



Crl.OP.Nos.18504 and 18650 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
23.08.2022

Pronounced on
15.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.OP.No.18504 of 2018 and Crl.M.P.No.9732 of 2018
and Crl.O.P.No.18650 of 2018 and Crl.M.P.No.9830 of 2018

M.Kavitha
Additional Commissioner
(Tiruppani), HR&CE Department
W/o.Shri.P.Saravanan,
No.12, Kapali Nagar,
Mylapore,
Chennai – 600 004.

... Petitioner / 1st Accused in both cases

Vs.

1.State,
Inspector of Police,
Sivakanchi Police Station,
Kancheepuram.
(Ref:Cr.No.341 of 2018 dt.14.07.2018)

2. Mr.A.Dillibabu ... Respondents in both cases

Prayer in Crl.O.P.No.18504 of 2018: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.M.P.No.3256 of 2018 on the file of Judicial Magistrate No.I, Kancheepuram and set aside the order dated 25.06.2018.

Prayer in Crl.O.P.No.18650 of 2018:Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records to quash the FIR bearing Crime No.341 of 2018 on the file of the Inspector of Police, Sivakanchi Police Station, Kancheepuram as against the petitioner.



Crl.OP.Nos.18504 and 18650 of 2018

WEB COPY

For Petitioner : Mr.A.Ramesh, Senior Counsel
For Mr.G.R.Hari in both cases

For R1 : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)
in both cases.

For R2 : Mr.K.P.P.Raja Raja Chozhan,
Legal-Aid-Counsel in both cases.

COMMON ORDER

The first accused is the petitioner herein. The petitioner is an Additional Commissioner.

2. (a) The petition is filed seeking to quash the order dated 25.06.2018 passed in C.M.P.No.3256 of 2018 which is filed under Section 156 (3) of Cr.P.C., directing the first respondent-police to register the F.I.R and to investigate the matter.

(b) The second respondent herein claims to be a 'Chalk Artist' by profession and he alleged that the renovation work of Ekambaranathar temple at Kancheepuram where carried out with JCB which according to the defacto-complainant (R2), is violation of law. It is further alleged that renovation work were funded by the Government. But the accused, a public servant have invited donations through temple website and those donations



Crl.OP.Nos.18504 and 18650 of 2018

have been misappropriated. Though two crores rupees was estimated work, according to the petitioner, there is no substantiate value of the work order and also alleged that the funds released for renovation of work were misappropriated.

3. With these allegations, he has filed the Crl.M.P. No. 3256/ 2018 before the learned Judicial Magistrate No.I, Kancheepuram under Section 156 of Cr.P.C.

4. The learned Judicial Magistrate, Kancheepuram has passed order as under:-

"Complainant present. Petition and documents perused. There are probable questions to be investigated in this case. Hence the Inspector, Siva Kanchee Police Station, directed to register an F.I.R and investigate this matter as soon as possible."

5. Pursuant to the said order, it appears that the Inspector of Police has registered an F.I.R in Crime No.341 of 2018 against the petitioners M.Kavitha, Sivaji, Ramani, V.Murugesan, V.Balasubramani and Sthapathy R.Nandakumar for alleged offence under Section 120-B, 379, 380(2), 409, 420, 437 and 468 of I.P.C.



Crl.OP.Nos.18504 and 18650 of 2018

WEB COPY

6. In the said petition, the defacto-complainant placed reliance upon the Judgment of Madurai Bench of this Court in Crl.O.P.(MD)No.5044 of 2011 in ***Thangarasu Vs.Assistant Commissioner*** dated 28.03.2017 for the proposition on the footing that no prior sanction is required for prosecution of public servants.

7. The above mentioned decision has been overruled by the Hon'ble Supreme Court in ***Anil Kumar V M.K. Aiyappa (2013) 10 SCC 705*** as discussed infra.

8. Mr.A.Ramesh, learned Senior Counsel appearing for the petitioner/first accused could contend that the averments in the petition under Section 156 (3) Cr.P.C does not have foundational facts or basic details and none of the allegations point the accusation against the petitioner towards the commission of alleged crime. The petition is full of omnibus allegations. This Court relies upon the decision of the Hon'ble Supreme Court and High Courts in:

(i) Anil Kumar Vs M.K.Aiyappa reported in (2013) 10 SCC 705 ,

(ii) Priyanka Srivastava Vs State of UP reported in (2015) 6 SCC 287,

(iii) K.S. Narayanan Vs S Gopinath reported in (1981) CriLJ 1611,



Crl.OP.Nos.18504 and 18650 of 2018

(iv) *K.Mohanraj and another V J Jayapaul Mohan and Ors. 2015 SCC*

OnLine Mad 14244.

9.The petitioner also filed Crl.O.P.No.18650 of 2018 challenging the F.I.R.

10. Heard the Learned Senior Counsel appearing for the Petitioner and the Learned Government Advocate.

11.The defacto-complainant is arrayed as a second respondent. Though notice was served upon him, he has not appeared and hence his name is printed in the cause list. Despite several adjournments for his appearance, he did not entered appearance either in a person or advocate and hence by an order dated 23.08.2022, this Court has directed the High Court Legal Services Committee to appoint a legal aid advocate. Mr.K. Rajaraja Chozhan, legal aid advocate has filed vakalat for the respondent.

12. On 10.08.2022, when the case was posted for arguments by Legal- Aid-Counsel, the Registrar of High Court has produced a letter along with the enclosure purported to have sent by the defacto-complainant (which is in Tamil) citing Section 314 of Cr.P.C. It has also been signed.



Cr1.OP.Nos.18504 and 18650 of 2018

Though the defacto-complainant has not appeared in person, through the contents of the said letter along with the enclosure, he has reiterated his averments made in the petition.

13. The learned Legal-Aid-Counsel appointed by the Court for the defacto-complainant/second respondent was also given a copy of the same and his arguments have been heard. Subsequently orders have been reserved.

14. I have perused the impugned order passed in C.M.P.No.3256 of 2018 and I find that the same is a non speaking order. There is no indication of application of mind as to whether the alleged offence are prima facie made out or not.

15. The respondent/accused No.2 to 5 before the trial Court were admittedly "public servants" as defined under Section 21 of the Indian Penal Code, 1860 and the allegations contained in the petitions are in connection with the discharge of their official duty/ during the course of their exercise of powers conferred in view of the said post and therefore necessary sanction has to be obtained before prosecution.



Cr1.OP.Nos.18504 and 18650 of 2018

16. I find that this vital point has not been considered by the learned Magistrate.

17. In the decision reported in *Anil Kumar V M.K. Aiyappa (2013) 10 SCC 705*, the above point has been emphasised by the Hon'ble Supreme Court.

18. (a) After perusing the averments, I find that the above original petitions was filed before the learned Magistrate by the person claiming to be the devotee for registration of the F.I.R against public servant in connection with alleged irregularity in the renovation of the temple and collection of the fund in the name of the temple renovation donation through website was misappropriated.

(b) I find that there is no factual foundation warranting registration of the F.I.R. When a plea of criminal conspiracy was raised by the defacto-complainant, sufficient details has to be dealt with and in the absence of any specific allegation against the petitioner herein and with regard to the alleged role played by her, the entire petition filed under Section 156 (3) Cr.P.C has to be rejected inlimine.



Crl.OP.Nos.18504 and 18650 of 2018

19. After perusing the order which is extracted supra, I find that the learned Magistrate ought to have applied his mind and recorded the reasoning for ordering of registration of F.I.R, especially when the proposed parties (proposed accused) are all "public servants" who worked in the HR&CE Department.

20. Regarding requirement of prior sanction of prosecution of public servant in connection with discharge of their official duty during the course of their employment, this Court relies on the judgment of Hon'ble Supreme Court in *D. Devaraja Vs Owais Sabeer Hussain* reported in (2020) 7 SCC 695.

73. While this Court has, in D.T. Virupakshappa [D.T. Virupakshappa v. C. Subash, (2015) 12 SCC 231 : (2016) 1 SCC (Cri) 82] held that the High Court had erred [D.T. Virupakshappa v. C. Subash, 2013 SCC OnLine Kar 10774] in not setting aside an order of the trial court taking cognizance of a complaint, in exercise of the power under Section 482 of the Criminal Procedure Code.....

Also, this Hon'ble Court in *Crl.O.P No. 8708 of 2022; Praveen Rajesh, Inspector of Police V Commissioner of Police and Ors dated 07.07.2022* has held as follows:

11.Such being the position, there must be a prior sanction to proceed against such Officer. In this regard, the Hon'ble Calcutta High Court in a case in Dr. Nazrul Islam V Basudeb Banerjee and Ors, the Hon'ble Calcutta High Court reported in 2022 SCC OnLine Cal 183 held as follows:



Crl.OP.Nos.18504 and 18650 of 2018

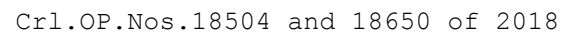
WEB COPY

21. Once it is noticed that there was not previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in **Paras Nath Singh** [(2009) 6 SCC 372: (2009) 2 SCC (L&S) 200] and **Subramanian Swamy** [(2012) 3 SCC 64: (2012) 1 SCC (Cri) 1041: (2012) 2 SCC (L&S) 666] cases. Thus, it has been categorically observed by the Hon'ble Supreme Court that if it is noticed there was no previous sanction the Magistrate cannot order investigation against the public servant while invoking powers under Section 156(3) of Cr.P.C.

9.A Magistrate cannot act as a Post Office and direct for registration of FIR. Registering FIR is not an ordinary thing. It will affect the rights of the individual and even some times, it will destroy the carrier of the people. Normally, the Magistrates would direct the police to file a report on the basis of the complaint filed under Section 156(3) Cr.P.C. whereas, in this case, the learned Metropolitan Magistrate has straight away directed the Station House Officer, R-5 Virugambakkam Police Station, to file FIR which itself clearly indicates that he has not applied his mind.

In **Crl.Op.No. 30058 of 2018 dated 16.09.2022, A.Mohan and Another V M.Surya Narayanan** , I have rendered a similar finding relying on the above mentioned decision.

21. Thus, in the absence of sanction, a complaint filed against the public servant while discharging duty for commission of alleged offence cannot be referred under Section 156 (3) Cr.P.C and hence on this short ground, this Crl.O.P is to be allowed.



23. The impugned order passed by the learned Magistrate, as extracted supra, it is observed that there is a non application of mind by the learned Judicial Magistrate and he has not applied his mind and in a mechanical manner he has forwarded the petition and ordered for registration of the F.I.R. The order of the Magistrate setting the criminal law in motion cannot be the matter of course and should be supported with a proper reasoning indicating that a prima facie case has been made out against the accused. Thereafter only, order for registration of the F.I.R could arise.

24. Hence I find that on these grounds as well, the impugned order is unsustainable in law, though certain points have been raised in respect of defect in filing of the complaint and want of affidavit in support of this case.

25. One of the contentions of petitioner is that the defacto complainant(R2), who was a chalk artist, was an unlawful tenant under



Crl.OP.Nos.18504 and 18650 of 2018

another subtenant of a tenant in the temple shop area was evicted by the petitioner through lawful means as per the HR& CE Act, Hence with malafide intention he has filed this present case.

26. Hence, having regard to the subject matter by way of which the petitioner has attempted to invoke the provisions of Section 156(3) of the Code of Criminal Procedure against the public servants this Court is of the opinion that as the provision of Section 197 of the Code of Criminal Procedure has been incorporated in the statute, the same has been for a meaningful purpose of allowing the public servants to discharge their duties without fear or favour or without any anticipation of being harassed because of the rigours of law. Therefore, ordinarily a valid sanction would be required in a proceeding where the provisions of Section 156(3) Cr.P.C. are invoked against public servants. However, in this case substantive offences as alleged have not been made out, so the issue of sanction is an additional consideration.

27. Since for the reasons stated supra, this Court has held that the order passed by the learned Magistrate is totally unsustainable in law from any stand point and accordingly the Crl.O.P.No.18504 of 2018 is allowed and the order dated 25.06.2018 made in C.M.P.No.3256 of 2016 by the



Crl.OP.Nos.18504 and 18650 of 2018

learned Judicial Magistrate No.I, Kancheepuram is set aside and the same stand dismissed. Consequently Crl.O.P.No.18650 of 2018 is allowed and F.I.R. on the file of the first respondent Sivakanchi police station, Kancheepuram in Crime No. 341 of 2018 also stands quashed.

28. After perusing the complaint filed before the learned Magistrate and the subject matter being renovation of the temple and the donation collected thereafter and disbursement of funds, the Registry is directed to forward the copy of the complaint to the Secretary and Commissioner of HR&CE to form a high power committee consisting of two senior officers (above the rank of the petitioner herein) to look into the averments and to hold an enquiry. Based upon the outcome of the said enquiry, the Secretary and Commissioner(HR & CE) shall take appropriate steps depending upon the finding of the said enquiry.

29. With the above observations, these Crl.O.P.s are allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

15.11.2022

Index : Yes/No



Cr1.OP.Nos.18504 and 18650 of 2018

Internet : Yes/No
Speaking Order/Non-Speaking Order

nvi

To

1. The Inspector of Police,
Sivakanchi Police Station,
Kancheepuram.
2. The Public Prosecutor,
High Court,
Chennai 600 104.



WEB COPY



Crl.OP.Nos.18504 and 18650 of 2018

RMT.TEEKAA RAMAN,J,

nvi

Pre-delivery common order made in

Crl.OP.No.18504 of 2018 and Crl.M.P.No.9732 of 2018
and Crl.O.P.No.18650 of 2018 and Crl.M.P.No.9830 of 2018

Dated: 15.11.2022