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CrI.O.P No.26092 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **15.11.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.O.P No.26092 of 2021

1.P.Pradeep

S/o Krishnan Nambiar
Sub Inspector of Police,
PAP E-company
Puducherry.

2.Vineesh Kumar @ Vineesh

S/o Kumaran
Traffic Police Station,
Yanam 533464.

... Petitioners/Accused 1 & 2

Vs.

Muhammed Shakir

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C.No.8 of 2021 pending on the file of the learned Judicial Magistrate, Mahe and quash the same.

For Petitioners : Mr.R.Sreedhar

For Respondent : Mr. M.Manojkumar



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ORDER

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.8 of 2021 pending on the file of the learned Judicial Magistrate, Mahe and quash the same.

2. The case of the prosecution is that the respondent is the accused in Cr.No.10/2016 of Palloor Police Station for the offences under Sections 341, 294(b), 323 and 353 IPC dated 29.01.2016. The first petitioner is said to be the complainant in the above said case and he was the Sub Inspector of Police, Special Branch, Mahe at the time of occurrence. On 29.01.2016 at about 20.30 hrs, when the first petitioner was performing intelligence collection duty in Palloor region, he noticed some flame of fire emanating in front of the shop of the respondent by name 'House of Trading'. Since it would endanger the safety of the pedestrian and passerby, the first petitioner had taken photograph. On seeing this, the respondent got angry and objected. When the first petitioner refused to do so, he abused him in filthy language and used criminal force by catching hold of his collar and assaulted him. Only because of that the above case in Cr.NO.10/2016 was



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registered against the respondent. During the course of investigation, on 30.01.2016 at about 07.05 hours, the respondent was arrested near his residence and produced before the learned Magistrate. The respondent told the Magistrate that he had abrasion and contusion on his body. After getting proper medical treatment and opinion, he was detained in prison.

3. The respondent has also given another complaint against the petitioners by way of a private complaint before the learned Judicial Magistrate, Mahe and the same was taken on file in CC.No.8/2017. This Criminal Original Petition has been preferred to quash the said proceedings pending in CC.No.8/2017.

4. The learned counsel for the petitioners submitted that the complaint has been taken cognizance without obtaining mandatory sanction under Section 197 Cr.P.C; the complaint has been given by the respondent only in retaliation of the earlier case registered against him; while arresting the accused, he ran and fell down and only because of that, he got abrasion; but he had exaggerated the same; the alleged occurrence, even if it is taken to be true, it has occurred when the petitioners were executing their duty and



hence the sanction under Section 197 Cr.P.C. is mandatory. Since the initiation of proceedings itself is fundamentally wrong, it is liable to be quashed. In support of his above contention the learned counsel for the petitioner relied on the judgment in the case of ***Indra Devi Vs. State of Rajasthan and another*** [reported in (2021) 8 Supreme Court Cases 768].

5.The learned counsel for the respondent submitted that, abusing and exerting violence on the respondent by the petitioners cannot be construed as the part of their duty and hence, sanction is not necessary. Even for the sake of arguments, if the sanction is mandatory, for want of sanction alone the criminal proceedings cannot be quashed and the sanction can be obtained even during trial. In support of his above contention, the learned counsel for the respondent relied upon the following judgments (i) in the case of ***Pukhraj vs. State of Rajasthan and another*** [reported in (1973) 2 Supreme Court Cases 701] and (ii) in the case of ***P.K.Pradhan Vs. State of Sikkim*** [reported in (2001) 6 Supreme Court Cases 704].

6. The petitioners claim that all the above occurrence had taken place only when the petitioners were on duty and during the course of the



performance of their duty. It is seen from the records that the examination of the witnesses has already commenced and many of the witnesses have been examined.

7. It is learnt that the charge sheet has been filed against the respondent relating to Cr.No.10/2016 and the same is taken on file in STC.No.1927/2017. The learned counsel for the petitioners submitted that, in the said case, almost all the witnesses have been examined except the medical officer.

8. In these circumstances, if both the cases are posted simultaneously and tried the essential facts like whether the petitioners were on duty at the time of the alleged occurrence will come to light. Many of the facts stated by the petitioner can be ascertained only if the petitioners participate in the trial. If it is proved that the petitioners were not on duty, the sanction contemplated under Section 197 Cr.PC is not necessary. If the petitioners were proved to be on duty, then the absence of sanction might play a vital role in deciding the result of the case.



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jrs

9. Since the trial in both the cases are about to be completed, I feel it is appropriate to dispose the petition with these observations and by giving a liberty to the petitioners to raise all the points which have been raised herein as their defence before the trial Court.

In the result, this Criminal Original Petition is **disposed of**.

15.11.2022

Index : Yes/No
Speaking Order : Yes / No

jrs

To:

1. The Judicial Magistrate II, Mahe

2. The Sub Inspector of Police,
PAP E-company, Puducherry.

3. The Public Prosecutor,
Madras High Court.

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