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W.P(MD).No.12739 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 04.07.2022

ORDER PRONOUNDED ON : 20 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.12739 of 2012

and

MP(MD).No. 1 of 2012

A.Rasalraj

.....Petitioner

Vs

The Secretary to the Government
The Highways and Minor Ports Department
Fort.St.George
Chennai 600 009

....Respondent

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the letter No.3179/H.L.1/2009-19 dated 23.05.2012 on the file of the respondent herein and to quash the same and directing the respondent to pass appropriate order on the petition dated 18.02.2009.

For Petitioner

: Mrs.P.Jessi Jeeva Priya

For N.Subramanian

For Respondent

: Mr.N.Muthu Vijayan

Special Government Pleader



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ORDER

The writ petition has been filed challenging an order passed by the respondent herein under which the request of the petitioner seeking sanction to prosecute the two officials of the Highways Department under Section 197 of Cr.P.C was rejected.

2.The learned counsel for the petitioner had contended that his father-in-law was the managing trustee of a temple in New Survey No.263, Udayarvilay, Viyanur Village, Kanyakumari District. Some third parties had filed W.P(MD).No.848 of 2007 before the Madurai Bench of Madras High Court to remove the said temple as an encroachment on the ground that it is on the highways land. According to the writ petitioner, the Highways authorities and the Police authorities have illegally and with a malafide intention have demolished the temple by using JCB and Bulldozers. When the petitioner objected to the illegal demolition by referring to the pendency of civil suit, he was brutally attacked by the Sub Inspector of Police by name Krishnaraj and one Murugesan who was the Inspector of Police attached to Tiruvattar Police Station. The two officials of the Highways Department namely Anthony Xavier and one Sundaram, kicked the petitioner on his back and caused injuries. They further attacked him and used abusive, filthy and



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unparliamentary words in front of the police. The petitioner was forced to remove his shirt and he was seated half naked in front of his in-laws and family members and other general public. The petitioner had further contended that he was falsely implicated in Crime No.73 of 2008. Since the officials of the Police Department and Highways Department committed serious offence, he lodged a complaint before the Police and FIR was registered in Crime No.186 of 2008. However, the police authorities have closed the case as mistake of fact. Since the police complaint was closed as mistake of fact, he was constrained to file a private complaint before the Judicial Magistrate, Padmanabhapuram in CMP.No. 2770 of 2009. However, the said complaint was not taken on file and it was adjourned from time to time for production of sanction order as contemplated under Section 197 of Cr.P.C., Since he could not produce the same in time, the said CMP.No.2770 of 2009 was disposed of on 30.05.2012 with liberty to file a fresh private complaint along with copy of the sanction order of the Government.

3.The petitioner had further contended that he had sent a representation to the respondent herein on 18.02.2009 followed by a reminder on 17.09.2010 seeking grant of sanction for prosecuting two officials of the Highways Department. Since the representation was not disposed of, the petitioner had filed W.P.No.3968 of 2011 seeking a writ of mandamus



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directing the first respondent herein to dispose of his representation. The said writ petition was allowed on 22.02.2011 directing the authorities to dispose of the representation.

4.The learned counsel for the petitioner had further contended that the first respondent has passed the impugned order on 23.05.2012 rejecting the request for sanction. The said order was under challenge.

5.According to the learned counsel for the petitioner without referring to any material and other records available on file, the present impugned order has been passed without any application of mind. He had further contended that the two officials of the Highways Department have exceeded their jurisdiction and they have beaten the writ petitioner and used abusive language. This fact should have been properly considered by the first respondent herein before passing the impugned order.

6.The learned counsel had further contended that both the officials have not acted in accordance with Tamil Nadu Highways Act or under any other Act, but when the petitioner has sustained injury, he was admitted to the Hospital. The first respondent ought to have granted sanction to prosecute the said officials. He had further contended that in the criminal case filed by the said officials in Crime No.73 of 2008, the petitioner has been falsely implicated. The petitioner had further contended that the respondent ought to have been taken an independent decision without consulting the Public



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Prosecutor. Hence, he prayed for allowing the writ petition.

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7.Per contra, the learned counsel appearing for the respondent had relied upon a counter and contended that the petitioner's father-in-law had encroached an extent of 5 cents and 434 square links in which he had constructed a temple. Some third persons had filed W.P.(MD).No.848 of 2007 before the Madurai Bench of Madras High Court seeking for removal of the said encroachment in the Highways poromboke. The writ petition was allowed on 02.02.2007 directing the authorities to consider the grievance of the petitioner in accordance with law and pass orders within a period of 12 weeks. Pursuant to the order, notice was issued to the father-in-law of the writ petitioner for removal of encroachment. Even thereafter, the petitioner's father-in-law namely K.Arjunan has not removed the encroachment.

8.Since the encroachment was not removed after notice, the revenue authorities and the Highways officials inspected the spot on 06.02.2008 at 08.30 a.m and attempted to remove the encroachment. Hence, there is no illegality or malafide intention on the part of the authorities who had just complied with the order of the Hon'ble Division Bench of the High Court.

9.The learned counsel for the respondent had further contended that the entire removal of encroachment was videographed. One Senthilkumar attempted to murder C.Sundaram one of the Highway officials by rashly driving an Ambassador Car over him. The car dashed against the said



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Sundaram, Antony Xavier and another person by name Vincent who is a Police Constable. In the said accident, Sundaram sustained injuries in his right leg, right leg forearm, besides the hip and thigh as well. The said Antony Xavier sustained head injuries in his eyebrow, cheeks and nose. The Police Constable namely Vincent also sustained injuries in the course of the said occurrence. As against these injured, Highways officials namely Sundaram and Antony Xavier, the petitioner had sought sanction under Section 197 Cr.P.C.

10.The learned counsel for the respondent had further contended that one of the Highways officials namely Sundaram has lodged a criminal case as against the four persons. The First Information Report has been registered in Crime No.73 of 2008 on the file of the Thiruvettaru Police Station as against the writ petitioner and his father-in-law namely Arjunan and two other persons namely Senthilkumar and Kanishbai who is the mother-in-law of the writ petitioner. The respondent had further contended that the petitioner had already filed the petition in Cr.M.P.No.3417 of 2008 to prosecute the Highways officials and the same has been closed. The complaint has been lodged by the petitioner in Crime No.186 of 2008 has been closed as mistake of fact on 16.05.2008. Only when a vindictive attitude, the petitioner had sought for sanction to prosecute the two Highway officials. On the other



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hand, the Highway officials who are sought to be prosecuted were injured in the attempt to murder by one Senthilkumar who is the co-accused along with the writ petitioner. Hence, he contended that the respondent herein after careful analysis of all the documents has refused to grant sanction for prosecution of the said officials under Section 197 of Cr.P.C. Hence, he prayed for dismissal of the writ petition.

11.I have considered the submissions made on either side.

12. Section 197 of Cr.P.C is extracted as follows:

“197.Prosecution of Judges and public servant-(1) *When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-*

(a)in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b)in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided *that where the alleged offence was committed by a person*



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referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article section 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.”

13.The said provisions has been incorporated in order to protect the official acts of the respondent. In the present case, the petitioner had sought for sanction under Section 197 Cr.P.C as against the two Highway officials to prosecute them on the ground that they had beaten him and abused him on the date when they attempted to remove encroachment. The petitioner had further alleged that the two police officials namely Krishna Raj and Vincent have also attacked him. A perusal of the affidavit and counter affidavit would reveal that the entire removal of encroachment was videographed by the Highway officials. According to the respondent, the videograph clearly shows that one Senthikumar was attempting to murder the Highway officials namely Sundaram and Antony Xavier by rashly driving the Ambassador Car as against them while they are carrying out removal of the encroachment. In the said act, the petitioner and his in-laws and one Senthilkumar are facing criminal prosecution which was initiated by one Sundaram who is also one of the Highway officials sought to be prosecuted by the writ petitioner.



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14.The facts above narrated will clearly indicate that the present act of the writ petitioner in seeking sanction as against the Highway officials is nothing but a counter blast to the criminal complaint lodged by them as against the writ petitioner and his in-laws. The videograph taken at the time of removal of encroachment was widely circulated in the media which would clearly show that there was an attempt to murder the Highway officials who were in their duty in removing the encroachment pursuant to the orders of the Division Bench of the High Court.

15.The Hon'ble Supreme Court in a judgment reported *in (2015) 3 SCC 123 (Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke and others)* in paragraph No.19 has held as follows:

“19.Once the prosecution is of the view that no case is made out so as to prosecute an accused, unless the Court finds otherwise, there is no point in making a request for sanction for prosecution. If the prosecution is simply vexatious, sanction for the prosecution is not to be granted. That is one of the main considerations to be borne in mind by the competent authority while considering whether the sanction is to be granted or not.....”

16.The Hon'ble Supreme Court in a judgment reported *in (2014) 14 SCC 295 (Central Bureau of Investigation Vs. Ashok Kumar Aggarwal)* in



paragraph No.16 has held as follows:

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“16.In view of the above, the legal propositions can be summarised as under:

16.1.The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

16.2.The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3.The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its minds to all the relevant material.

16.5. In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law”



17.The Hon'ble Supreme Court in a judgment reported *in (1995) 6*

SCC 225 (Superintendent of Police (C.B.I) Vs. Deepak Chowdhary and others) in Paragraph No.5 has held as follows:

“5.We find force in the contention. The grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a Court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore being administrative act the need to provide an opportunity of hearing to the accused before according sanction does not arise. The High Court, therefore, was clearly in error in holding that the order of sanction is vitiated by violation of the principles of natural justice.”

18.In view of the judgements cited supra, it is clear that the authorities have to scrutinize the whole records produced by the prosecution independently and after applying their mind and take into consideration all the relevant facts before granting an order of sanction. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought for. Granting sanction being an administrative act, it is not necessary to provide an opportunity of hearing to the accused before according sanction.



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19. In the light of the above facts narrated in the present case, it is clear that the petitioner and his family members have prevented the Government officials from performing their duty of removal of encroachment pursuant to the order of the Division Bench of our High Court. However, when they continued with their removal of encroachment, one of the family members had rashly driven the Car as against the Highway official (against whom sanction is sought for) in order to commit murder. The petitioner and his family members are facing the trial for the said offence in Crime No.73 of 2008 initiated by the Highway officials. Hence, the present prayer for sanction is highly vexatious one and it is not in the public interest.

20. The petitioner's representation dated 18.02.2009 under which the petitioner sought sanction to prosecute the officials does not reveal any material which would disclose any offence warranting grant of sanction under Section 197 Cr.P.C. The petitioner has just referred various I.P.C provisions and has sought for sanction without any further details. The impugned order has been passed by the respondent herein after referring to the Division Bench order of removal of encroachment and the incident that have been recorded in the form of video. Hence, there is no reason to interfere in the impugned order which has been passed after taking into consideration all the relevant material facts.



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21. Therefore, I find that the respondent has rightly refused to grant sanction for prosecution on the ground that it would be a vexatious one and it would not be in the interest of public.

22. In view of the above said discussions, I do not find any merit in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20 .07.2022

Internet : Yes/No
Index : Yes/No
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To

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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