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THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

THE HIGH COURT OF JUDICATURE AT MADRAS

CRL.O.P.NO.7218 OF 2017
AND CRL.M.P.NOS.5220 AND 5221 OF 2017

Ajeet Kumar Saxena

.. Petitioners /Accused

.Vs.

S. Jayashree

.. Respondent /
Complainant

Prayer:

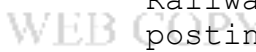
Petition filed under Section 482 of Cr.P.C.to call for the records in CC No.714 of 2017 pending on the file of the XVI Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.A. Ramesh
Senior Counsel for
Mr.A.M. Amutha Ganesh

For Respondent : Mr. N.R. Elango
Senior Counsel for
Mr.K.R. Ramesh Kumar

O R D E R

This petition has been filed to call for entire records in CC.No.714 of 2017 on the file of the XVI Metropolitan Magistrate, George Town, Chennai and quash the same.



2.a. The Petitioner was Chief Traffic Manager in Southern Railways, Chennai. He was an officer of IRTS batch. After his posting, he stopped pilferage, demands made by railway staff, illegal gratification from consignors. Several disciplinary actions have been taken against the railway staff and union members, which attracted large protest from the trade union. He was also implemented the Ministry of Railway's policy of privatization of parcel business by leasing out the parcel vans. He floated necessary tenders and took consequent and necessary action to implement Government policy and also recommended several transfers, disciplinary actions against the erring staff and successfully enforced discipline and accountability amongst the staff.

2.c. With regard to the above incident FIR in Cr.No.361 of 2007 came to be filed under Section 147, 341, 342, 427 and 506 (ii) IPC and Section 7(1) of the Criminal Law Amendment Act against Vijay Anand and four others. Hence it is his contention that to wreck vengeance as a counter measure on 02.05.2007 a proxy FIR was got registered by the Southern Railway Mazdoor Union through one of their comrades, the defacto complainant S. Jayasree.

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and issued summons, which is sought to be quashed.

3.a. The learned Senior Counsel Mr.A. Ramesh appearing for the Petitioner submitted that it is a classical case for abuse of process of law. In order to wreck vengeance of the very senior officer of the railways who took several actions to curtail the actions of the trade union members and implemented the Railway Policies, the trade union members foisted the case. It is his contention that trade union members barged into the petitioner's room on 20.04.2007 and wielded threat to his life which resulted in filing of FIR against some of the accused in Cr.No.361 of 2007. In order to wreck vengeance as a counter blast, a complaint came to be filed by one of the member of the trade union alleging as if while she went to the chamber of the officer to question his behavior against the other employees previous day, she was abused by him with filthy language and also threatened at gun point. It is the contention that the complaint was orchestrated by the trade union SRMU later point with deliberation as a counter blast to the earlier complaint launched.

3.b. The communication to the Home Secretary on the date of alleged occurrence on 20.04.2007 indicate how the district officer was taken on file by some of the trade union members. Therefore his contention is that the FIR registered against the trade union members has been transferred by this Court to the Assistant Commissioner of Police, Periamed. He has now filed final report against the accused in the above case. Whereas the complaint given by the trade union member was investigated by the Railway Police and thoroughly examined all the witnesses and filed a negative report. The learned Metropolitan Magistrate not accepted the final report filed by the Inspector of Police, Central Railway Police Station and treated the protest petition as Private Complaint and examined three witnesses and took cognizance for the above offences.

3.c. It is his further contention that the Magistrate could not have treated the Protest Petition as complaint. The Protest Petition filed by defacto complainant did not disclose any offences and did not contain list of witnesses and the protest petition is not at all satisfied all the conditions of the complaint as no list of witnesses given in the protest petition. The prayer in the protest petition itself is to handing over the investigation to some other agency. Whereas the learned Magistrate took cognizance mainly on the basis of the protest petition and examined witnesses which is not proper as per law. In support of his contention, he relied upon a judgment of the Apex Court in Vishnu Kumar Tiwari vs. State of U.P. [(2019) 8 SCC 27].



3.d. He further submitted that even if the statement of witnesses are entirely taken, the same would not constitute an offence to attract any of the of the offences. When the criminal complaint is manifestly attended with malafide and malicious instituted with ulterior motive of wrecking vengeance against the accused such proceedings has to be quashed. Hence prayed for quashment of the entire proceedings.

4. Learned Senior Counsel Mr.N.R. Elango submitted that witnesses were examined by the learned Magistrate and their statements clearly indicate that the nature of abusive statement made by the accused. Learned Magistrate in fact, treated the protest petition as complaint. There is no bar under law to treat the protest petition as complaint. Learned Magistrate in fact followed the procedures under Section 200 and 202 Cr.P.C.and examined the witnesses and applied his mind took cognizance. Therefore, it cannot be said that the court took cognizance without application of mind and further it is his contention that the statement of witnesses clearly inidcate that he has abused the witnesses and called them as prostitute. When the prima facie materials available on record all those things is a matter of evidence. Malicious prosecution or malafideness can be gone into only at the trial. The same cannot be gone into while exercising power under Section 482 Cr.P.C. Hence prayed for dismissal of the Petition.

5. No doubt, when there are materials indicate that there are prima facie case to proceed further for the trials normally the court would not interfere under Section 482 of Cr.P.C. At the same time when the court finds that the entire proceeding is a result of some malafideness or motive to take vengeance of the accused the court is not powerless to interfere and to prevent the abuse of process of law. The fact that the accused was posted as Senior Officer in the Southern Railways, Chennai, is not in dispute and he was posted as Chief Traffic Manager at Chennai at the relevant point of time. It is also undisputed fact that on 20.04.2007 FIR in Cr.No.361 of 2007 came to be registered under Sections 147, 341, 342, 427, 451, 506(ii) IPC r/w 7(1)(a) of Criminal Law Amendment Act on the basis of the complaint filed by the present petitioner against one Vijay Anand, Commercial Department, Dev Raj, Electrical Department, Peter, Station Master cadre, Vinadkumar, Commercial Department and Kuppusamy Commercial Department. The allegation in the FIR indicate that as the Petitioner took charge he implemented the Railway policies and he has also recommended departmental proceedings to be initiated against some staff who are working against the public interest and he has also taking steps to transfer certain people. Aggrieved over the actions of the officer (the present petitioner), railway union was not happy and about 100 to 150 people gone to the official chamber and



made slogans and thrown furnitures, thumped the doors, climbed on his desk and even attempted to physically assault the petitioner and he was rescued by the RPF men.

6. The Petitioner immediately sent a complaint and sent to the Home Secretary of Tamil Nadu as could be seen from his letter attached in the typed set. This FIR later transferred to the Assistant Commissioner of Police, Periamedu by orders of this Court in CrI.O.P.No.24399 of 2016. After completion of the investigation now it appears that the Final Report has been filed and the accused are facing trial. These facts are not in dispute.

7. After initiation of FIR against the Railway employees, the present proceedings came in the form of FIR which was registered on 02.05.2007. FIR was given by one Jayasree said to be the member of one of the trade Unions. The FIR indicate that on 19.04.2007 in the wake of Railway Week, in order to give prizes, certain officials met the accused therein, at that time the petitioner abused them. Therefore, at the instructions when the defacto complainant visited the chamber of the accused along with other witnesses, the accused abused that "you are whore" and also threatened her with pistol. It is also to be noted that this FIR came to be filed for the offences under Section 342, 297, 506(ii) I.P.C r/w 3 r/w 25 of Indian Arms Act on 02.05.2007. The matter has been investigated by the Railway Police and final Report filed indicating that the entire prosecution is a result of taking vengeance against Senior Officer. Therefore further action dropped. It is also stated in the final report that only the trade union members without permission of the Chief Traffic Manager barged into the chamber and made slogans against him. After investigation it was concluded that the prosecution is motivated one. As against which the protest petition filed by the defacto complainant.

8. It is also to be noted that prior to that both FIRs were closed before the Lok Adalath on the ground of limitation. Thereafter, the same was set aside by this Court in CrI.O.P.No.6755 of 2016. It is relevant to note that in the protest petition filed as against the dropping of proceedings, defacto complainant questioned the findings of the investigating officer. The Protest Petition entirety seen there is no allegation as to the nature of offences said to have committed by the Petitioner. The Protest Petition was in the form of questioning the finding of the Investigating Officer. It is nowhere alleges in the protest petition about the occurrence. Ultimately, the relief is sought in the protest petition is that a suitable direction for the reinvestigation by the high ranking officer viz., Deputy Superintendent of Police, Railway Police or by an officer not below the Rank of Inspector of police under



the supervision of Deputy Superintendent of Police or Railway Police. Nowhere allegations have been made in the petition to treat it as complaint. Learned Magistrate did not accept for re-investigation or further investigation however rejected the negative report filed by the police and treated the protest petition as private complaint.

9. As already discussed in the protest petition no whisper whatsoever made as to allegations levelled against the petitioner. Sufficient averments as to the offence totally absent in the protest petition. Rather it is only questioning the findings of the investigating officer on various grounds. It is relevant to note that to take cognizance of the offence, there must be a complaint either by way of separate complaint or necessary allegations must be found in the protest petition. "Complaint" means any allegation made in orally or in writing to a magistrate, with a view to taking action under the Code, test some person whether known or unknown has committed an offence, that does not include a police report. Of course, there is no bar under law to treat the protest petition as a complainant to take cognizance by following procedure under Section 200 and 202 of Cr.P.C. Before invoking such procedure to take cognizance, the protest petition must contain the necessary averments to attract the offences to treat as a complaint. Whereas in the entire protest petition in this case is only in the form of questioning the action of the investigating officer filing a negative report. In fact prayer was sought for in the protest petition is for reinvestigation. In this regard it is useful to refer the judgment of the apex Court reported in Vishnu Kumar Tiwari vs. State of U.P. [(2019) 8 SCC 27] wherein it is held as follows:

"42. The facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the procedure prescribed under Section 200 and 202 of the Code if the latter Section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt,



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depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

43. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the protest petition. In *Mahabir Prasad Agarwala v. State*¹⁰, a learned Judge of the High Court of Orissa, took the view that a protest petition is in the nature of a complaint and should be examined in accordance with provisions of Chapter XVI of the Criminal Procedure Code. We, however, also noticed that in *Qasim and others v. The State and others*¹¹, 10 AIR 1958 Ori. 11 11 1984 CrLJ 1677 a learned Single Judge of the High Court of Judicature at Allahabad, inter alia, held as follows:

"6. ... In the case of *Abhinandan Jha* MANU/SC/0054/1967 (supra) also what was observed was 'it is not very clear as to whether the Magistrate has chosen to treat the protest petition as complaint.' This observation would not mean that every protest petition must necessarily be treated as & complaint whether it satisfies the conditions of the complaint or not. A private complaint is to contain a complete list of witnesses to be examined. A further examination of complainant is made under



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Section 200 Cr.P.C. If the Magistrate did not treat the protest petition as a complaint, the protest petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a prima facie case as to take cognizance. The protest petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a protest petition the case is to become a complaint case."

10. In Para 46 also it is held as follows:

"46. If a protest petition fulfills the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or liable to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections the second respondent against the final report."

11. Considering the above judgments the fact that when the ingredients of the offence or allegation were absent in the protest petition, treating the same as a private complaint by the learned Magistrate indicate that he has not applied his mind and he has treated the petition as private complaint casually even without going through the complaint. Therefore, treating such protest petition which is bereft of details, as the private complaint is not according to law. Thereafter followed the procedures and explained the witnesses also is not according to



law. Only when there is proper allegations found in the protest petition which is to be treated as complaint, which is absent in the protest petition. Therefore, merely on the basis of the procedure followed under Section 202 of Cr.P.C. by examining three witnesses, taking cognizance by the learned Magistrate is not according to law.

12. This court cannot make a roving enquiry, the veracity and admissibility of the statement under Section 482 Cr.P.C. When it appears that the prosecution itself is motivated and maliciously instituted the Court is powerless to find out such act, can also go into the statements of witnesses. The entire statement of three witnesses when seen, they went to the official chamber of the Petitioner to question his behavior exhibited against the other staff on the previous day he has abused and called them "bitch how dare you come here?" and also took the gun and threatened them. It is also stated that through they have given complaint on the same day, police has asked them to change the date to show as if the complaint was given on 02.05.2007. Such statements when seen, along with FIR lodged by her, the statements had given only to cover up the delay. In fact the FIR indicate that the complaint given only on 02.05.2007 the original date scored and 02.05.2007 has been inserted, below her signature she put the correct date 02.05.2007. That itself indicate that the complaint came to be filed later in anticipation as counter blast to the previous complaint lodged by the present petitioner.

13. it is to be noted that even assuming that only at the instance of police they have given complaint at the relevant point of time and even assuming that the police has not taken any action on the same day, it is to be noted that the complaint is not an ordinary person, they all have strong support from Trade Union, they challenge the action of the superior officer in such a situation normal action of the petitioner or the union would have been to take immediate action to register the FIR which was not done. That itself indicate that the complaint is an after thought. It is only a counter blast to the earlier complaint by the officer/Petitioner herein.

14. it is also to be noted that when the final report indicates that on 20.04.2007 about 100 people barged in the room of present petitioner and committed vandalism which culminated the final report against Trade Union. Therefore it is highly improbable to contend that at the same time petitioner allegedly removed the gun and threatened the complaint and two others only. Such contention is also highly improbable and clearly



establish the fact that only in order to threaten the superior officer who acted strict manner as against the trade union members who are the staff of the Railways, present prosecution is launched. From the above factual narrations, this Court is of the view that the complaint is nothing but false and motivated and the prosecution is initiated with mala fide only with ulterior motive to wreck vengeance of the accused to bring some intimidation on higher officials.

15. In 1992 SUPP (1) Supreme Court Cases - 335 State of Haryana and Others vs. Bhajan Lal and Others, the Hon'ble Apex Court has set out the following guidelines for quashing the complaint.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a



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just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. Therefore, considering the above settled position of law when court finds that the allegations have been targeted only to silence the superior officials and as a counter blast to the action to be taken against them by the higher officials and the complaint is orchestrated by the union which protested certain measures. Merely because of some allegations pressed into service, it cannot be said that those things have to be tested only in trial. The very initiation of the prosecution is a result of motive and silence the superior officer. Therefore this Court cannot be a mere spectator to allow such prosecution merely on the ground that there are some materials to proceed against the accused. Accordingly, this court is of the view that the cognizance taken by the trial court on the basis of the protest petition without any allegations as to the offence has to be interfered. Accordingly, the order of the XVI Metropolitan Magistrate, George Town, Chennai dated 23.03.2017 in CC.No. 714 of 2017 is set aside. In view of the same the entire proceeding in CC.No. 714 of 2017 is quashed.

17. in the result, the Criminal Original Petition is ordered. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

ggs

Sub Assistant Registrar



To

1 The XVI Metropolitan Magistrate,
George Town, Chennai.

2 Do-thro The Chief Metropolitan Magistrate,
George Town, Chennai.

+2ccs to Mr.A.M. Amutha Ganesh, Advocate, S.R.No.4471

Crl.O.P.No.7218 of 2017
and Crl.M.P.Nos.5220 and 5221 of 2017

PCH (CO)
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