



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 18.04.2022	Orders Pronounced On 26.04.2022
----------------------------------	------------------------------------

CrI.O.P.No.18622 of 2018
and
CrI.MP.No.9820 of 2018

1.M.K.Rajasekaran [Enquiry Officer]
2.M.Pachaiyappan, H.R.

... Petitioners

Vs.

1. State rep. by
The Inspector of Police,
Nasaratpet,
Ambattur.

2. Sundaram

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in FIR.No.529 of 2018 on the file of the Nasaratpet Police Station, Ambattur and quash the same.

For Petitioners: Mr.K.Sathish
for M/s.Kaavya Silambanan Associates

For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : Mr.V.Manogar

ORDER

The petitioners/A1 and A2 in Crime No.529 of 2018 for the offence under Sections 465 and 468 IPC, filed this quash petition.



WEB COPY

2.The first respondent Police on the direction received from the learned Judicial Magistrate No.I, Poonamallee in C.M.P.No.2108 of 2018 filed under Section 156 Cr.P.C. dated 22.05.2018, registered the FIR.

3.The gist of the complaint is that the second respondent/defacto complainant was employed with M/s.DMC Automotive Private Limited, Uthukottai Taluk, Thiruvallur. The factory employed with 400 workers, of which only 21 employees are permanent employees, 56 workers are designated as trainees and the remaining workers are treated as contract labours. The said 56 workmen who are designated as trainees were working for more than 5 years, they were kept as trainees and paid less wages. The petitioner who is one among the 21 permanent employees have been supporting the said 56 workmen to get permanent status and wage increase through legal forums. Since the second respondent was supporting the said 56 workmen, the Management started victimizing him by issuing show cause notices. In the meanwhile, the Management and Officials confined the second respondent in the conference hall of the factory, threatened and humiliated him on 16.08.2017. Unable to bear the humiliation, the second respondent attempted self immolation by pouring diesel, inside the factory, later he was rescued, admitted in Shri Ramachandra Hospital for three days and thereafter he was discharged. The Management lodged a complaint for this incident with the Pennalurpet Police, who conducted an enquiry, thereafter a compromise was arrived between the second respondent and Management. During the compromise, the Management agreed that they will not take any coercive or punitive action against the second respondent. Further, the Management gave an assurance that they will not harass the second respondent any further. Believing those words, the second respondent withdrew his complaint against the Management. After withdrawal of the complaint, the Management started making false allegation against the second respondent with a view to dismiss him from service, charge sheet was also issued against him and a domestic enquiry was conducted.

4.One Mr.K.Rajasekaran/first petitioner was appointed as Enquiry Officer and the second petitioner is the Company representative in the enquiry. The Domestic enquiry commenced on 06.01.2018 at Motel Highway, Poonamallee in Room No.107. Enquiry progressed on 18.01.2018 and thereafter, it was to be held on 17.02.2018 at 8.00 a.m. The second respondent could not reach the enquiry venue within time since he was held up in the traffic and he could reach the venue only at about 8.45 a.m. While he was in the traffic, he received a call from the second petitioner at about 8.20 a.m. enquiring about his whereabouts, he informed that he was stuck in the traffic and he will reach



the venue soon. When the second respondent reached the enquiry venue at about 8.45 a.m., he found nobody in the venue, he enquired in the reception, the car driver of the Management informed him that the second petitioner was having coffee in the coffee shop, the second respondent went there, enquired with him, he was informed that the next date of enquiry will be informed to him later and both the second respondent and second petitioner were together till 9.20 a.m. Thereafter, the second respondent left the hotel at 9.45 a.m. This being the case, on 20.01.2018 the second respondent was served with the enquiry proceedings held on 17.02.2018, to his shock and surprise it was recorded that the second respondent failed to participate in the enquiry till 9.00 a.m. on 17.02.2018, thereafter, enquiry got adjourned, which is contrary to the facts, the second respondent reached the enquiry venue at about 8.45 a.m. and he was along with the second petitioner till 9.20 a.m. Further, when the second respondent enquired the reception on 17.02.2018, he was informed that the Enquiry Officer/first petitioner came to the venue at 8.00 a.m. and left the venue within fifteen minutes, at about 8.15 a.m.. Thus, with false and fabricated particulars, the enquiry proceedings was recorded and notice served to the second respondent. Further, the CCTV footage available in the Hotel would prove that the petitioners fabricated false documents. Hence, second respondent lodged a complaint to the respondent police on 22.02.2018, who refused to receive the complaint finding that it is a employer-employee dispute. Thereafter, the second respondent lodged a complaint to the Superintendent of Police, Tiruvallur on 23.02.2018. Since, no action taken, the second respondent approached the learned Judicial Magistrate No.I, Poonamalle, who forwarded the complaint and hence, FIR registered.

5.The contention of the petitioners is that the first petitioner is the Enquiry Officer and the second petitioner is the Presenting Officer for the domestic enquiry against the second respondent/defacto complainant. The second respondent/defacto complainant was creating trouble, disturbing industrial peace, projecting himself as though he is a Trade Union leader questioning the Management, showing insubordination and was not attending to his work properly. When he was questioned and advised to attend work, he raised objection as though he was humiliated, threatened to immolate himself by pouring diesel over him and created a high drama on 16.08.2017. further, the second respondent was in the nature of creating attention towards him for one reason or other. Thereafter, for the second respondent's improper conduct, domestic enquiry was initiated, enquiry was held at Motel Highway, Poonamallee, for one of the hearings the second respondent failed to appear, enquiry was adjourned to some other day and notice was sent to him. On receipt of the notice on 20.02.2018, the second



WEB COPY

respondent made objection as though he reached the enquiry venue on 17.02.2018 at about 8.45 a.m., he saw the Presenting Officer in the coffee shop and was with him from 8.50 a.m. to 9.20 a.m., thereafter he left the place only at 9.45 a.m. and hence, fabrication of documents was made. Further, in support of his contention, he wanted to retain the CCTV recordings of the Hotel. It is further submitted that the complaint of the second respondent is far fetched, initially he lodged a complaint with the respondent police who made enquiry, found the complaint to be exaggerated and closed the same. Again a representation was made to the Superintendent of Police who forwarded the same to the Police who enquired and the same was closed. Thereafter, the second respondent filed a petition before the Magistrate and got FIR registered.

6.It is further submitted that the Management already conducted enquiry and terminated the service of the second respondent, against which industrial dispute is pending between the Management and the defacto complainant. The defacto complainant to brook vengeance, with an ulterior motive got the FIR registered against the petitioners. It is also submitted that by adjourning the enquiry for his non-appearance, no damage caused to the second respondent. Further, after 17.02.2018 there have been six more hearings and finally enquiry was completed on 03.05.2018 after affording full opportunity in the enquiry. The Management accepted the report of the Enquiry Officer holding the charges proved and the delinquent defacto complainant was removed from service, against which industrial dispute case filed before the Labour Court. It is further submitted that the complaint by the defacto complainant is figment of imagination and the said false complaint was filed just to harass the Company representative and the Enquiry Officer. Hence, prayed for quashing the same.

7.The learned counsel for the second respondent submits that he is one among the 21 permanent employees in the Factory. Though there are several hundreds of employees working, they have been wantonly designated either as trainees or temporary workers to keep them under tender hooks. The second respondent was espousing the cause of 57 trainee employees who put more than five years of service, to regularize their employment and for them to receive higher wages. The Management had an eye on the second respondent since he was espousing the cause of the workers, started humiliating him for one reason or other. After sometime, the second respondent received a show cause notice, a domestic enquiry was constituted, wherein the first petitioner herein is the Enquiry Officer and the second petitioner is the Presenting Officer. The Enquiry notice dated 20.02.2018 was issued with false particulars and forgery committed by the petitioners. On receipt of forged notice, the second respondent



immediately lodged a complaint to the Police who failed to take action and the representation given to the Superintendent of Police was also in vain. Thereafter, the second respondent/defacto complainant filed a complaint before the Magistrate, got the FIR registered. It is further submitted that the points raised by the petitioners cannot be entertained now and the investigation cannot be stalled. Hence, he prayed for dismissal of this petition.

8.The learned Additional Public Prosecutor appearing for the first respondent submitted that the second respondent/defacto complainant lodged a complaint before the learned Judicial Magistrate No.I, Poonamallee in C.M.P.No.2108 of 2018 under Section 156 Cr.P.C. and on the direction of the learned Magistrate dated 22.05.2018, FIR came to be registered. It is further submitted that the investigation has just commenced and in the meanwhile, it was verified from the Motel Highway, Poonamallee that there is no CCTV recordings available. Further, in the enquiry it was found that it is an industrial dispute between the employer and the employee and the timing in the enquiry notice is now projected to be false and a forged document prepared. It is further submitted that due to pendency of this petition, investigation could not be continued and on completion of investigation, appropriate final report would be filed.

9.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the second respondent/defacto complainant is an employee with M/s.DMC Automotive Private Limited, there was a domestic enquiry pending against him, now the enquiry concluded and the defacto complainant, got terminated from service, against which, case is pending before the Labour Court. The first petitioner is the Enquiry Officer and the second petitioner is the Presenting Officer for the domestic enquiry against the second respondent/defacto complainant. On 17.02.2018, the defacto complainant could not attend the enquiry in time, thereafter it was adjourned, the next enquiry notice was issued on 19.02.2018, wherein it was mentioned that on 17.02.2018 the Enquiry Officer was waiting for the second respondent till 9.00 a.m., and thereafter, for non-appearance of the second respondent, it got adjourned. The contention of the defacto complainant that till 9.45 a.m., he was present in the venue and met the second petitioner in the Coffee shop, hence, enquiry notice contains false complaint and forgery committed. The complaint is of no consequence, subsequent to 17.02.2018, thereafter on six dates enquiry was conducted. Enquiry concluded and the defacto complainant was terminated from service. It is a dispute between the employer and employee. Further, the defacto complainant was proactive, raising labour disputes is an



admitted fact. The defacto complainant attended the domestic enquiry is admitted, the grievance of the defacto complainant is that enquiry notice contained wrong timing, by itself it cannot be termed as forgery. In view of the same, this Court finds that no case made against the petitioners, warranting investigation. Hence, continuation of the case would amount to abuse of process of law.

10. In view of the above, investigation in Crime No.529 of 2018 pending against the petitioners on the file of the respondent police is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Inspector of Police,
Nasaratpet, Ambattur.
2. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Kaavya Silambanan Associates, Advocate, S.R.No.28487

Cr1.O.P.No.18622 of 2018

SKM(CO)
SU(10/05/2022)