



Crl.O.P No.17686 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.12.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.17686 of 2019
and Crl.M.P.No.8917 of 2019

A.R.A.Jayaraj

... Petitioner

Vs.

R.Anbazhagan

... Respondent

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in complaint in C.C. No.63 of 2019 on the file of the Judicial Magistrate No.II, Nagapattinam made by the respondent and quash the same.

For Petitioner : Mr.D.Veerasekharan

For Respondent : Mr. A.Raja



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ORDER

This Criminal Original Petition has been filed to call for the records in C.C. No.63 of 2019 on the file of the Judicial Magistrate No.II, Nagapattinam and quash the same.

2. The petitioner is the sole accused in a private complaint given by the respondent on the allegation that the petitioner who was the Revenue Divisional Officer of Nagapattinam District had abused his power and issued false residential certificates in favour of persons who do not reside at Thirukuvalai Village. Even though there is no order of the Court with regard to the issuance of residential certificate to the respondent who is a permanent resident of Thirukuvalai Village, the petitioner had called him for enquiry by referring the order of this Court in W.P. No.6703 of 2016 and facilitated to cancel the residential certificate issued to the respondent and issued a certificate in favour of one Kalai. Since the residential certificate is one of the essential document for getting the LPG distributorship from India Oil Corporation, the act of the petitioner had caused grievance to the respondent, a case has been registered in C.C. No.63 of 2019 for the offence under Section 166, 182, 465, 466 & 474 IPC.



3. The learned counsel for the petitioner submitted that the petitioner had acted only in pursuant to the direction of this Court issued in W.P. No.6703 of 2016 and in view of the same, the earlier residential certificate issued by him in favour of Kalai got cancelled; since the petitioner was directed to call for all the interested persons to attend enquiry before issuing a fresh residential certificate, he issued notice to the respondent also; he had issued fresh residential certificate after making proper enquiry; there is no ingredients to make out a case against the petitioner for offences under Section 166, 182, 465, 466 & 474 IPC; the petitioner who is a Government servant has got immunity for the actions done during the course of his official duties and hence it is mandatory for the respondent to obtain sanction under Section 197 Cr.P.C; but without obtaining the said sanction, the complaint has been filed and it has been taken on file; hence, the impugned proceedings should be set aside.

4. The learned counsel for the respondent submitted that the writ petition in W.P. No.6703/2016 has got no relevance to the respondent but the petitioner, with some ulterior motive, had unnecessarily issued notice to the respondent in order to do a favour to one Kalai; due to the petitioner's



unnecessary action, he created an impression as though the residential certificate issued to the respondent was subjected to certain Court proceedings and this had deprived the respondent's right in getting the distributorship.

5. The records would show that on 29.05.2013, the Indian Oil Corporation called for applications from eligible candidates for distributorship of L.P.G. at Ettugudi in Thirukuvalai Taluk, Nagapattinam District by way of advertisement through local dailies. One of the conditions for eligibility is that the applicant should be a resident of Thirukuvalai Village. Three eligible candidates namely Vijayamaharajan, Kalai and R.Anbazhagan contested for getting the distributorship. During the said process Vijayamaharajan got selected and he was given with a letter of intent. Since the residential certificate played a vital role to make the candidates eligible to get the distributorship there was competition among the applicants to get the resident certificate suiting to the eligibility. In this regard Vijayamaharajan filed a writ petition in W.P. No.6703 of 2016 and in which a direction has been given to cancel the residential certificate issued by the respondent in favour of Kalai and to call for all the interested persons



for enquiry and decide the matter accordingly. In the order dated 09.03.2016 made in W.P. No.6703 of 2016 this Court has held as under:

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“... 7. In view of the submissions, I am of the opinion that the said order has been passed without enquiring the petitioner. Therefore, there is violation of natural justice. Hence, I am of the opinion that the said order is liable to be quashed.

8. Accordingly, the order passed by the second respondent in Na.Ka.284/2016/A2, dated 23.1.2016 is quashed. The matter is remitted back to the second respondent for fresh consideration. The second respondent is directed to conduct enquiry within a period of four weeks from the date of receipt of a copy of this order, after affording opportunity of personal hearing to the petitioner as well as to the necessary parties, if any and pass a fresh order on merits and in accordance with law.”

6. Subsequent to the above order, the petitioner conducted an enquiry and for which he had sent notice to the respondent as well. It is the contention of the learned counsel for the respondent that he is not a party to the writ proceedings but notice has been unnecessarily sent to him only for the purpose of creating an image that there is no dispute pertaining to the residential certificate issued to the respondent also.



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7. The respondent had also filed a writ petition in W.P. No.44117 of 2016 to cancel the proceedings of the DRO dated 15.12.2016 through which the residential certificate issued to the respondent was cancelled. The said writ petition was allowed on 16.08.2022 and the matter was remitted back to the Revenue Divisional Officer for fresh enquiry by giving appropriate notice to the parties concerned. Since the petitioner has also got a grievance in connection with the residential certificate issued for availing distributorship, the petitioner seems to have given notice to the respondent as well. If the said notice does not have any relevance to the respondent, the respondent can simply ignore the same. However, the learned counsel for the petitioner submitted that the notice has been issued to show that there was some dispute pertaining to the residential certificate issued to the respondent also.

8. The records would show that there are various litigations filed by all the three eligible candidates who have been shortlisted for distributorship. Under such circumstances, the petitioner could have issued notice to the respondent also. Being a Revenue Divisional Officer, the petitioner would not have prepared the notice by himself. His staff would have prepared the



notice and sent it for the signature of the petitioner. There can be even genuine mistake in mentioning the case numbers and the parties to whom it should be given. That can be, at the best, seen as negligence on the part of the petitioner.

9. As stated already, even if the respondent had some ulterior motive to take criminal action against the petitioner, necessary sanction ought to have been obtained under Section 197 Cr.P.C. Obviously such sanction has not been obtained. Further there is a possibility for preparing the records by making false entries and the petitioner could have affixed the signature without properly scrutinizing the details. Even that lapse on the part of the petitioner could at the best might attract disciplinary action and not a criminal action.

10. In support of his contention, the learned counsel for the petitioner submitted that the officers who are performing their duties should not be put to unnecessary harassment by initiating criminal action. Only with a view to protect the public servants who discharge their official functions from malicious and vexatious prosecution, the sanction under Section 197 Cr.P.C.



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is mandatory. In the case on hand, even though the respondent has alleged that the petitioner had got bribe from some interested persons and had issued notice, no *prima facie* materials have been produced to show the same. In the absence of any materials to prove any corruption, the previous sanction under Section 197 Cr.P.C. cannot be viewed as a mere formality.

11. In the case on hand, the petitioner had issued notice to the respondent for enquiry in pursuant to the order of this Court in W.P. No.6703 of 2016. Even if there is no order of the Court, issuing notice to parties for making enquiries before issuing residential certificate will fall under the official duties of the petitioner. Hence, previous sanction is very much essential before initiating criminal action against the petitioner.

12. In the absence of previous sanction and materials to show that there is an offence committed by the petitioner other than the possibilities for negligent action or lapse while executing the official duty. As there is no offence made out, no criminal action can be initiated against the petitioner. Hence, I feel it is appropriate to quash the proceedings against the petitioner.



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13. In view of the above stated reasons, this Criminal Original Petition is allowed and the proceedings in C.C. No.63 of 2019 on the file of the Judicial Magistrate No.II, Nagapattinam is hereby quashed. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
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To:

1. The Judicial Magistrate No.II, Nagapattinam.



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R.N.MANJULA, J.,

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