



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.01.2022

Delivered on : 01.02.2022

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

WEB COPY

W.P. (MD)No.20566 of 2019

and

W.M.P. (MD)No.17205 of 2019

H.T.Sathiyadass

... Petitioner

Vs.

1.The Additional Chief Secretary to the Government,
Home (Pol-XII) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 9.

2.The Additional Director General of Police
(Administration),
Office of the Director General of Police,
Mylapore, Chennai - 4.

3.A.Ellango,
Additional Superintendent of Police,
Division of Investigation of Crimes against
Women and Children,
Sivagangai District.

4.Rajesh,
Inspector of Police,
Kovilpatti West, Thoothukudi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the first respondent, vide his Letter No.19652/Pol-XII/2018-3, dated 11.09.2018, quash the same as illegal and consequently, direct the first respondent to accord sanction to prosecute respondents 3 and 4 as per Section 197 Cr.P.C. so as to proceed the petitioner's private complaint pending in Cr.M.P.No.3466 of 2015, on the file of the learned Judicial Magistrate No.II, Nagercoil.

For Petitioner : Mr.V.Angusamy

For R1 and R2 : Mr.A.Thiruvadikumar
Additional Public Prosecutor

For R3 and R4 : Mr.R.Senthilkumar



ORDER

The case of the petitioner is that, his private complaint filed under Section 200 Cr.P.C. before the learned Judicial Magistrate No.II, Nagercoil, is pending for want of sanction to prosecute the accused persons since they are public servants, viz., the Additional Superintendent of Police and Inspector of Police. Hence, the Writ Petition seeking Mandamus to direct the Government to accord sanction under Section 197 Cr.P.C. to prosecute them.

2.In the affidavit filed by the petitioner, it is stated that the land measuring 17.400 cents was leased to him by one T.Selvam for a period of one year after receiving Rs.32 lakhs as loan. Without repaying the loan amount, the said T.Selvam tried to dispossess him hence, civil suit filed and pending. While so, on 22.05.2012 the said Selvam and 20 others trespassed into the bar run by the petitioner in the said land, attacked the Manager and damaged properties worth Rs.2,66,450/- and also gave life threat. In this connection, he gave a complaint to the Police, but they did not take action against the perpetrators of the crime. Therefore, he forwarded his complaint to the D.I.G., Tirunelveli, by post and same was received and complaint in Crime No.916 of 2012 was registered by the Vadasery Police Station under Sections 147, 448, 323, 294(b) and 379 (NP) of I.P.C. r/w. Section 3(1) of TNPPDL Act, 1992.

3.Instead of taking appropriate action on his complaint, under the guise of investigation, he was called to the Office of Deputy Superintendent of Police at Thalavaipuram on 10.01.2013 and threatened to withdraw the complaint made in F.I.R.No.916 of 2012. Therefore, he preferred complaint before the Nesamani Police for commission of offence under Sections 120-B, 147, 166, 506(ii), 500 r/w. 149 I.P.C. against the accused in Crime No.916 of 2012 and the Police Officials, who forced him to withdraw his complaint. The said complaint was registered in Crime No.57 of 2014, on the file of the Inspector of Police, Nesamani Nagar Police Station. Since the case was against Police Official of the rank of Deputy Superintendent of Police, the Investigation was transferred to the Additional Superintendent of Police, Nagercoil. Since the Investigating Officer and the accused Baskaran/D.S.P. were close friends, the petitioner herein sought for transfer of investigation to some other Officers and as per the direction of the Hon'ble Supreme Court in S.L.P. (Cri.)No.4199 of 2017, dated 12.12.2017 the investigation was entrusted to Thiru.N.K.Stanley Jones, Additional Superintendent of Police, for further investigation of Crime No.57 of 2016 registered on the complaint given by this petitioner.

4.Meanwhile, on 29.05.2015, the petitioner has filed a private complaint under Section 200 Cr.P.C against the Police Officials namely, Ilangovan, Additional Superintendent of Police and Rajesh, Inspector of Police alleging abuse of their official position and



for creating false statements of witnesses, leading to closure of his complaint as mistake of fact. Since the complaint was not taken on file for want of sanction, he filed W.P.(MD)No.1521 of 2018 seeking direction to the Government to accord sanction. The said Writ Petition was disposed with direction to the Government to consider the representation and pass orders within six weeks. Thereafter, the Government has passed the impugned order dated 11.09.2018 informing the writ petitioner that the Government will consider his request after final report in Crime No.57 of 2018 under investigation by the new Investigation Officer.

5.This said order is under challenge in this Writ Petition on the ground that the private complaint can proceed independent of the outcome of the investigation in Crime No.57 of 2014, since the facts are different and distinct. While the learned Judicial Magistrate after perusal of the private complaint, found *prima facie* material to proceed with the complaint and granted time to the complainant to get sanction to prosecute. Therefore, the role of the sanctioning authority is limited and need not wait for the outcome of the investigation in Crime No.57 of 2014.

6.The learned counsel for the petitioner submitted that the complaint in Crime No.57 of 2014 is in respect of the incident alleged to have occurred in the Office of the D.S.P., Tirunelveli. In this complaint, Thiru.Baskaran, D.S.P., Nagercoil, is shown as first accused. Whereas, the private complaint dated 29.05.2015 is for creating false statements of witnesses in the course of investigating Crime No.57 of 2014 and it is against the then Investigation Officer Mr.Ilango, Additional Superintendent of Police and Mr.Rajesh, Inspector of Police for their disobedience of direction under law and abuse of their official power. Therefore, the outcome of the investigation by the new Investigation Officer have no relevancy to grant sanction to prosecute.

7.Per contra, the learned Additional Public Prosecutor submitted that, the contention of the petitioner is not factually correct. The investigation of the complaint by the petitioner, which was registered in Crime No.916 of 2012 was investigated impartially and fairly. However, the petitioner in the habit of filing petitions suspecting the fairness of the Investigation Officers made wild allegations against the then D.S.P. Baskaran and forwarded complaint to the D.I.G. of Police and same was also taken up for investigation in Crime No.57 of 2014. The petitioner knowing well that his complaint against the D.S.P. is false, started alleging bias against the then Investigation Officer Mr.Ilango, Additional Superintendent of Police. Hence, the investigation was transferred to Thiru.N.K.Stanley Jones, A.D.S.P. Later, the investigation was taken up by Thiru.K.R.Vijayabaskaran, A.D.S.P. and after completion of investigation the complaint was closed as 'mistake of fact', vide final report dated 20.06.2019. The notice of referred charge sheet



question of granting sanction to prosecute the former Investigation Officer and other Police Officers for disobedience of law or for creation of false statements does not arise.

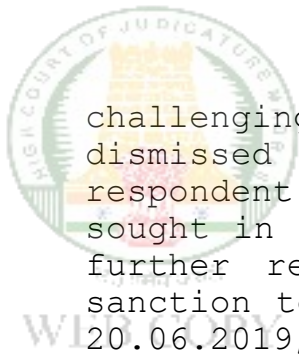
8. On perusal of the records, this Court finds that the contentions of the writ petitioner that granting sanction to prosecute is independent of the outcome of the investigation in Crime No.57 of 2014 is not correct. The dispute between the lessor and the lessee leading to attempt of illegal dispossession is the sum and substance of the complaint given by the petitioner herein in Crime No.916 of 2012, on the file of Vadasery Police Station. Thereafter, allegations have been made by the petitioner herein against the Investigation Officers and other higher Police Officials, who dealt with his complaint in Crime No.916 of 2012, dated 31.05.2012. The prior complaint, which in fact, filed prematurely even before the completion of the investigation alleging biased investigation by the Investigation Officer, rightly not taken cognizance by the learned Judicial Magistrate for want of sanction. The complaint taken on file will not give any right to the complainant to prosecute a public servant, who is protected under Section 197 of Cr.P.C. More so, when the complaint itself regarding faulty investigation in a pending case.

9. The learned Additional Public Prosecutor has brought to the notice of this Court that the investigation in Crime No.57 of 2016, pursuant to the direction of the Hon'ble Supreme Court, entrusted to a different Investigation Officer and was closed as 'mistake of fact', vide final report dated 20.06.2019. While so, the Writ Petition filed subsequent to that without challenging the final report, dated 20.06.2019, is not maintainable.

10. This Court holds that the order of the first respondent, which is impugned in this Writ Petition, is in accordance with law and there is no error or illegality in it to quash. To prosecute a public servant, who is protected under the Statute, there must be a sufficient material to make out the alleged offence and such material can be inferred only on enquiry and investigation. When the investigation in the said case was pending, it is improper on the part of the petitioner to seek sanction to prosecute.

11. It is now stated by the learned Additional Public Prosecutor that the petitioner herein after closure report, had again initiated a private complaint under Section 200 Cr.P.C. which has been taken on file by the learned Judicial Magistrate in CrI.M.P.No.1807 of 2021, after the closure of his complaint by the Police, through the final report dated 20.06.2019.

12. This Court holds that from the material placed, there is no *prima facie* case made out to prosecute the Investigation Officers and no *prima facie* case made out in the complaint of the petitioner to grant sanction. Furthermore, the present Writ Petition



challenging the order of the first respondent deserves to be dismissed on the sole ground that the reasoning given by the first respondent is in consonance with law and procedure and the relief sought in the Writ Petition is premature at that point of time. No further request has been made by the petitioner herein seeking sanction to prosecute, after the closure report/final report, dated 20.06.2019, that too after a lapse of 10 years, it will be a futile exercise to keep alive the matter, which from the inception, bristles with concoction and falsehood.

13.As a result, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD I)

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/ /2022

Sub Assistant Registrar(CS)

To

1.The Additional Chief Secretary to the Government,
Home (Pol-XII) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 9.

2.The Additional Director General of Police
(Administration),
Office of the Director General of Police,
Mylapore, Chennai - 4.

3.The Judicial Magistrate II,
Nagercoil.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SENTHIL KUMAR, Advocate(SR-3407[F] dated
01/02/2022)

+1 CC to M/s.V.ANGUSAMY, Advocate (SR-3749[F] dated 02/02/2022)

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MGJ(14.02.2022) 5P 7C