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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2022

PRONOUNCED ON : 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.21458 of 2018 and
Crl.M.P.Nos.11701 & 11702 of 2018

G.Francis Raja

... Petitioner

Vs.

1. State Rep. by,
The Inspector of Police,
Periyayanakanpalayam Police Station,
Coimbatore District.

2. M/s.Micro Electric Controls,
Rep. by the Power of Agent of its Proprietor,
Mr.Babu,
Door No.9/174, Railway Station Road,
Periyanaickenpalayam,
Coimbatore - 641 020.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in pursuant to C.C.No.61 of 2015 pending disposal on the file of the Judicial Magistrate No.VI Coimbatore and quash the same.

For Petitioner : Mr.M.Mohammed Riyaz for
Mr.A.Deivasigamani

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

For R2 : Mr.M.Palanivel for
Mr.K.Thilageswaran

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.61 of 2015, pending on the file of the Judicial Magistrate Court No.VI, Coimbatore.

2.The 2nd respondent company lodged a complaint against the petitioner before the 1st respondent Police on 18.05.2003 and the same was registered in Crime No.166 of 2003, for offence under Section 457 and 420 IPC. Gist of the complaint is that the 2nd



respondent is the company viz., M/s. Micro Electric Controls, Periyanaickenpalayam, Coimbatore. The petitioner was employed as Machine Operator in the 2nd respondent company in the year 1998. On 29.07.1998, the petitioner gave resignation letter to the 2nd respondent company in presence of LW2, LW4 & LW5 that he was unable to continue with his work. On 30.07.1998, the petitioner's dues settled and he was relieved from the service. Suppressing the same, the petitioner filed a case before the Labour Court, Coimbatore in I.D.No.332 of 1999 claiming that his signature found in the resignation letter, dated 29.07.1998 is forged and that he used to sign without any line, but in the resignation letter, there is a line below the signature. After proper adjudication, I.D.No.332 of 1999 ended in favour of the petitioner on 11.03.2002. Aggrieved by the award passed by the Labour Court, Coimbatore, dated 11.03.2002, the 2nd respondent filed a Writ Petition in W.P.No.7781 of 2003 before this Court and also filed W.M.P.No.10000 of 2003 for stay of operation of award, dated 11.03.2002, wherein this Court, by order, dated 12.03.2003 had granted interim stay directing the 2nd respondent company to deposit the entire backwages to the petitioner. Challenging the order of stay, dated 12.03.2003, the 2nd respondent preferred an appeal in W.A.No.1666 of 2003 and this Court, by order, dated 24.08.2006 confirmed the order of the stay, dated 12.03.2003. Thereafter, this Court, by order, dated 23.12.2009 dismissed the Writ Petition in W.P.No.7781 of 2003.

3. The petitioner filed a petition in C.P.No.52 of 2010 before the Labour Court, Coimbatore seeking arrears of his wages and to comply with the order of the Labour Court, Coimbatore in I.D.No.332 of 1999. Thereafter, the 2nd respondent company filed Interlocutory Application in I.A.No.287 of 2015 in C.P.No.52 of 2010 to pass an order to send the documents to the Forensic Lab and the same was dismissed on 01.06.2015. Thereafter, C.P.No.52 of 2010 ended in favour of the petitioner, against which, the 2nd respondent company filed a Writ Petition in W.P.No.150 of 2022 and the same is pending. Further, the 2nd respondent filed CrI.O.P.No.1 of 2012 under Section 340 r/w 195(i)(b) of Cr.P.C., before the Labour Court, Coimbatore and the same was dismissed on 24.07.2017.

4. In the year 2004, the FIR registered against the petitioner in Crime No.166 of 2003 was closed as Mistake of Fact for the reason that the forged resignation letter was not produced and served the notice in R.C.S.No.230 of 2004, dated 17.06.2004 to the 2nd respondent company. Thereafter, in the year 2006, the trial Court destroyed the records in Crime No.166 of 2003. After termination of the proceedings before the Labour Court, Coimbatore as well as before this Court, the original resignation letter was obtained from the Labour Court, Coimbatore and the 2nd respondent company filed a petition for



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further investigation under Section 173(8) Cr.P.C., on 17.11.2012 in C.M.P.No.908 of 2013 in Crime No.166 of 2003 before the trial Court. At that time, the 2nd respondent company was informed about the destruction of case records, hence, he filed a petition in C.M.P.No.899 of 2013 for reconstruction of the case records in Crime No.166 of 2003. The trial Court, by order, dated 06.02.2013 ordered reconstruction of the destroyed records and for further investigation in Crime No.166 of 2003. During further investigation, the resignation letter was sent for forensic examination, where the handwriting expert confirmed that the signature of the petitioner and the signature found in his resignation letter are one and the same. Finding that the petitioner has committed the forgery and cheating, the 1st respondent Police filed final report listing LW1 to LW8 and several documents before the trial Court. The trial Court finding prima facie case against the petitioner, took the case on file in C.C.No.61 of 2015, against which, the present Quash Petition.

5.The learned counsel for the petitioner submitted that the petitioner worked as Machine Operator in the 2nd respondent company in the year 1998. On 29.07.1998, he had given a resignation letter stating that he is no more interested in continuing with his job and asked for his backwages. Based on his resignation letter, he was relieved from service on 30.07.1998. Thereafter, he disputed his resignation letter and claimed that the resignation letter was forged one and thereafter, he filed a Industrial Dispute case in I.D.No.322 of 1999 before the Labour Court, Coimbatore. The Labour Court, Coimbatore by an award dated 11.03.2002 found that the alleged resignation letter, which has been marked as Ex.P3 has not been sent to the hand writing expert and hence, it cannot be said to be forged and held the case in industrial dispute in favour of the petitioner, directing the 2nd respondent company to permit the petitioner to continue his employment. Aggrieved by the award passed by the Labour Court, Coimbatore, the 2nd respondent company had filed a writ petition in W.P.No.7781 of 2003 before this Court. Pending the writ petition, the 2nd respondent had filed a petition in W.M.P.No.10000 of 2003 prayed for stay of the operation of the award dated 11.03.2002. The learned Single Judge, on 12.03.2003 had granted an order of stay directing the 2nd respondent company herein to deposit the entire backwages to the petitioner. Challenging the order of stay, the 2nd respondent company had preferred an appeal in W.A.No.1666 of 2003 and this Court, by order, dated 24.08.2006 confirmed the order of the learned single Judge and hence, it attained finality.

6.He further submitted that this Court, on 23.12.2009 had dismissed the writ petition in W.P.No.7781 of 2003, holding that



the burden of proof was cast upon the person, who relies upon the said document. In this case, the Labour Court, Coimbatore gave cogent reasons elaborately as to why the theory of resignation could not be accepted by it in paragraph Nos.10, 12, 13, 14 and 16 and further observed that it is the duty of the 2nd respondent company to send the alleged resignation letter to hand writing expert to confirm the signature found in Ex.M3 is that of the petitioner, which they failed to do so and held the case in favour of the petitioner. Thereafter, the petitioner had filed a petition in C.P.No.52 of 2010 seeking arrears of his wages and to comply with the earlier order of the Labour Court, Coimbatore. In the meanwhile, the 2nd respondent company had filed Interlocutory Application in I.A.No.287 of 2015 in C.P.No.52 of 2010 under Section 11(3) of the Industrial Disputes Act r/w Section 45 of the Evidence Act and 151 of C.P.C., to pass an order to send the documents to the Forensic Lab and the same was dismissed by order, dated 01.06.2015, wherein, it was observed as follows:-

"The writ petition filed by the petitioner against the award is dismissed by the Hon'ble High Court of Madras on 23.12.2009. The copy of the order marked as Ex.W8. Since the M.w.1 has admitted that the memo of understanding was filed before the Hon'ble High Court, Madras in Writ Appeal in W.A.No.1666/2003 and he had agreed to provide employment with effect from 01.11.2003 as per Ex.W15, it is not necessary to send those documents prior to the period of 01.11.2003 to the handwriting expert for comparison. The Hon'ble High Court also has arrived back wages of Rs.1,80,000/- while passing an order Ex.W.7 dated 24.08.2006. Therefore, the relief sought by the petitioner/respondent is unnecessary and unwarranted and he is not entitled to the relief as prayed for. Thus, this point is answered."

7.The learned counsel for the petitioner submitted that C.P.No.52 of 2010 had ended in his favour, against which, the 2nd respondent had filed a Writ Petition in W.P.No.150 of 2022 and the same is pending. The 2nd respondent company had also filed CrI.O.P.No.1 of 2012 under Section 340 r/w 195(i) (b) of Cr.P.C., before the Labour Court, Coimbatore. The Labour Court, Coimbatore, by order, dated 24.07.2017 dismissed the petition, against which, the 2nd respondent company did not prefer any appeal. On the contrary, he managed to re-open the criminal case and proceed against the petitioner.

8.The learned counsel for the petitioner further submitted that the 1st respondent Police had closed the case as Mistake of Fact and served the notice in R.C.S.No.230 of 2004 on 17.06.2004



and filed the closure report before the trial Court. As stated above, the proceedings before the Labour Court, Coimbatore as well as before this Court were agitated by the 2nd respondent company and all the cases ended in favour of the petitioner. After lapse of 11 years, the charge sheet was filed by the 1st respondent Police in this case. More so, the case was reopened and no notice was served to the petitioner while reopening the case. It is settled preposition that if any adverse order is being passed on the further investigation, notice to the issued to the person who is affected and thereafter hearing his objections, the trial Court to take the case on file. In this case, after lapse of 11 years, how come charge sheet has been filed is not known. The specific case of the petitioner is that the petitioner has not written his resignation letter nor affixes his signature in the same. The 2nd respondent had filed W.P.No.150 of 2022 seeking quashing of the order passed in C.P.No.52 of 2010, dated 02.11.2021. This is the only petition which is pending now, that too, with regard to bonus granted by the Labour Court, Coimbatore in favour of the petitioner.

9.He further submitted that the 2nd respondent company earlier filed petitions before the Labour Court, Coimbatore to send the resignation letter, which is in dispute, to Forensic Department and the same were dismissed. He further submitted that in the year 2004, the FIR registered against the petitioner in Crime No.166 of 2003 was closed as Mistake of Fact for the reason that the alleged forged resignation letter was not produced and served the notice in R.C.S.No.230 of 2004, dated 17.06.2004 to the 2nd respondent company. Thereafter, in the year 2006, the trial Court destroyed the records in Crime No.166 of 2003. After termination of the proceedings before the Labour Court, Coimbatore as well as before this Court, the original resignation letter was obtained from the Labour Court, Coimbatore and the 2nd respondent company filed a petition for further investigation under Section 173(8) Cr.P.C., on 17.11.2012 in C.M.P.No.908 of 2013 in Crime No.166 of 2003 before the trial Court. At that time, the 2nd respondent company was informed about the destruction of case records, hence, he filed a petition in C.M.P.No.899 of 2013 for reconstruction of the case records in Crime No.166 of 2003. The trial Court, by order, dated 06.02.2013 ordered reconstruction of destroyed records and for further investigation in Crime No.166 of 2003. Thereafter, reconstruction was done and further investigation was conducted by the 1st respondent Police. He further submitted that the Deputy Superintendent of Police, Periyanaickenpalayam seems to be more interest and loyal to the 2nd respondent company, without any judicial order, he sent the documents for forensic study and based on the forensic report, the charge sheet was filed by the 1st respondent Police. While that being so, the trial Court ought not to have taken cognizance of the



case. Hence, he prayed for quashing of the proceedings against the petitioner.

10. The learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of "Chinnathambi @ Subramani Versus State, rep. by the Inspector of Police, Vellakovil Police Station, Tirupur District reported in 2017 (2) CTC 241" wherein certain guidelines were given by this Court, which have not been followed in this case.

11. The learned counsel for the 2nd respondent company submitted that after termination of the proceedings before the Labour Court, Coimbatore, the 2nd respondent company obtained the original resignation letter of the petitioner, dated 29.07.1998. He further submitted that initially, the case in Crime No.166 of 2003 was closed as Mistake of Fact for the reason that the original resignation letter could not be produced during investigation. After obtaining the original resignation letter, the 2nd respondent company approached the trial Court and he was informed that the case records in Crime No.166 of 2003 was destroyed in the year 2006 itself. Hence, the 2nd respondent company filed a petition for reconstruction in C.M.P.No.899 of 2013 and produced the copy of the complaint, FIR in Crime No.166 of 2003 and the trial Court, by order, dated 06.02.2013 ordered reconstruction of destroyed records. The 2nd respondent also filed a petition under Section 173(8) Cr.P.C., for further investigation in Crime No.166 of 2003, since the original resignation letter, dated 29.07.1998 was obtained. The trial Court, by order, dated 06.02.2013 ordered further investigation in Crime No.166 of 2003. During further investigation, it was conclusively proved and confirmed by the Forensic Department that the signature in the resignation letter is that of the petitioner. The contention of the petitioner that the signature in his resignation letter is a forged one, cannot absolve him from the case. From the year 1998, the petitioner had been filing petitions before the Labour Court, Coimbatore as well as before this Court and obtained orders in his favour suppressing the true facts. Now, the Forensic Department confirmed that the signature found in the resignation letter is that of the petitioner. In the larger interest of justice, the trial Court considering the submissions of the 2nd respondent company accepted the further investigation petition and directed the 1st respondent Police to conduct further investigation, by order, dated 06.02.2013.

12. He further submitted that the investigation was conducted in a proper manner after obtaining appropriate orders from the trial Court, which cannot be questioned by the petitioner. Hence, he prayed for dismissal of the Quash Petition.



13. The learned Additional Public Prosecutor appearing for the 1st respondent Police produced the Case Diary and made his submissions that since the disputed resignation letter, dated 29.07.1998 was not available and only photostat copy was available, the Assistant Director, Document Division, Forensic Department returned the photostat copy of the resignation letter without examination, hence, the FIR was closed as Mistake of Fact and notice in R.C.S.No.230 of 2004 was served on the 2nd respondent company. After prolonged litigation before the Labour Court, Coimbatore, finally, the 2nd respondent obtained the original resignation letter and submitted the same before the trial Court and filed a petition for further investigation under Section 173(8) Cr.P.C., in C.M.P.No.908 of 2013. At that time, the trial Court was informed that in the year 2006, the entire records in Crime No.166 of 2003 were destroyed. Hence, the 2nd respondent company also filed a petition in C.M.P.No.899 of 2013 for reconstruction of case records in Crime No.166 of 2003. Both the petitions were allowed by the trial Court on 06.02.2013 and direction was given to the 1st respondent Police to conduct further investigation, hence, the further investigation was conducted and the 2nd respondent and other witnesses were examined, documents collected. Based on the forensic report and the statement of the witnesses, charge sheet was filed in this case.

14. He further submitted that the 1st respondent Police only acted on the directions of the trial Court in conducting further investigation in this case. As regards the labour dispute between the petitioner and the 2nd respondent company is concerned, the 1st respondent Police is not concerned about the same. Hence, he prayed for dismissal of the quash petition.

15. This Court considered the rival submissions and perused the materials available on record.

16. It is seen that there was a long battle between the petitioner and the 2nd respondent. The crux of the issue is that according to the petitioner, the resignation letter, dated 29.07.1998, is a forged. Thereafter, there have been several litigations before this Court as well as before the Labour Court, Coimbatore.

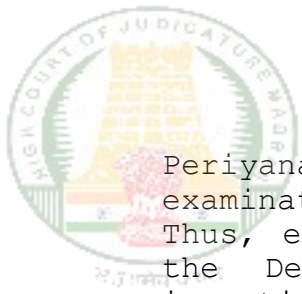
17. The contention of the learned counsel for the petitioner is that the petitioner used to sign his signature without any underline. In the resignation letter, there is underline, hence, he claims that the signature in the resignation letter is forged. In the year 2003, the 2nd respondent company obtained direction under Section 156(3) Cr.P.C., from the trial Court, as per the direction, the 1st respondent Police registered FIR in Crime No.166 of 2003 against the petitioner, thereafter, the



case was closed as Mistake of Fact in R.C.S.No.230 of 2004 on 17.06.2004. In the year 2006, the case records in Crime No.166 of 2003 were destroyed. This being the case, suddenly in the year 2013, the 2nd respondent filed a petition before the trial Court for reconstruction in C.M.P.No.899 of 2013 and for further investigation claiming that he obtained the original resignation letter from the Labour Court. Strangely, in both the petitions, the 1st respondent Police is not shown as party. The trial Court, by order, dated 06.02.2013 directed the 1st respondent Police to conduct further investigation in Crime No.166 of 2003.

18.On perusal of the case diary, it is seen that there is a proceedings, dated 03.02.2014 in Na.Ka.No.10/Memo/SDOPNP/2014 of the Deputy Superintendent of Police, Periyanaickenpalayam, Sub Division, Coimbatore District, who directed the Inspector of Police Periyanaickenpalayam that the 2nd respondent approached this Court and obtained order to register a case and conduct investigation against the petitioner. The Deputy Superintendent of Police, Periyanaickenpalayam, Sub Division, Coimbatore District sent the above proceedings to the 1st respondent Police along with the copy of the 2nd respondent's complaint, salary documents containing his signature, the petitioner's resignation letter, his leave letter and the report of the Forensic Department. Further, in the Case Diary, there is a receipt of Forensic Department in No.0592574, dated 27.11.2012 acknowledging the receipt of Rs.1,500/- and the document submitted for forensic examination has been assigned as document No.25 of 2012. The report of the Forensic Department, dated 09.04.2012 is addressed to the Deputy Superintendent of Police, Periyanaickenpalayam Sub Division, Coimbatore. The Scientific Officer acknowledged the receipt of documents through Grade-I Police Constable No.1900 Tr.V.Sreenivasan, which was without any seal. There have been 16 documents S1 to S16 and one questioned document were examined. The questioned document is the resignation letter, dated 29.07.1998. On verification of S1 to S16, it is found that in all the sixteen documents, there is no underline after the signature of the petitioner except S8, a letter, dated 25.03.1995 and S15, a leave permission slip, dated 12.07.2003. In the Forensic Report, there is no mention with regard to comparison of underline, which is the crux of the issue in this case.

19.It is strange to see under what authority, the Deputy Superintendent of Police, Periyanaickenpalayam Sub Division, Coimbatore sent the documents for forensic examination is not known. It is seen that the 2nd respondent filed a petition for reconstruction and further investigation on 17.11.2012 and the orders were passed only on 06.02.2013 and the order was communicated to the concerned Police only on 19.06.2014. It is also to be seen that the Deputy Superintendent of Police,



Periyanaickenpalayam had paid the fee for Rs.1,500/- for examination of the documents, which is not a usual procedure. Thus, even before reconstruction and further investigation, how the Deputy Superintendent of Police conducted preliminary investigation is not known. Admittedly, no specimen signature of the petitioner was obtained. Thus, from the Forensic Report, no case could be made out against the petitioner, since no study was made on the underline of the signature.

20. From the statement of the witnesses annexed in the final report, it is seen that LW1 to LW5 are from the 2nd respondent company, LW6 is the Scientific Officer, LW7 is the Deputy Superintendent of Police and LW8 is the Inspector of Police. Already, the 2nd respondent company filed petition before the Labour Court, Coimbatore to send the documents for forensic study, which was rejected. Suppressing the same, the 2nd respondent company managed through the Deputy Superintendent of Police, Periyanaickenpalayam for forensic study, which is not proper. The report of the Forensic Department is also not a complete document. The act of the Deputy Superintendent of Police, Periyanaickenpalayam is not in the manner known to law. Thus, the entire further investigation is tainted and coloured one. The trial Court ought to have seen the manner in which the Deputy Superintendent of Police, Periyanaickenpalayam Sub Division, Coimbatore had conducted investigation/enquiry in Crime No.166 of 2003, when the case has already been closed as Mistake of Fact. Only on the direction of the Deputy Superintendent of Police, Periyanaickenpalayam Sub Division, Coimbatore, the 2nd respondent filed a petition under Section 173 (8) Cr.P.C., in C.M.P.No.908 of 2013 to get authenticated. Thus, the act of the Deputy Superintendent of Police, Periyanaickenpalayam Sub Division, Coimbatore is not acceptable and it is abuse of process of law. Earlier, the 2nd respondent filed petition before the Labour Court seeking identical relief, which was negatived. Thereafter, the present cause of action initiated, which is not acceptable, proper and that cannot be approved.

21. In view of the above, the proceedings in C.C.No.61 of 2015, on the file of the Judicial Magistrate Court No.VI, Coimbatore, is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



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To

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1. The Judicial Magistrate Court No.VI,
Coimbatore.
2. The Inspector of Police,
Periyannayakanpalayam Police Station,
Coimbatore District.
3. The Public Prosecutor,
High Court, Madras.

Copy to

-do through The Chief Judicial Magistrate,
Coimbatore.(for Information)

+1cc to Mr.K.Sathiyamurthi, Advocate, S.R.No.36670

Crl.O.P.No.21458 of 2018

KK(CO)
CT/05/07/2022