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Crl.O.P.(MD)No. 3244 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05/07/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.3244 of 2019
and
Crl.MP(MD)No.1804 of 2019

Arockiya Doss : Petitioner/Sole Accused

Vs.

P.Muruganantham : Respondent/
De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the charge sheet in CC No.441 of 2018 on the file of the Judicial Magistrate No.V, Trichy and quash the same.

For Petitioner : Mr.C.Susi Kumar

For Respondent : Mr.S.Vanchinathan

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No. 441 of 2018 on the file of the Judicial Magistrate No.V, Trichy.



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2. The facts in brief:-

The respondent herein filed a private complaint against the petitioner and others with the following allegations:- On 02/12/2018 at about 9.30 pm, he was informed by Muneeswaran that his friend namely Madhanraj was detained in the Palakkarai police station. He went to the police station. At that time, he was abused by the accused persons stating that how he can make a complaint before the National Human Rights Commission. He was also criminally intimidated and also threatened. It was informed to his friends, who were Advocates and they came to the police station and rescued him. He lodged a complaint. Upon which, no action was taken. So the present private complaint has been filed.

3.This petitioner, who is arrayed as sole accused filed this petition seeking quashment of the entire proceedings on the ground that the occurrence said to have taken place, while he was discharging his official duty. Apart from that, he is also raised some factual issues.

4.Heard both sides.



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5.It is a case of quarrel between the Advocates and the police officials. It is seen that the occurrence said to have taken place, when the respondent went to the police station, where the petitioner was working as Inspector of Police during the relevant time and made enquiry with regard to the detention of one Madhanraj. How the above said Madhanraj was related to him is not clear on record. It has been simply stated that he was a friend. When he wanted to interact with the above said Madhanraj, he was prevented by the police. According to him, he was also abused and criminally intimidated etc. It is seen that against the said Madhanraj, a case was registered in Crime No.767 of 2018 for the offences under sections 448, 323, 392 and 506(ii) IPC r/w 4 of Tamil Nadu Prohibition of Women Harassment Act.

6.The respondent, who is a practising Advocate was not permitted to interact with the above said person Madhanraj. I am unable to understand the duty, which was cast upon the respondent to visit the police station and interact with the person, against whom a robbery case has been alleged. When the accused was in custody, it appears that the respondent tried to interact and meet the above said person and at that time, trouble has arisen between himself and



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the petitioner, who was working as Inspector of Police during the relevant time.

7.The learned counsel appearing for the petitioner would submit that in the facts and circumstances of the case, section 197 Cr.P.C comes into rescue of the petitioner and without obtaining prior sanction, no private complaint can be initiated and continued. For that purpose, he would rely upon several judgments, such as in the case of Kannan Vs. S.M.Noor Mohammed (CDJ 2018 MHC 7572) and D.Devaraj Vs. Owais Sabeer Hussain (Criminal Appeal No.458 of 2020, dated 18/06/2020). He would further submit that as per the Tamil Nadu District Police Act, 1956, the Director General of Police, Inspector General of Police and DIG are empowered to suspend and retain any officer of the subordinate police. So according to him, the competent authority for giving sanction to prosecute this petitioner is the District Superintendent of Police and so, sanction ought to have obtained from the competent authority before initiating or continuing the criminal prosecution. But the petitioner was only the Inspector of Police and he is not removable from his office by the order of the Government. So, sanction under section 197 Cr.P.C is not required. This is also evident from the Police Standing Order.



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8. Section 63 of the Police Standing Order, reads as under:-

"PSO63. Sanction to prosecute police

Officers- No criminal prosecution of a Police Officer for an offence committed in his official capacity shall be instituted without the sanction of an officer not inferior in rank to a Superintendent. This does not affect the right of the magistracy or of private individuals to initiate such proceedings."

9. Reading of the above PSO shows that sanction is required for a private individual to initiate such a proceedings against the petitioner. The judgment relied upon by the petitioner in D.Devaraja Vs. Owais Sabeer Hussain is pertaining to the officer in the rank of Superintendent of Police. He is removable by the order of the Government. Moreover, in that case, the offence said to have been committed by the accused facing at the time of investigating the case. Investigating the criminal offence is the duty of the police officer and if anything has been done in the course of investigation, then it will come



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under the definition 'in the course of discharging the official duty'.

10. But here, the facts and circumstances are entirely different. It has been uniformly held that causing assault even during the course of investigation is not saved under section 197 Cr.P.C. More-over, section 170 of the Karnataka Police Act was also under consideration. Here, as mentioned earlier, PSO does not prohibit the criminal prosecution by an individual. Here in Tamil Nadu, there is no such provision, either in the Police Standing Order or in the District Police Act. So the ground that has been urged by the learned counsel appearing for the petitioner is not available to him. But at the same time, the facts and circumstances, as mentioned earlier, shows that without proper authority or permission, the respondent alleged to have visited the accused. At that time, it appears that trouble has arisen. In the complaint, it has been stated that the respondent, being the Advocate or Legal Adviser to the accused can interact with the accused person. In the facts and circumstances of the case sections 294(b), 341 and 500 IPC may not be attracted. For attracting the offence under section 506(ii) IPC, the respondent might have entertained fear of death. But absolutely, there is



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allegation here. So reading of the complaint shows that it is highly exaggerated one. Along with the list of documents, the respondent has produced only a document concerning one Chandru @ Chandrasekaran before the trial court. According to the respondent, that is the reason for the motive for the present occurrence. But for the particular incident, no other material has been placed before the trial court. So as mentioned earlier, exaggerated version has been given in the complaint, which shows the *mala fide* exercise on the part of the respondent. A petty issue that has been taken place in the ordinary court of nature has been given exaggerated version. So, I find that absolutely, on that ground, the petition is liable to allowed.

11.In the result, this criminal original petition is **allowed**. The impugned CC No.441 of 2018 on the file of the Judicial Magistrate No.4, Trichy is quashed against the petitioner. Consequently connected Miscellaneous Petitions are closed.

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