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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.01.2022
DELIVERED ON : 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.No.12752 of 2016
and Crl.M.P.Nos.6596 & 6597 of 2016

S.S.Lingaraja .. Petitioner / Accused

Vs.

B.Selvakumar .. Respondent / Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., seeking to call for the records related to C.C.No.55 of 2016, on the file of the learned Judicial Magistrate, Mettupalayam and quash the same.

For Petitioner : Mr.P.V.S.Giridhar
for M/s.Giridhar & Sai

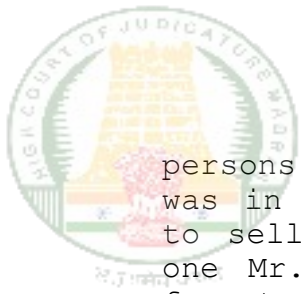
For Respondent : Mr.T.Mohan

O R D E R

The petitioner/accused has filed the present criminal original petition to quash the private complaint filed under Section 200 Cr.P.C. for the alleged offences punishable under Sections 193, 211, 221, 330, 354, 448, 499 and 506(ii) of I.P.C.

2. The case of the respondent / complainant, before the Court below is that, the petitioner/accused Mr.S.S.Lingaraja is the Conservator of Forests in Biligirirangan Temple (BRT) Tiger Reserve, Chamraj Nagar, Karnataka. The respondent/complainant was an agricultural labour in a private firm, in Nilgiris District, and he is also assisting people working for conservation of forest and wildlife by gathering information about the poachers and traders of wild animal parts in and around Sathyamangalam Tiger Reserve (STR) area.

3. During the month of September, 2015, the respondent/complainant, has gathered information that, two



persons belonging to Mavanatham village of Sathyamangalam Taluk was in possession of tiger bones and claws and they are trying to sell the same. He immediately passed on the information to one Mr. Jayachandran, a conservationist and an informer to the forest department regarding illegal poaching. Mr. Jayachandran, in turn, passed on the information to the forest department and they requested the respondent/complainant to act as a decoy to lure the poachers to bring the wildlife parts.

4. Then the respondent/complainant approached the poachers and they assured that they will bring the materials to the Karnataka Forest area adjoining Sathyamangalam Tiger Reserve. Then Mr. Jayachandran contacted one Mr. Muthanna of Karnataka State, and requested for his assistance. Mr. Muthanna, in turn, informed the Conservator of Forest, BRT Tiger Reserve and the forest officials also made a plan to arrest the poachers. However, the poachers have changed the venue in the last minute and they came to Hasanur Forest area in STR.

5. When the respondent/complainant and others approached the poachers in the Tamil Nadu Territory, the petitioner/accused and his team entered into STR area, which is situated in Tamil Nadu territory, and on seeing them, the poachers run away from the scene abandoning the materials brought by them. The petitioner/accused and his team deliberately did not take any steps to nab the culprits, however they caught hold of the respondent/complainant and tortured him, and by coercion, ill treatment and physical violence compelling him to give confession implicating Mr. Jayachandran and Mr. Muthanna. The petitioner/accused also forcefully obtained the signature of the respondent/complainant and took him to his native village in Sathyamangalam Taluk, Erode district and vandalised his house situated in Sirumugai village and misbehaved with his wife and molested her in his presence. Thereafter, the petitioner filed a false complaint against the respondent/complainant and produced him before the learned Judicial Magistrate, Chamraj Nagar, Karanataka, in a fake case fabricated by the petitioner/accused, as if the respondent/complainant was found with tiger bones and he also criminally intimidated him not to reveal the truth.

6. In the meantime, the Conservator of Forest, STR, registered a separate case and arrested the poachers in the STR area and recovered the remaining tiger claws and bones from their possession, subsequently the forest officials of STR area written to the petitioner/accused to transfer the case to Tamil Nadu as the occurrence took place in STR area, Tamil Nadu.

7. Alleging that the petitioner/accused committed various offence under the Indian Penal Code as mentioned above, a private complaint has been filed before the learned District



Munsif cum Judicial Magistrate, Mettupalayam, wherein, the learned District Munsif cum Judicial Magistrate took cognizance of the offence and issued summons. To quash the above said proceedings, the present quash petition has been filed.

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8. Mr.P.V.S.Giridhar, learned counsel appearing for the petitioner/accused would contend that the entire occurrence said to have taken place in the State of Karnataka in BRT Tiger Reserve, and the respondent/complainant has been arrested in Chamraj Nagar in Karnataka State, and the respondent/complainant cannot maintain a private complaint before the learned District Munsif cum Judicial Magistrate, Mettupalayam. Therefore, the learned Judicial Magistrate has no jurisdiction to entertain the complaint. Entire reading of the complaint as well as the other materials do not make out a prima facie case against the petitioner and there is no sufficient ground available to take cognizance against the petitioner.

9. The learned counsel further submitted that the petitioner is working as Conservator of Forests in Biligirirangan Temple Tiger Reserve and the respondent/complainant was arrested during investigation for various offences which had taken place inside Karnataka State and it was done while the petitioner was performing his official duty and he is protected under Section 60 of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the 'Act') and hence no criminal proceedings can be initiated against the petitioner/accused.

10. The learned counsel further submitted that as the petitioner was discharging his official duty, sanction under Section 197 Cr.P.C. is essential before taking cognizance. Admittedly, the alleged acts said to have been committed by the petitioner while conducting investigation and in the absence of any valid sanction from a competent authority, the learned Judicial Magistrate ought not to have taken cognizance of the offence and issue summons.

11. The learned counsel further submitted that so far as the offence under Sections 193 and 211 of I.P.C. are concerned, there is a bar under Section 195(b) of Cr.P.C., and the Court can take cognizance only on a complaint given by the Court or any other authorised officer. Hence, the learned Judicial Magistrate ought not to have taken cognizance of the offences under Sections 193 and 211 of I.P.C. in the absence of any complaint from the concerned Court.

12. The learned counsel further submitted that, so far as other offences are concerned, namely Section 221 I.P.C., no materials available on record to show that the petitioner



intentionally omitted to arrest the culprits and allowed them to escape. For the offence under Section 330 I.P.C., the learned counsel submitted that there is no voluntarily causing hurt and no medical report has been produced before the learned Judicial Magistrate to that effect. So far as offence under Section 354 I.P.C. is concerned, the allegation that the petitioner acted with an intention to outrage the modesty of the respondent/complainant's wife, mere statement that he has insulted her does not make out a case under Section 354 I.P.C. So far as Section 448 I.P.C. is concerned, the petitioner searched the respondent's house during the course of investigation and he was authorised to conduct search under Section 50 of the Act and hence no offence is made out. So far as offence under Section 499 I.P.C. is concerned, absolutely there is no averment in the complainant that the petitioner intended to defame the respondent/complainant and none of the ingredients of Section 499 I.P.C. is made out against the petitioner. Even for the offence under Section 506(ii) I.P.C. also there is no material available on record to show that the petitioner had criminally intimidated the respondent/complainant.

13. Concluding his argument, the learned counsel submitted that the complaint and the sworn statement as well as other materials filed along with the complaint do not make out any prima facie case against the petitioner and no ground has been made out for proceeding with the complaint. However, the learned Judicial Magistrate mechanically taken cognizance without applying his mind and issued summons and therefore the entire complaint is liable to be quashed. In support of his contention, the learned counsel relied upon various judgments, which will be referred to in the later part of this order.

14. Per contra, Mr.T.Mohan, learned counsel appearing for the respondent/complainant would contend that, the respondent is a public spirited person and he has taken various steps to prevent poaching of wild animals in the STR area and based on his information number of crimes have been registered against the poachers. The petitioner / accused was working as Conservator of Forests in Karnataka State and only help the poachers, he framed the respondent/complainant in a criminal case.

15. The learned counsel further submitted that the entire occurrence took place in the STR area which is falling within the jurisdiction of the State of Tamil Nadu, whereas, the petitioner/accused and his team trespassed into Tamil Nadu territory and falsely arrested the accused and ransacked his house in Sirumugai village near Sathyamangalam and outraged the modesty of his wife and defamed him. That apart, the petitioner has criminally intimidated the respondent and he has also



created false records and filed the same before the Court and thereby the petitioner committed offences under Sections 193 and 211 of I.P.C.

16. So far as the bar under Section 195 Cr.P.C. is concerned, it will get attracted only if the offence has been committed in a judicial proceedings, whereas, in the instant case, the offence is not related to any proceedings in the Court. The allegations is that the petitioner has fabricated the documents and filed it before the Court, and does not committed the offence in, or in relation to, any proceedings in any Court. Hence, the learned Judicial Magistrate has every right to take cognizance of the offence under Sections 193 and 211 of I.P.C.

17. The learned counsel would further submit that only on the information given by the respondent/complainant and other public spirited persons who are well known for their anti poaching activities, a trap was arranged. However, when the poachers were available, the petitioner/accused has deliberately allowed them to escape and registered various cases against the respondent/complainant, sufficient averment available in the complaint as well as in the sworn statement. Hence, prima facie case is made out against the petitioner for an offence under Section 221 I.P.C.

18. So far as the offence under Section 330 I.P.C. is concerned, the petitioner had physically assaulted the respondent and caused injury hence offence under Section 330 I.P.C. is also made out. So far as the offence under Sections 354 and 448 of I.P.C. is concerned, materials available on record prima facie show that the petitioner took the respondent/complainant to his native village and damaged his house and also abused the respondent's wife and outraged her modesty and molested her. The averments made in paragraph 8 of the complaint prima facie makes out a case against the petitioner for offences under Sections 354 and 448 I.P.C. By making false allegation against the respondent as though he has committed the offence and also arrested him and remanded him to judicial custody, the petitioner has defamed the respondent and hence an offence under Section 499 I.P.C. is made out against the petitioner. That apart, he has criminally intimidated the respondent and there are sufficient materials to make out a prima facie case under Section 506(ii) I.P.C. against the petitioner.

19. The learned counsel further submitted that Section 60 of the Wild Life (Protection) Act protects a person who has discharged his duties in good faith, whereas, the petitioner was not in good faith and he registered a false complaint



against the respondent and allowed the real culprits to escape from the clutches of law, who were subsequently arrested by the Tamil Nadu officials and a criminal case has been registered against them. Hence the protection under Section 60 of the Wild Life (Protection) Act to the petitioner will not get attracted.

20. The learned counsel further submitted that making false complaint, criminally trespassing into a house and outraging the modesty of a women are not part of discharge of public duty. Hence, sanction under Section 197 Cr.P.C. is not required. The protective umbrella under Section 197 Cr.P.C. is applicable to a person who discharges public duty bona fide and the petitioner cannot take umbrage the above provisions.

21. The learned counsel further submitted that the learned Judicial Magistrate after applying his mind and being satisfied that a prima facie case is made out and there are sufficient ground for proceeding against the petitioner, has taken cognizance and issued summons and there is no reason to quash the same.

22. I have considered the rival submissions and also perused the materials available on record.

23. The primordial contention of the learned counsel appearing for the petitioner/accused is that the alleged offence said to have been committed by the petitioner/accused while was discharging a public duty when he was conducting investigation in a criminal case against the respondent/complainant. If at all any offence is committed, it has been committed by the petitioner while discharging his official duty, which will bring him under the protective umbrella of Section 197 Cr.P.C. Hence without getting a sanction for prosecution before the competent authority no cognizance could be taken by the learned Magistrate. In support of his said contention, the learned counsel relied upon a judgment of the Hon'ble Supreme Court in Gauri Shankar Prasad Vs. State of Bihar and another reported in (2000) 5 SCC 15.

24. Section 197 of Cr.P.C. affords protection to a public servant against frivolous, vexatious or false prosecution for the offence alleged to have been committed by the public servant while acting or purporting to act in discharge of his official duty. It has been designed to facilitate effective and unhampered performance of official duty by public servants by providing for scrutiny into the allegations of commission of offence by their superior authorities and prior sanction for their prosecution was a condition precedent for taking cognizance of the offence against them by the Courts. Further, when any criminal offence which has been committed by a public



servant which is not part of their official duties, it could not be said to have been committed in the course of discharge of his official duty and so such sanction is necessary. The question whether a particular act is done by a public servant in discharge of his official duties is substantially one of fact and it has to be determined in the circumstances of each case.

25. In the instant case, the allegation against the petitioner/accused is that the petitioner has deliberately abused the power vested in him, allowed the real culprits to escape from the clutches of law and falsely implicated the petitioner in a criminal case. Thereafter, trespassed into the house of the respondent and also outraged the modesty of the respondent's wife, caused hurt to him and also criminally intimidated him, by the above said act petitioner defamed the respondent/complainant. These allegations made against the petitioner in the complaint cannot be at any rate be treated to have been performed while discharging his public duty genuinely and bona fide. The protection umbrella under Section 197 Cr.P.C. is available only to a public servant who discharged public duty. In case there is any excess or misuse of the said authority, no protection could be extended to the public servant under Section 197 Cr.P.C.

26. In Bhagwan Prasad Srivastava Vs. N.P. Mishra reported in (1970) 2 SCC 56, the Hon'ble Supreme Court has held as follows:

"...the object and purpose underlying Section 197 Cr.P.C. to afford protection to public servant against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty..."

27. In Choudhury Parveen Sultana Vs. State of West Bengal reported in (2009) 3 SCC 398, the Hon'ble Supreme Court has held in paragraph 18 as follows:

"18. The direction which had been given by this Court, as far back as in 1971 in Bhagwan Prasad Srivastava's case (supra) holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by



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him. As mentioned in Bhagwan Prasad Srivastava's case (supra), the underlying object of Section 197 Cr.P.C is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered de hors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned."

28. In the instant case, the allegations made in the complaint as well as the other materials available on record could not bring the case within the ambit of Section 197 Cr.P.C., and hence the petitioner cannot seek for protection under Section 197 Cr.P.C.

29. The next contention of the learned counsel appearing for the petitioner is that, as the petitioner was working as Conservator of Forest and the alleged occurrence is said to have taken place while investigating a forest offence in good faith, and he is protected under Section 60 of the Wild Life (Protection) Act, and no legal proceedings will lie against the petitioner. However, this contention of the learned counsel also cannot be countenanced for the simple reason that, the protection granted under Section 60 of the Wild Life (Protection) Act, is available only to officers or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under the Act. As already held, the allegations in the complaint prima facie shows that the petitioner did not acted in good faith. Whether the petitioner acted in good faith or not is a matter for trial and the question whether the petitioner is protected under Section 60 of the Wild Life (Protection) Act, cannot be decided at this stage.

30. So far as the bar under Section 195 Cr.P.C. for taking cognizance is concerned, the allegation in the complaint is that the petitioner has registered false FIR and also created remand report with false allegations and produced the respondent before the concerned learned Judicial Magistrate and remanded the



respondent to judicial custody. The contention of the learned counsel appearing for the petitioner is that the offence has been committed in relation to a Court proceedings and hence the bar under Section 195 Cr.P.C. will apply. However, it is settled law that, for the bar under Section 195(1)(b) Cr.P.C. to come into operation, there should be a proceedings in any Court, and the allegation must fall under Sections 193 and 211 of I.P.C. and it is committed in or in relation to such a proceedings. Unless those ingredients exists, the bar under Section 195(1)(b) Cr.P.C. will not come into operation. The Hon'ble Supreme Court in M.L.Sethi Vs. R.P.Kapur reported in AIR 1967 SC 528 has held as follows:

"10. In the interpretation of this clause (b) of sub-section (1) of Section 195, considerable emphasis has been laid before us on the expression "in, or in relation to", and it has been urged that the use of the expression "in relation to" very considerably widens the scope of this section and makes it applicable to cases where there can even in future be a proceeding in any court in relation to which the offence under Section 211 IPC, may be alleged to have been committed. A proper interpretation of this provision requires that each ingredient in it be separately examined. This provision bars taking of cognizance if all the following circumstances exist viz. (1) that the offence in respect of which the case is brought falls under Section 211 IPC; (2) that there should be a proceeding in any court; and (3) that the allegation should be that the offence under Section 211 was committed in, or in relation to, such a proceeding. Unless all the three ingredients exist, the bar under Section 195(1)(b) against taking cognizance by the Magistrate, except on a complaint in writing of a court, will not come into operation. In the present case also, therefore, we have to see whether all these three ingredients were in existence at the time when the Judicial Magistrate at Chandigarh proceeded to take cognizance of the charge under Section 211 IPC against the appellant.

11. There is, of course, no doubt that in the complaint before the Magistrate a charge under Section 211 IPC, against the appellant was included, so that the first



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ingredient clearly existed. The question on which the decision in the present cases hinges is whether it can be held that any proceeding in any court existed when that Magistrate took cognizance. If any proceeding in any court existed and the offence under Section 211 IPC, in the complaint filed before him was alleged to have been committed in such a proceeding, or in relation to any such proceeding, the Magistrate would have been barred from taking cognizance of the offence. On the other hand, if there was no proceeding in any court at all in which, or in relation to which, the offence under Section 211 could have been alleged to have been committed, this provision barring cognizance would not be attracted at all."

31. In the instant case, the allegation against the petitioner is that he fabricated a case against the complainant and registered a false FIR. At the time of fabricating a false case and registered the FIR, no proceedings is pending in any Court in relation to which the offence under Section 211 IPC has been committed. In the said circumstances, the bar under Section 195(1)(b) Cr.P.C. for taking cognizance would not attract.

32. So far as other allegations are concerned, the petitioner was said to have taken the respondent/complainant to his native village at Sirumugai village which is within the jurisdiction of the learned Judicial Magistrate, Mettupalayam, where the petitioner has vandalized the house of the respondent, molested his wife and outraged her modesty. In Paragraph 8 of the complaint the respondent has clearly narrated the same.

33. Likewise for the offence under Sections 221, 330 and 506(ii) I.P.C. there are averments in the complaint at paragraphs 7 and 8 that the petitioner/accused physically tortured and ill treated the respondent and he has also allowed the real culprits to escape and also criminally intimidated the respondent. The probative value of those allegations can be considered only at the time of trial and at this stage, the Court is expected only to see whether sufficient material is available to make out a prima facie case against the petitioner/accused.

34. So far as the offence under Sections 354, 448 and 499 of IPC is concerned the complaint is that the petitioner made false allegation against the respondent thereby registered FIR and consequently arrested and defamed the respondent and hence



he has committed the offence under Sections 354, 448 and 499 of IPC, for which also there is sufficient averment in the complaint.

35. It is settled law that at the time of taking cognizance the learned Magistrate is only expected to see whether from the material available on record, sufficient ground is made out for proceeding against the accused. In the instant case, the learned Judicial Magistrate after considering the entire materials is of the opinion that prima facie case is made out against the petitioner/accused, taken cognizance and issued process and I do not find any infirmity or illegality in the above proceedings.

36. In the result, I find no merit in this criminal original petition and it is liable to be dismissed and accordingly dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kk

To

The Judicial Magistrate,
Mettupalayam

+1cc to M/s.Giridhar & Sai, Advocate, S.R.No.5740
+1cc to Mr.Genicom & Asso, Advocate, S.R.No.5739

Cr1.O.P.No.12752 of 2016
and Cr1.M.P.Nos.6596 & 6597 of 2016

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