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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.8121 of 2019
and
Crl.M.P.No.4387 of 2019

1.Ibrahim @ Belt Ibrahim
2.Abdul Jaleel
3.Kaja Hussain
4.Riyaz
5.Abdullah
6.Sagabudeen

... Petitioners

Vs.

1. State Rep.by its
The Inspector of Police
Ukkadam Police Station
Coimbatore.

2. Krishna Kanagaraj

... Respondents

PRAYER: Criminal Original Petition had been filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.153 of 2010 pending on the file of the Judicial Magistrate Court No.V, Coimbatore and quash the same as illegal and without jurisdiction.

For Petitioners : Mr.K.Nizamuddin

For Respondents : Mr.R.Vinothraja for R1
Government Advocate (Crl.Side)

ORDER

This petition had been filed to call for the records in C.C.No.153 of 2010 pending on the file of the Judicial Magistrate Court No.V, Coimbatore and quash the same as illegal and without jurisdiction.



2. When the case was taken up for hearing on 19.04.2022, this Court passed the following order, based on the submission of the learned Counsel for the Petitioners.

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"Today, when the case is taken up for the hearing, the learned Counsel for the Petitioners invited the attention of this Court stating that one of the charges framed against the Petitioners is under Section 295(A) of IPC, for which, prior sanction has to be obtained from the Government. At that stage, this Court had sought remarks from the learned Judicial Magistrate No.V, Coimbatore. Further, the learned Counsel for the Petitioners stated that on that ground, the case was adjourned.

2. On verification of records, it is found that remarks had been offered by the Judicial Magistrate No.V, Coimbatore, vide his letter bearing D.No.508/2022, dated 08.04.2022. As per his remarks, interim stay was granted in CrI.M.P.No.4387 of 2019 in CrI.O.P.No.8121 of 2019 staying all further proceedings as against the Petitioners in C.C.No.153 of 2010. Till such date, the learned Judicial Magistrate had proceeded with the trial and had examined 11 witnesses who have been examined by the Prosecution upto P.W.11 and the witnesses are to be cross-examined.

3. At that stage, the Accused had filed this Criminal Original Petition seeking to quash the charge sheet.

4. The Petitioners are Accused 1, 2, 4, 6, 8 and 9. As per the grounds raised in the Petition to quash the charge sheet, before filing the final report the Prosecution should obtain sanction either from the Central Government or State Government to prosecute the Accused as one of the offences alleged is under 295(A) of IPC which had to be prosecuted only after obtaining sanction either from the Central Government or State Government as per Section 196(1) (a) of the Code of Criminal Procedure Code. Therefore, the learned Counsel for the Petitioners seeks clarification from the learned Judicial Magistrate concerned.

Therefore, the Registry is directed to call for the remarks from the learned Judicial Magistrate No.V, Coimbatore, as to whether sanction had been obtained



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either from the Central Government or State Government before taking cognizance of the charge sheet by the learned Judicial Magistrate as per Section 196(1) (a) of the Code of Criminal Procedure for the offences alleged against the Accused under Section 295(A) of IPC.

Call the case on 21.04.2022."

3. As per the submission of the learned Counsel for the Petitioners, the Petitioners have been arrayed as Accused Nos.1, 2, 4, 6, 8 and 9. The offence alleged against the Petitioners are under Sections 143, 295(A) and 341 of IPC. Regarding the offence under Section 295(A) the prosecution ought to have obtained prior sanction, either from the Central Government or from the State Government. In this case, the final report of the investigation laid before the Court without obtaining sanction, the trial proceed before the trial Court. The learned Judicial Magistrate No.V, Coimbatore, having taken cognizance and trial commenced. The Accused Nos.1, 2, 4, 6, 8 and 9 approached this Court by filing this Crl.O.P.No.8121 of 2019 seeking to quash the charge sheet in C.C.No.153 of 2010, pending on the file of the learned Judicial Magistrate No.V, Coimbatore, on the ground that prior sanction had not been obtained. Therefore, this Court sought remarks from the Judicial Magistrate No.V, Coimbatore. The learned Judicial Magistrate No.V, Coimbatore, had offered his remarks, in which, he had stated that the final report in Crime No.203 of 2010 under Sections 143, 341 and 295(A) IPC filed before the learned Judicial Magistrate No.V, Coimbatore. On perusal of the case records, it is seen that the learned Judicial Magistrate No.V, Coimbatore, had taken cognizance of the offence only under Sections 143 and 341 of IPC, but had not taken cognizance of the offence under Section 295(A) IPC.

4. The learned Government Advocate (Crl.Side) submits that the Prosecution had sought sanction with the State Government and it was refused by the State Government. The Investigation Officer present before this Court with CD file. In the CD file, the request for the sanction is enclosed. The District Collector, Coimbatore, had refused to sanction, on the ground that the Crime No.203 of 2010 in B12 Ukkadam Police Station, Coimbatore, is not a fit case for according sanction under Section 295(A) IPC. Further, he has instructed to take necessary action against the Accused for the offences except under Section 295(A) IPC, for which, no prior sanction from the Government is necessary.



5. The learned Government Advocate further submits that since the Government had refused to sanction, the learned Judicial Magistrate No.V, Coimbatore, on perusal of the case diary, report, and materials had not taken cognizance for the offence under Section 295(A) of IPC.

6. At the time of admission of this CrI.O.P.No.8121 of 2019, an interim stay was granted. Before that, the trial Court had examined 11 witnesses as per the list of witnesses in the final report. Since no prior sanction had been obtained either from the Central Government or the State Government, the learned Counsel for the Petitioners sought to quash the case in C.C.No.153 of 2010 on the ground of fair trial. The submission of the learned Counsel for the Petitioners is found not acceptable, as already the Government through the District Collector, Coimbatore, refused sanction for the offence under Section 295-A of IPC. The learned Judicial Magistrate No.V, Coimbatore, had taken cognizance of the offences except under Section 295-A of IPC since sanction was refused.

7. On perusal of the remarks offered by the Judicial Magistrate No.V, Coimbatore, it is seen that the offence under Section 295(A) IPC, had not been taken cognizance by the learned Judicial Magistrate No.V, Coimbatore as the District Collector, Coimbatore refused to grant sanction.

8. In the light of the above, this Criminal Original Petition is dismissed with the directions to the learned Judicial Magistrate No.V, Coimbatore to proceed with the further trial and disposed of the case within a period of three months. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

dna

To

1. The Judicial Magistrate Court No.V,
Coimbatore.



2. Do-Through,
The Chief Judicial Magistrate,
Coimbatore.

3. The Inspector of Police
Ukkadam Police Station
Coimbatore.

4. The Public Prosecutor
High Court, Madras.

+1cc to Mr.I.Abdul Basith, Advocate, S.R.No.27786

CrI.O.P.No.8121 of 2019
and
CrI.M.P.No.4387 of 2019

JPL (CO)
SU (27/05/2022)