considered view that since there is a bar under Sections 195 and 197 of Cr.P.C, the complaint is liable to be quashed as per dictum laid down in **State of Haryana Vs Bajanlal 1992 SCC Cr1 426.**

10. So, the petition is liable to be allowed and accordingly allowed and the private complaint filed by the respondent herein is quashed insofar as the petitioner is concerned. The Trial Court may proceed against the other accused without being influenced by the any of the observations made in this petition and it is also made clear that the observations are made only for the limited purpose of disposing this petition. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

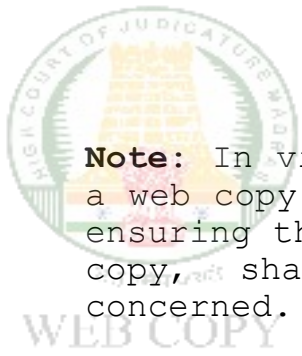
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Sub Assistant Registrar(CS)

DSS

<https://hcservices.ecourts.gov.in/hcservices/>



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

The District Munsif-cum-Judicial Magistrate,
Vedasandur.

+1 CC to Mr.S.C.HEROLD SINGH, Advocate (SR-7711[F] dated 01/03/2021)

Order made in
Crl.O.P.(MD)No.7571 of 2017 and
Crl.MP(MD)No.5187 of 2017
26.02.2021

ES (CO)

SRS (12/03/2021) 5P : 3C