



WEB COPY

Crl.O.P.(MD)No.14370 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.07.2022

PRONOUNCED ON: 02.09.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.14370 of 2019
and
Crl.M.P.(MD)Nos.8675 and 8676 of 2019

R.Yogarathinam

: Petitioner/Accused No.4

Vs.

G.Dhanalakshmi

: Respondent/Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in the proceedings in C.C.No.225 of 2017, on the file of the Judicial Magistrate, Pudhukottai for the offences under Sections 294(b), 417, 420, 466, 471, 472, 475, 109, 166, 217, 218, 221 I.P.C., and set aside the same.

For Petitioner : Mr.S.M.A.Jinnah
for Mr.S.Lenin Kumar

For Respondent : Mr.S.Poornachandran



ORDER

WEB COPY

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to Cr.M.P.No.9084 of 2016 and C.C.No.225 of 2017, pending on the file of the Judicial Magistrate Court, Pudukkottai and set aside the same.

2. The petitioner is the fourth accused in C.C.No.225 of 2017, on the file of the Judicial Magistrate Court, Pudukkottai. The respondent is the defacto complainant and he filed a private complaint under Section 200 Cr.P.C., in C.M.P.No.9084 of 2016 and the learned Magistrate, after conducting enquiry, has passed the impugned order, dated 16.09.2017, ordering for taking cognizance of the case against seven accused including the petitioner for the offences under Sections 294(b), 417, 420, 466, 471, 472, 475, 109, 166, 217, 218 and 221 I.P.C., and on that basis, the case was taken on file in C.C.No.225 of 2017.

3. The case of the complainant is that on 23.09.2010, a sale deed was executed in favour of the complainant by one Faritha Begam (Accused No.7) in the Sub Registrar Office, vide document No.5980/2010 relating to the property in Plot Nos.125, 126, that when the defacto complainant visited the office of the



sixth accused – A.S.Dhanasamy, the fifth accused – M.R.Navaneetham (Government Pleader) has given assurance that there was no encumbrance in the said property and she could trust them to buy the property, that when the defacto complainant visited the property on 25.07.2014, she was shocked to notice that the fencing done by her was forcibly removed and new fencing was made with the adjoining property by the original owner, that the accused 5 to 7 colluded together and made forged documents of some other person's property and executed a sale deed in favour of the defacto complainant and that the defacto complainant lodged a complaint before the first accused – S.Karunakaran, the then Inspector of Police of the Ganesh Nagar Police Station.

4. It is the further case of the prosecution that on 14.09.2015, the defacto complainant appeared before the police, in pursuance of of their directions and the third accused Rajendran – Special Sub-Inspector of Police had received all the relevant documents and shouted at her that since the Government Pleader – Accused No.5 is involved in this matter, no action can be taken and they can file a false complaint to send her behind the bar, that the third accused also warned her to leave the complaint at that stage itself and that thereafter, the defacto complainant made a complaint to the higher officials against the Accused Nos.3, 5, 6 and 7 and alleged that all the accused colluded together and created forged documents so as to sell the said property illegally.



5. It is the further case of the defacto complainant that even after sending the complaints to the higher Officials of Police Department, no action was taken and hence, she approached this Court and filed Crl.O.P.(MD)No.4236 of 2016 seeking orders for registration of the case and this Court directed the defacto complainant to approach the Judicial Magistrate, Pudukkottai under Section 156(3) Cr.P.C., that thereafter the defacto complainant filed a petition dated 11.08.2016, that the petitioner-fourth accused in pursuance of the directions of the learned Magistrate, summoned all the relevant persons, that on 25.10.2017, the defacto complainant along with her husband appeared before the petitioner at the police station and at the time of enquiry, the police had threatened the defacto complainant by saying that the accused Nos.5 to 7 are having political nexus and she cannot do anything against them, that the petitioner had thereafter asked the defacto complainant to withdraw the complaint, so that he could arrange some other alternative property for them and that the petitioner has filed a closure report before the learned Judicial Magistrate on 26.10.2016.

6. It is not in dispute that subsequently, the respondent has filed a private complaint on 09.12.2016 and the learned Judicial Magistrate, after conducting enquiry, has passed the impugned order dated 16.09.2017 in Crl.M.P.No.9084 of 2016, taking cognizance of the complaint and on that basis, the case was taken on file in C.C.No.225 of 2017.



7. The main contention of the petitioner is that the allegations/charges levelled against the petitioner can be attributed to the discharge of his public duty and has a direct nexus and that the learned Judicial Magistrate did not appreciate the provisions under Section 197 Cr.P.C., and passed the impugned order without any application of mind in an arbitral manner, which would be a miscarriage of justice.

8. The learned Counsel for the petitioner would strongly contend that the learned Judicial Magistrate ought to have followed the provisions under Section 197 Cr.P.C., and obtained due sanction from the State Government since the allegation made against the petitioner comes within the purview of discharging official duty and it is mandatory on behalf of the Judicial Magistrate to follow the provisions under Section 197 Cr.P.C.

9. Considering the above, it is clear that the petitioner has taken a main stand that while the petitioner was discharging his official duty, the alleged occurrence had taken place and as such, he has been protected under Section 197(1) Cr.P.C., and the complainant should have obtained sanction to prosecute the petitioner and that in the absence of necessary sanction, the proceedings initiated against the petitioner is liable to be quashed.



10. The learned Counsel for the petitioner has also relied on the judgment of this Court in ***P.Kalai Kathiravan Vs Ramaiah*** passed in ***Crl.O.P.(MD)No. 4756 of 2016, dated 24.09.2018***, wherein this Court has held as follows:

“10. It is seen very clearly from the complaint filed by the respondent that the respondent has aggrieved by the act of the petitioner in discharge of this official duty. The petitioner admittedly falls within the definition of Public Servant under [Section 21](#) of IPC and therefore, it is mandatory to follow the provisions under [Section 197](#) of CrPC, which gives a special protection to public servants. The Public Servants are treated as a special class of person enjoying the said protection, so that they can perform their duties without any fear or favour and without threats of malicious prosecution. Sine qua non for the applicability of [Section 197](#) of CrPC is that the offence charged, be it one of commission or omission, must be one which has been committed by the Public Servant either in his official capacity or under the colour of the office held by him. The moment, the act of the Public Servant falls within the above said requirement, the protection given under [Section 197](#) of CrPC starts operating automatically and there can be no prosecution without obtaining a sanction.”



11. In the above decision, the point that was decided is as to whether the alleged offence committed is reasonably connected with the performance of the official duty of the accused and if the answer is in the affirmative, previous sanction for prosecution is necessary. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Fakhruzamma Vs. State of Jharkhand and another*** reported in ***CDJ 2013 SC 1089*** and the relevant portion is as follows:

“Whether sanction under Section 197 of Cr.P.C., is necessary from State Government before prosecuting Appellant as Sub-Inspector of Police. The question that has come up for consideration in this case is whether sanction under Section 197 Cr.P.C., is necessary from the State Government before prosecuting the Appellant, though he was removed from service following the procedure laid down Police Manual and an Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the State Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty.” (emphasis supplied)

12. Moreover, a learned Judge of this Court in ***Muthuswamy Gounder Vs. C.P.Singharam*** reported in ***(1979)1 MLJ (Crl.) 705***, has specifically held that since the Inspector General or Deputy Inspector General or District Superintendent of Police is the competent authority to dismiss or to impose



punishment of reduction to a lower post, or for a lower stage in time scale with respect to any officer of the Subordinate Police which includes all Police Officers below the rank of Inspector of Police, no sanction of the State Government for the prosecution of the Police Officer below the rank of Inspector of Police is necessary.

13. In the case on hand, as already pointed out, the petitioner is the Sub-Inspector of Police. Considering the legal position above referred and the petitioner being the Sub-Inspector of Police, prior sanction for prosecution is absolutely not necessary. Considering the above, this Court has no hesitation to hold that the above said contention of the learned Counsel for the petitioner is devoid of substance and the same is liable to be rejected.

14. It is the specific case of the prosecution against the petitioner is that on 25.10.2017, when the petitioner was conducting enquiry at the police station, he allegedly threatened the defacto complainant and asked her to withdraw her complaint, that the petitioner has filed his closure report dated 26.10.2017 and cited the reason that the property in dispute is not falling in the jurisdiction of Ganesh Nagar Police Station, in which the petitioner was working at that time and that thereafter the defacto complainant has filed her private complaint on 09.12.2016.



15. The learned Counsel for the petitioner would submit that the defacto complainant did not point out any involvement of the petitioner in the entire set of events, that the defacto complainant for the first time, in the private complaint, has alleged that the petitioner was also involved, that the learned Judicial Magistrate should have taken note of the entire transactions and circumstances therein, while taking cognizance of the case and that the learned Magistrate ought not to have made the petitioner as collectively responsible with other accused without having any prima facie material.

16. The learned Counsel for the petitioner would submit that the complainant failed to prove any alleged collusion or dishonest intention on the part of the petitioner in connection with the other accused persons and without appreciating the same, the learned Magistrate has passed the impugned order dated 16.09.2017 in a mechanical manner. The learned Counsel would further submit that when the cognizance is taken by the learned Judicial Magistrate, the charges levelled against the petitioner has to be specific and the allegations made against the petitioner must fulfill the conditions made in the definition clause given under the section in the charge, that the petitioner's right to defend himself will be jeopardized if the charges are vague and illegal and that the petitioner has not committed any offence as alleged by the defacto complainant.





petitioner is of the view that there are no materials available to proceed against him, he is at liberty to raise his objections at the time of framing of charges or he can very well file a discharge application.

20. It is pertinent to mention that the Hon'ble Supreme Court in in *Dhruvaram Murlidhar Sonar vs The State Of Maharashtra* reported in *2019(18) SCC 191*, after considering the decision of the Hon'ble Supreme Court in *State of Haryana and Others vs. Bhajan Lal and others* reported in *1992 Supp (1) SCC 335*, has specifically held that exercise of powers under Section 482 Cr.P.C., to quash the proceedings is an exception and not a rule and that inherent jurisdiction under Section 482 Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is also settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C., for quashing the criminal proceedings.

21. A perusal of the complaint and other records available, makes out a *prima facie* case against the petitioner at this stage and there appear to be sufficient ground for proceeding against the petitioner. Hence, this Court concludes that the above Criminal Original Petition is devoid of merits and the same is liable to be dismissed.



22. In the result, the Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous Petitions are also dismissed.

02.09.2022

Index : Yes/No

Internet : Yes/No

SSL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate Court, Pudukkottai.



WEB COPY



Crl.O.P.(MD)No.14370 of

K.MURALI SHANKAR, J.

SSL

PRE-DELIVERY ORDER MADE IN

Crl.O.P.(MD)No.14370 of 2019

02.09.2022