

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.12057 of 2020

and

Crl.M.P.No.4856 of 2020

R.Gunavharman
S/o.M.G.Ramasamy,
Inspector of Police (L & O),
G-1 Vepery Police Station,
Chennai - 600 003.

...Petitioner

Vs

K.Babu

...Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the proceedings in C.C.No.1491 of 2020 pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.N.Senthilkumar

For Respondent : Mr.N.Anandaraj

O R D E R

The petition has been filed to quash the proceedings in C.C.No.1491 of 2020 pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai, thereby taken cognizance for the offences under Sections 166, 323, 336, 352, 427, 500 & 506(2) of IPC, as against the petitioner.

2.The respondent lodged private complaint alleging that he is a practising advocate in Chennai and on 12.09.2019, he received an information that one Milaisa was taken by the police personnel of G1, Vepary Police Station, Chennai. The relatives were not able to know that what purpose and what ground he was taken to the police station. They were also not informed about the ground on which he was taken to the police station. Therefore, the respondent along with his colleague in discharge of their professional duty went to G1 Vepery Police station and requested the police personnel to tell about the allegations as against the said Milaisa. However, the police personnel did not

disclose anything about the case and any information with regard to registration of FIR, if any, as against the said person.

3. When the respondent and his colleague about to meet the higher officials, the petitioner scolded him with filthy language and abused him. They have also made sarcastic and insulting remarks against the respondent herein. The petitioner also caught hold the shirt of the respondent and hit on his backside of his neck and his right hand and drag him to exit of the police station. Therefore, the respondent lodged complaint before the commissioner of police, Chennai, Home Secretary of the State of Tamil Nadu and Director General of Police, Tamil Nadu. However, no action was taken on his complaint as such the respondent filed private complaint under Section 19(1)(a) r/w 200 of Cr.P.C., for the offences punishable under Sections 166, 323, 336, 352, 427, 500 & 506(2) of IPC against the petitioner herein. On receipt of the complaint, the learned Magistrate conducted enquiry and examined the respondent and his supporting witnesses. Thereafter the trial Court had taken cognizance and issued summons to the petitioner.

4. The learned counsel appearing for the petitioner would submit that the learned Magistrate ought not to have taken cognizance of the complainant for which sanction under Section 197(1)(b) of Cr.P.C., from the competent authority is mandatory. It has been legislated to protect responsible public servant against the institution of vexatious criminal proceeding for the offences alleged to have been committed while acting or purporting to act as public servant. In the absence of sanction under Section 197 Cr.P.C., taking cognizance of the complaint is bad in law. In support of his contention, he relied upon the judgment dated 18.06.2020 passed by the Hon'ble Supreme Court of India in the case of D.Devaraja Vs. Owais Sabeer Hussain in CrI.A.No.458 of 2020.

5. Per contra, the learned counsel appearing for the respondent would submit that the respondent being an Advocate and in order to discharge his duty he went to the petitioner's police station as contemplated under Section 41(d) of Cr.P.C. The person who was taken to police station arrested without any reasons and without even informing his relatives about the grounds of arrest. Therefore, the respondent went to the petitioner's police station and questioned about the grounds of arrest and detention of the person viz., Milaisa. The respondent was abused by the petitioner and also assaulted by the petitioner. Therefore, the respondent lodged complaint before the higher officials and no action was taken by them. Therefore the respondent was constrained to file a private complaint and the trial Court after considering the sworn statement of the respondent and other supported documents rightly had taken

cognizance and issued summons to the petitioner. The grounds raised by the petitioner are mixed question of facts and it has to be considered only during the trial before the trial Court.

6. Heard Mr.N.Senthilkumar, learned counsel appearing for the petitioner and Mr.M.Anandaraj, learned counsel appearing for the respondent.

7. According to the respondent, the petitioner while he was working as Inspector of Police of G1 Vepery Police station, Vepery, Chennai, the respondent went to the police station and enquired about Milaisa's detention. He was abused by the petitioner and pushed him out of the police station. The petitioner also threatened him with dire consequences by showing his pistol towards the respondent.

8. On perusal of the records revealed that the petitioner registered a case in Crime No.384 of 2019 for the offences under Section 72 of Chennai City Police Act 1888, Section 420 of IPC and Section 66(d) of the Information Technology Act, 2000, against the accused persons on the allegations that they involved in Cricket gambling through computer with regard to the Cricket match played in abroad and got unlawful gain at shop No.F-9, 2/36, Oshiyam Arctais Complex, Hunters Road, Choolaimedu, Chennai. In this regard, the petitioner arrested one Jai Milansha, Rahul D Jain, Dinesh Kumar, Dinesh V.Kumar. In the said crime one Ronck Chordia had lost several lakhs and cheated by the accused persons. They were arrested on 12.09.2019 and recovered cash and other equipment from the accused persons. Thereafter, they were remanded to judicial custody and taken for interrogation under the police custody.

9. Therefore, the person mentioned in the present complaint viz., Milaisa is not an accused in Crime No.384 of 2019. The petitioner arrested and remanded to judicial custody only three persons at stated supra. The said person viz., Milaisa seems to be a father of one of the accused. Therefore, the respondent herein went to the petitioner's police station and as usual shown his rough attitude before the petitioner herein. Therefore, there was a wordy altercation between them.

10. The learned counsel appearing for the respondent cited the judgment of the Hon'ble Suprem Court of India in the case of Devinder Singh & ors Vs. State of Punjab through CBI in Criminal Appeal No.190 of 2003 dated 25.04.2016 which held that in case there is an act of beating a person suspected of a crime confining him or sending him away in an injured condition, it cannot be said that police at the time were engaged in investigation and the acts were done or intended to be done under the provisions of law. Act of bearing and confining a

person illegally is outside the purview of the duties. In the case on hand, no such occurrence took place even according to the respondent, since no person was beaten or illegally detained by the petitioner. Therefore, the judgment cited by the learned counsel appearing for the respondent is not applicable to the case on hand.

11. Admittedly, while the petitioner was discharging his duty, the respondent interfered with the investigation. When the petitioner arrested three accused person in pursuant to the FIR registered in Crime No.384 of 2019 for the offences under Section 72 of Chennai City Police Act 1888, Section 420 of IPC and Section 66(d) of the Information Technology Act, 2000, the respondent interfered with the investigation done by the petitioner herein.

12. In this regard, as cited by the learned counsel appearing for the petitioner in CrI.A.458 of 2020 in the case of D.Devaraja Vs. Owais Sabeer Hussain, the Hon'ble Supreme Court of India held that the law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police official under Section 197 of Cr.P.C., is well settled by the Hon'ble Supreme Court of India. The relaveant portion of the order is extracted hereunder :-

''68. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government.''

Further held that the Act has its limitation. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.

13. Further the law laid down under Section 197 of Cr.P.C., makes it absolutely clear that sanction is required not only for

the acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority. It is well settled that an application under Section 482 of Cr.P.C., is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of Court. If on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceedings is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of Cr.P.C., would have to be exercised to quash the proceedings to prevent abuse of process of Court.

14. In the case on hand, admittedly before taking cognizance, no sanction was obtained to prosecute the petitioner herein, since the alleged occurrence taken place, when the petitioner was discharging his official duty. Therefore, the sanction is required to prosecute the petitioner under Section 197 of Cr.P.C. Therefore, the learned Magistrate ought not to have taken cognizance on the complaint lodged against the petitioner, in the absence of sanction required under Section 197 of Cr.P.C. Sanction of the Government to prosecute a police officer is imperative to protect him from facing harassive, retaliatory, revengeful and frivolous proceeding. Therefore, the impugned complaint cannot be sustained as against the petitioner and it is liable to be quashed.

15. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.1491 of 2020 pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The II Metropolitan Magistrate, Egmore, Chennai.
2. Do Thro The Chief Judicial Magistrate, Chennai.

+1cc to Mr.N.Senthilkumar, Advocate, S.R.No.38642

CrI.O.P.No.12057 of 2020
and CrI.M.P.No.4856 of 2020

KK(CO)RGA(26/07/2022)