



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 12.01.2022
PRONOUNCED ON: 30.03.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CrI.O.P. (MD)No.16600 of 2018
and
CrI.M.P. (MD)No.7349 of 2018

Muniyandi : Petitioner/Sole Accused

Vs.

V.Muthukumar : Respondent/Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pursuant to C.C.No.478 of 2017, on the file of the learned Judicial Magistrate No.I, Srivilliputhur and quash the same.

For Petitioner : Mr.A.S.Vaikunth

For Respondent : Mr.M.Jerin Mathew

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.T.C.No.478 of 2017 (wrongly mentioned as C.C.No.478 of 2017), on the file of the Judicial Magistrate Court No.I, Srivilliputhur and quash the same.

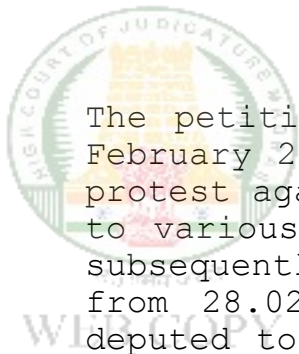
2. The petitioner is the sole accused in S.T.C.No.478 of 2017, on the file of the Court of Judicial Magistrate No.I, Srivilliputhur. Admittedly, the respondent/complainant is an Advocate practicing in Srivilliputhur and that the petitioner/accused was working as Sub-Inspector of Police, Koomapatti Police Station, Srivilliputhur Taluk, Virudhunagar District at the relevant point of time and was working in CBCID Wing, Tirunelveli at the time of filing of the petition. It is evident from the records that the respondent has filed a petition under Section 156(3) Cr.P.C., seeking directions to register the F.I.R., against one John Pandian and 12 others for the alleged offences under Sections 147, 148, 294(b), 448, 307 and 120(b) I.P.C., and under the provision of TNPPDL Act, before the Judicial Magistrate Court No.I, Srivilliputhur and that the learned Magistrate has passed an order forwarding the said petition to



Koomapatti Police Station under Section 156(3) Cr.P.C., and the Investigating Officer was directed to conduct a preliminary enquiry for the purpose of ascertaining as to whether cognizable offence has been committed and file preliminary report within a period of two months and also directed to act in accordance with the Constitution Bench judgment of the Hon'ble Supreme Court in ***Lalita Kumari vs Government of U.P. & Ors.*** The respondent/complainant, by alleging that though a specific direction was issued by the learned Judicial Magistrate in Cr.M.P.No.4250 of 2016, dated 26.12.2016, the petitioner has not registered the case and as such, the petitioner has committed an offence under Section 217 I.P.C., has filed a private complaint under Section 200 Cr.P.C., against the petitioner herein and the learned Magistrate, after recording the sworn statement of the respondent/complainant and after hearing the arguments of the complainant's side, by observing that *prima facie* case was made out, has taken cognizance of the case for the offence under Section 217 I.P.C., in S.T.C.NO.478 of 2017 and ordered issuance of summons to the petitioner/accused.

3. The petitioner/accused, after entering into appearance before the Jurisdictional Magistrate, has come forward with the above petition for quashing the proceedings in S.T.C.No.478 of 2017.

4. The case of the petitioner is that on 28.10.2016 at about 09.45p.m., when the petitioner was in duty at Koomapatti Police Station, one Manakottai, w/o (Late) Seenii, with blood injuries appeared before the petitioner and lodged a complaint that the respondent attacked her nephew Johnpandian with wooden log and caused blood injuries to him and when the same was questioned by her, the respondent scolded her with filthy language and attacked her by stone and caused injury to her, that the petitioner, after enquiry, registered the F.I.R., in Cr.No.196 of 2016 against the respondent for the offences under Sections 294(b), 323, 506(i) I.P.C., and Section 4 of TNPHW Act, that the respondent as a counter blast and to safeguard himself, even without lodging any complaint before the petitioner, sent a complaint directly to the Superintendent of Police and the Inspector of Police, Koomapatti Police Station through the registered post with false and vexatious complaint with concocted story, that the respondent has thereafter suppressed the real facts, has filed a petition under Section 156(3) Cr.P.C., before the Judicial Magistrate Court No.I, Srivilliputhur and the learned Judicial Magistrate directed to act in accordance with law if *prima facie* case is made out, that the petitioner received the complaint of the respondent from the Virudhunagar District Police Office and conducted enquiry with the alleged persons on 04.01.2017, that the enquiry revealed that the complaint of the respondent is utter false and the same has been filed with a view to settle the criminal case registered against the respondent and that the petitioner after conducting enquiry, submitted his report before the District Police Office, Virudhunagar District.



The petitioner's further case is that in the month of January and February 2017, he was allotted with protection duty as there was a protest against the ban on Jallikkattu, that the petitioner was sent to various parts of the State and involved in protection duty and subsequently, due to ill-health, the petitioner was in medical leave from 28.02.2017, that after completion of medical leave, he was deputed to CC TNS Section in District Police Office and his duties at Koomapatti Police Station was handed over to the in-charge officer and that therefore, the petitioner has never committed dereliction of his duties.

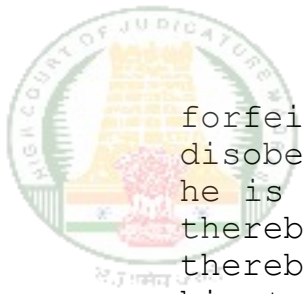
5. The learned Counsel for the petitioner would submit that the petitioner conducted unbiased investigation based on the complaint sent by the respondent to the Superintendent of Police, that the respondent cannot expect the petitioner to act on his own whims and fancies as dictated by him, that since the petitioner has always been acting in accordance with law and strictly following the procedures contemplated under the Criminal Procedure Code and Police Standing Orders, the respondent filed the above private complaint only to harass the petitioner, that the private complaint is a motivated one and that therefore, the proceedings pending in S.T.C.No.478 of 2017, on the file of the Judicial Magistrate No.I, Srivilliputhur is liable to be quashed.

6. The learned Counsel for the petitioner would submit that the respondent has also filed another private complaint against the petitioner and also Gr.II Constable Kathiresan, who was working with the petitioner at Koomapatti Police Station alleging that the respondent Advocate while he was in police station to give his client legal advise, they had abused him in filthy language and also seized his two wheeler and ill-treated him, that the learned Magistrate has forwarded the said complaint in Cr.M.P.No.539 of 2017, directing the Inspector of Police to conduct a preliminary enquiry as stated by the Hon'ble Apex Court in **Lalita Kumari's case**, that the Inspector of Police, after conducting enquiry, has submitted a report dated 03.04.2017 stating that the petitioner has exaggerated the incident shown in the complaint and that due to the previous enmity, the present complaint came to be filed.

7. The learned Counsel for the petitioner would further submit that the petitioner being a Government servant, previous sanction from the Government is mandatory and that the allegations found in the complaint would not attract the ingredients of offence under Section 217 I.P.C.

8. Before entering into further discussion, it is necessary to refer Section 217 I.P.C., which is as follows:

217. Public servant disobeying direction of law with intent to save person from punishment or property from



forfeiture.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

9. Section 217 I.P.C., punishes the intentional disobedience of any direction of law on the part of the public servant to save a person from the punishment. A dereliction must be with the intention or with the knowledge that it is likely to save anyone from legal punishment. The offence under Section 217 I.P.C., has the following essentials:

- (1) that the accused was a public servant;
- (2) that he knowingly disobeyed any direction of the law in relation to his conduct as a public servant;
- (3) (a) that he did so, with the intention of saving any person from legal punishment or with the intention that he gets lesser punishment than to which he is liable; or
(b) that he intended to save or knowingly that he is likely to save any property from forfeiture or any charge to which it is liable."

10. The Hon'ble Supreme Court in ***V.Rajaram Vs. State represented by the Inspector of Police CBI/SCB*** in Criminal Appeal Nos.1765-1766 of 2019, dated 26.11.2019, has held that one of the essential ingredients to make out an offence under Section 217 I.P.C., is that the public servant should have disobeyed any direction of law with intention to save any person from legal punishment. To put it in short, the offence under Section 217 I.P.C., gets attracted when there is willful disobedience of any direction of law.

11. More importantly, as rightly pointed out by the learned Counsel for the petitioner, the learned Jurisdictional Magistrate has only directed the Investigating Officer to conduct preliminary enquiry for the purpose of ascertaining as to whether a cognizable offence has been committed and also directed him to file a preliminary report within two months. It is not the specific case of the respondent that the jurisdictional Magistrate has directed the petitioner, who was the then Sub-Inspector of Police to conduct the preliminary enquiry and to submit the report.

12. No doubt, the learned Counsel for the respondent has relied on a decision of this Court in Crl.O.P.(MD)No.5944 of 2011, dated



28.03.2017 in ***Thennarasu Vs. The Assistant Commissioner of Police, Thilagar Thidal Zone, Madurai and Others*** and in that case, the third respondent therein has filed a complaint as against the petitioner and others under Section 156(3) Cr.P.C., before the jurisdictional Court alleging that the petitioner therein has not registered the F.I.R., on receiving the complaint lodged by him, that the complaint lodged against the petitioner and others by the third respondent was registered in Cr.No.80 of 2009 for various offences of I.P.C., r/w Sections 8 and 9 of Prevention of Corruption Act and on the basis of the directions issued by the learned Chief Judicial Magistrate under Section 156(3) Cr.P.C., F.I.R. came to be registered and after filing of the charge sheet, the case was taken on file and that this Court has held that since the allegations made in the charge sheet makes out a prima facie case and the genuineness of certain allegations can be gone into only during the course of trial, has dismissed the petition. But in the case on hand, as already pointed out, it is not the case of the respondent that he has preferred a complaint directly to the petitioner and even after the receipt of the same, the petitioner has not chosen to register the case. As already pointed out, the respondent has filed a petition under Section 156(3) Cr.P.C., before the Jurisdictional Magistrate and the learned Magistrate has also directed the Investigating Officer to conduct the preliminary enquiry. It is pertinent to note that the jurisdictional Magistrate has not passed any order directing the Inspector of Police or any other Officer of the said police station to register the F.I.R.,. But a direction was given only for conducting of preliminary enquiry.

13. It is settled law that in cases involved in failure to register the case or to execute NBW or summons, a reasonable opportunity should be given to the Police Officer to explain his position and after determining that there is a prima facie case to show that there has been violation of duty, then the Court can proceed against the concerned Police Officer.

14. In ***Sugesan Transport Private Ltd., Vs the Assistant Commissioner of Police, Adayar Police Station, Adayar and another*** in Crl.O.P.No.19197 of 2016 batch cases, this Court has issued certain directions and it is necessary to refer the directions which are as follows:

"x If the police officer does not register FIR within a period of one week from the date of receipt of the Magistrate's order, the Magistrate shall initiate prosecution against him under Section 21 read with Section 44 of the District Police Act before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be.

xi If no FIR is registered by the police within one week from the date of receipt of a copy of the order of the



Magistrate under Section 156(3), Cr.P.C., the complainant can approach this Court under Section 482, Cr.P.C.

xii If the police fail to complete the preliminary enquiry within six weeks as mandated by the Supreme Court in Lalita Kumari-V, the complainant can approach this Court under Article 144 read with Section 482, Cr.P.C.

xiii The aforesaid petition under Article 144 read with Section 482, Cr.P.C. must be accompanied by an affidavit sworn to by the complainant with satisfactory materials to show that the police have not completed the preliminary enquiry within six weeks, as mandated by the Supreme Court in Lalita Kumari-V. In such a petition, this Court will not read the complaint, but, issue directions to the police to register an FIR on the complaint for the very failure of the police to follow the mandates of Lalita Kumari-IV and V. The Registry of this Court shall not number the petition filed under Section 482, Cr.P.C. seeking a direction to register an FIR unless it is accompanied by an affidavit containing the above details.

xiv In suitable cases, this Court shall also direct disciplinary action to be taken against the police officer for the violation of the mandates of Lalita Kumari - IV and V.

xv If the police officer fails to register the FIR pursuant to the directions of this Court, he will be liable for contempt of Court, besides facing disciplinary action."

15. In the case on hand, as already pointed out, there was no specific direction for registration of F.I.R. and that too by the petitioner. It is also not the case of the respondent nor the jurisdictional Magistrate that the Court has sent any reminder or notice for filing of the report, as called for by the Court earlier. As rightly contended by the learned Counsel for the petitioner, the learned Magistrate, before taking the complaint under Section 200 Cr.P.C., on file, has not sent any letter or notice seeking remarks or explanation from the concerned police official for not filing report as called for by the Court. Moreover, the learned Magistrate has only recorded the sworn statement of the respondent and on that basis, has taken the cognizance of the case. Even assuming for arguments sake that the direction was issued only to the petitioner, there is no material to show that the petitioner has violated the directions of the Court willfully.

16. Considering the above, this Court has no hesitation to hold that the ingredients for Section 217 I.P.C., are not made out and that permitting the prosecution to proceed further is not only



unnecessary, but also unwarranted. Hence, this Court concludes that the proceedings in S.T.C.No.478 of 2017 pending before the Judicial Magistrate Court No.I, Srivilliputhur as against the petitioner are liable to be quashed.

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17. In the result, the Criminal Original Petition is allowed and the proceedings in S.T.C.No.478 of 2017 pending before the Judicial Magistrate Court No.I, Srivilliputhur as against the petitioner are quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

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 No.I, Srivilliputhur

+1 CC to M/s.M.JERIN MATHEW, Advocate (SR-16028[F] dated 01/04/2022)

CrI.O.P.(MD)No.16600 of 2018
30.03.2022

RD(28.04.2022) 7P 3C