



Crl.O.P.No.6056 of 2019
and
Crl.M.P.No.3380 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.10.2022

Pronounced on :03.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.6056 of 2019
and
Crl.M.P.No.3380 of 2019

E.Rajeshwari .. Petitioner/Sole Accused

/versus/

T.Vasanthakumar .. Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in connection with the case in C.C.No.7761 of 2018 on the file of the II Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioner :Mr.A.Sakthivel

For Respondent :Mr.A.Nirmal Kumar



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ORDER

The petitioner, who is a public servant (Inspector of Police) is before this Court to quash the private complaint in C.C.No.7761/2018 taken cognizance by the learned II Metropolitan Magistrate, Egmore, Chennai, on being satisfied that the petitioner had *prima facie* appeared to have restrained, abused and threatened the complainant/respondent to break his hand, thereby to be tried for offences under Sections 341,294 (b) and 506(i) of IPC.

2. The respondent in his complaint under Section 200 of Cr.P.C, has alleged that the petitioner, while serving as the Inspector of Police at G-5, Secretariat Colony Police Station, Chennai, enquired his complaint against one Panni Babu, who was polluting the dumpyard at Otteri, Chennai and when the same was objected by the respondent, he was threatened. His complaint was not properly enquired by the petitioner and the same was



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closed. This inaction of the petitioner emboldened Panni Babu and his associates to attack the complainant with deadly weapon on 27/04/2018. After treatment as in-patient for about 2 weeks, the complainant was discharged from the hospital. A case in Cr.No.262/2018 was registered against the said Panni Babu and others for offences under Sections 341, 294(b), 324, 307 and 506(ii) of IPC by the P-2, Otteri Police. This incident occurred due to the dereliction of duty by the petitioner. Hence, the respondent reported to the Senior Police Officials about the inaction of the petitioner. They called the petitioner and conducted enquiry. Being infuriated, the petitioner foisted a false case as if the respondent is preparing to attack his assailants viz, Panni Babu and others. Also, she foisted a false case against his friends in Cr.No.227/2018 dated 07/07/2018. It is further alleged in the complaint that these false cases were registered to show the respondent in bad light and to detain him under the Goonda's Act. The whimsical and malafide action of the petitioner was brought to the notice of the Higher Officials. On coming to know about this, the petitioner on



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29/07/2018 restrained the respondent near Brick Kiln Road, (at Otteri graveyard) and abused him in filthy words for giving complaint against her and threatened to break his hands. The learned Metropolitan Magistrate after recording the sworn statement of the respondent herein/complainant and one Gajendiran, had taken cognizance of the offences and caused summons to the petitioner herein.

3. The learned counsel for the petitioner placing documents submitted that the respondent/complainant, a criminal, is having several complaints against him for conducting Kangaroo Court. He and his associates, due to enmity with the other gang led by Panni Babu. When the respondent gave a complaint on 16/01/2018 against Panni Babu alleging criminal intimidation, that was properly enquired and closed after the said Panni Babu gave an undertaking in writing that he will not indulge in polluting the dumpyard or any criminal act in future. However, the life of the respondent was attempted by Panni Babu gang and a case was registered



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against them by the Otteri Police. Against the respondent, Proceedings against Section 107 Cr.P.C was initiated. Some of his associates were detained under the Goondas Act.

4. The allegations in the private complaint are false and invented to wreck vengeance against the petitioner, who has discharged her duty as Inspector of Police. The allegations though not true, even otherwise were purported to have committed, while discharging the duty as a public servant and therefore, prior sanction under Section 197 Cr.P.C is required before taking cognizance. Since the Learned Magistrate has taken cognizance of the offences and caused summon without sanction as required under the law, the case in C.C. No.7761/2018 is liable to be quashed.

5. Mr.N.S.Suganthan, learned Government Advocate (Crl.Side), on request to clarify the legal position, whether all private complaints against public servant requires sanction. He cited the following two judgments of the



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Hon'ble Supreme Court and clarified when sanction is not required.

(i) In *Anil Kumar and others v. M.K.Aiyappa and another* reported in *[(2013) 10 SCC 705]*, wherein paragraph Nos.13,14 and 22 extracted as below:

“13. The expression “cognizance” which appears in Section 197 CrPC came up for consideration before a three-Judge Bench of this Court in *State of U.P. v. Paras Nath Singh* [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200], and this Court expressed the following view: (SCC pp. 375, para 6)

“6. ... ‘10. ... And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to



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whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to *Black's Law Dictionary* the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.' [Ed.: As observed in *State of H.P. v. M.P. Gupta*, (2004) 2 SCC 349, 358, para 10 : 2004 SCC (Cri) 539.] ”

14. In *State of W.B. v. Mohd. Khalid* [(1995) 1 SCC 684 : 1995 SCC (Cri) 266], this Court has observed as



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follows:

“13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.” [Ed.: As considered in *State of Karnataka v. Pastor P. Raju*, (2006) 6 SCC 728, 734, para 13 : (2006) 3 SCC (Cri) 179.]

The meaning of the said expression was also considered by this Court in *Subramanian Swamy case* [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .

22.Further, this Court in *Army Headquarters v. CBI* [(2012) 6 SCC 228 : (2012) 3 SCC (Cri) 88] opined as follows: (SCC p. 261, paras 82-83)

“82. Thus, in view of the above, the law on the issue of sanction can be summarised to the effect that the question of sanction is of paramount importance for protecting a



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public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. ...

83. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void *ab initio*....”

(ii) In ***D.T.Virupakshappa v. C.Subash*** reported in ***[(2015) 2 SCC***

231], wherein paragraph Nos.5,7 and 8 extracted as below:-

“5. The question, whether sanction is necessary or not, may arise on any stage of the proceedings, and in a given case, it may arise at the stage of inception as held by this Court in *Om Prakash v. State of Jharkhand* [*Om Prakash v. State of Jharkhand*, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] . To quote: (SCC p. 94, para 41) “41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a



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given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea.”

7. The issue of “police excess” during investigation and requirement of sanction for prosecution in that regard, was also the subject-matter of *State of Orissa v. Ganesh Chandra Jew* [*State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] , wherein, at para 7, it has been held as follows: (SCC pp. 46-47)

“7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are



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acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. *If in doing his official duty, he acted in excess of his duty, but 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 public servant of the protection.* The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the



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discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty.”

(emphasis supplied)

8. In *Om Prakash* [*Om Prakash v. State of Jharkhand*, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] , this Court, after referring to various decisions, particularly pertaining to the police excess, summed up the guidelines at para 32, which reads as follows: (SCC P.89)

“32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (*K. Satwant Singh* [*K. Satwant Singh v. State of Punjab*, AIR 1960 SC 266 : 1960 Cri LJ 410]).*The protection given under Section 197 of the Code has certain limits and is*



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available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but 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 public servant of the protection (Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104]). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.”

(emphasis supplied)

6. The complaint as extracted above and the material placed by



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the petitioner clearly show that the allegations against the petitioner are in connection with her action during discharge of her duty. The incident alleged to have occurred on 27/04/2018. The respondent has not produced any document to show that before resorting to private complaint, he approached the jurisdiction police or the Higher Officers and their inaction has forced him to lodge the private complaint.

7. It is obviously clear that, without following the procedure contemplated under the Code of Criminal Procedure, this private complaint is filed. Ignoring the mandate under Section 197 of Cr.P.C, the learned Metropolitan Magistrate has taken cognizance of the offences and caused summon to the petitioner. The allegations against the petitioner squarely fall within the meaning of act purported to have committed during discharge of the duty and in connection with the discharge of duty. Therefore, this Criminal Original Petition is allowed.



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8. In the result, the private complaint in C.C.No.7761 of 2018 on the file of the II Metropolitan Magistrate Court, Allikulam (Egmore), Chennai is quashed. **This Criminal Original Petition is allowed.** Consequently, connected Miscellaneous Petition is closed.

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Index:yes/no
speaking order/non speaking order
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To :

The II Metropolitan Magistrate Court, Egmore, Chennai.

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Delivery Order made in
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