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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:25.04.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.14944 of 2020

and

Crl.M.P.No.5687 of 2020

D.Vamseedhar Reddy(M/....years)
S/o Ramakrishna Reddy,
The Then Superintendent of Police,
Puducherry.
Presently serving as
Deputy Commandant(IRBN)
SP, Traffic (Engineering & Road Safety)
Puducherry.

.. Petitioner/Accused

/versus/

1.Inspector of Police,
(PCR Cell
Yanam Puducherry UT)
(In crime No.1 of 2020)

..1st Respondent/Complainant

2.KaladiRaju
(Bench Clerk)
On behalf of
Hon'ble Judicial Magistrate Court,
Yanam, Puducherry UT.

.. Respondent/Defacto complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records FIR in Crime No.1 of 2020 dated 28.08.2020 pending investigation on the file of the respondent police and quash the same as against the petitioner/accused.

For Petitioner : Mr.M.Velmurugan

For Respondents: Mr.V.Balamurugane
Additional Public Prosecutor (P)
for R1
No appearance for R2



O R D E R

This petition for quash the First Information Report registered by the respondent police in Crime No.1 of 2020 against the Then Superintendent of Police, Yanam, Puducherry.

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2.The case of the petitioner is that on 25.06.2020 in C.C.No.48 of 2015 investigated by the Yanam Police in Crime No.5 of 2015, the Judicial Magistrate, Yanam, passed a docket order wherein he had directed the Investigating Officer in Crime No.5 of 2015 to initiate the proceedings under Section 4(1) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Sections 217 and 218 of IPC against the petitioner herein. According to the Judicial Magistrate, he was prima facie satisfied with the material collected during the course of investigation make out offence under the provision of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. However, the Investigating Officer (petitioner herein) has failed to conduct the investigation properly. Pursuant to this docket order, the Bench Clerk of the Court has given a complaint and the same was registered against the petitioner herein in Crime No.1 of 2020, which is now sought to be quashed under Section 482 of Cr.P.C.

3.The prime contention raised by the learned counsel appearing for the petitioner is that, Section 4 (2) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, contemplates Administrative Enquiry before initiating prosecution, only after due enquiry, proceeding for prosecution against a public servant, who has neglected in discharging his duty can be initiated. Whereas, inspite of the specific direction by the Judicial Magistrate in his order dated 25.06.2020 to deal with the matter against the petitioner herein in accordance with the provision of Section 4(2) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, no administrative enquiry was conducted. Criminal case has been registered because the complaint received from the Bench Clerk of the Judicial Magistrate Court, ignoring the statutory procedure, which mandates recommendation of an administrative enquiry.

4.To appreciate the said argument, it is necessary to analyze Section 4 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, which reads as below:

[4. Punishment for neglect of duties.--

(1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be



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punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

(2) The duties of public servant referred to in sub-section(1) shall include--

(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;

(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;

(c) to furnish a copy of the information so recorded forthwith to the informant;

(d) to record the statement of the victims or witnesses;

(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;

(f) to correctly prepare, frame and translate any document or electronic record;

(g) to perform any other duty specified in this Act or the rules made thereunder:

Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.]

(Emphasis added)

5. This Section is primarily to prosecute the public servant, who neglects to perform his duties as required under the said Act. Proviso to this Section indicates that charges in this regard against the public servant shall be booked only on the recommendation of an Administrative Enquiry. Whereas, in the instant case, the concerned Judicial order has been passed directing the authorities only to initiate proceedings under Section 4 (2) and not to register case directly without recommendation of Administrative Enquiry. The law set in motion by the judicial order has to be followed with the procedure contemplated under the Act namely, Administrative Enquiry on whether the public servant has failed or neglected to discharge his duty and a recommendation without proper Administrative Enquiry under Sub-Section (2) of Section 4 and the public servant cannot be prosecuted under Sub-Section (1) of Section 4 of the Act.



6. In this case, it is admitted that no administrative enquiry was conducted before registering First Information Report in Crime No.1 of 2020 against the petitioner herein. An opportunity for the petitioner to appear before the Administrative Enquiry and to establish that there was no dereliction or neglect of duty on his part has been taken away by not conducting administrative enquiry. Registering First Information Report, without following the procedure contemplated in proviso to Section 4(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is violation of due process of law. Further, the general law under Cr.P.C as well as the specific provision in Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, provides protection to a public servant, who discharge his duty in good faith. The said protection cannot be deprived even by a judicial order. Hence, this Court finds force in the submissions made by the learned counsel appearing for the petitioner and on considering the gross violation of the proviso to Section 4 (2), the complaint registered in violation of the said provision is liable to be quashed. Accordingly, First Information Report in Crime No.1 of 2020 on the file of the respondent is quashed.

7. The quashing of the First Information Report will not stand in the way of the authorities to conduct administrative enquiry in accordance with the law and proceed, if necessary.

8. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Yanam, Puducherry UT.
2. The Inspector of Police,
(PCR Cell Yanam Puducherry UT).



3. The Public Prosecutor (P),
High Court, Madras.

+1cc to Mr.M.Velmurugan, Advocate SR.No.29038

Cr1.O.P.No. 14944 of 2020
and
Cr1.M.P.No.5687 of 2020

SSN(CO)
GMY(10/05/2022)