



CrI.O.P.No. 4726 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No. 4726 of 2015

and

M.P.No.1 of 2015

1. Powunraj
2. Thangavel
3. Gnanavel
4. Uma

..... Petitioners

Vs

Vembu

..... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the C.C.No.446 of 2014 pending before the Judicial Magistrate No.VI, Coimbatore District filed by the respondent and quash the same.

For Petitioners : Mr.N.Stalin
For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.446 of 2014 on the file of the Judicial Magistrate No.VI, Coimbatore.

2. Heard the learned counsel appearing for the petitioners



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and perused the materials available on record.

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3. The respondent filed a private complaint as against the petitioners alleging that the son of the second respondent was illegally taken by the petitioners and was brutally attacked by them on 12.03.2014. He was taken along with one Banurekha, who is a friend of the respondent herein. They also threatened them that if they disclosed to anybody a false case will be foisted against them. Hence, the complaint.

4. On receipt of the complaint, the Trial Court had taken the complaint on file for the offences under Sections 341, 324 & 506(2) of IPC, alleging that the petitioners/accused had also taken cash from the respondent's son.

5. A perusal of the records reveals that all the petitioners are police officials of B6, Crime Branch, Peelamedu Police Station, Coimbatore. The son of the second respondent is an accused in Crime No.149 of 2014 alleging that the complainant, viz., Saravana Kumar, lodged a complaint that his jewels weighing 50 sovereigns were missing.



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He suspected two persons. On receipt of the complaint, the first petitioner registered FIR in Crime No.149 of 2014. After registration of the FIR, the petitioners had conducted detailed enquiry and found that one Banurekha, who is a relative of the complainant and her son's friend, viz., son of the respondent herein, colluded together and committed theft of 50 sovereigns of jewels. Both were arrested and they confessed that they had committed theft of 50 sovereigns of jewels. Based on the confessions statement, the entire jewels were recovered from the accused and produced before the Judicial Magistrate Court. After completion of investigation, the first petitioner filed a final report and the same has been taken cognizance in C.C.No.640 of 2014 on the file of the Judicial Magistrate No.VI, Coimbatore.

6. That apart, the son of the respondent and another involved in similar offence of committing theft and are facing trial in C.C.No.182 of 2011 on the file of the Judicial Magistrate No.VIII, Coimbatore. Subsequently, it entered in conviction and they were sentenced to undergo three years imprisonment by Judgement dated 24.08.2022. Therefore, the present complaint is nothing but a clear abuse of process of law and in order to escape from the cases pending



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against the son of the second respondent, the present impugned complaint has been lodged against the complainant.

7. Further the first petitioner now died and as such, all the charges were abated against him. Sofar as the other petitioners are concerned, before taking cognizance, no sanction was obtained as contemplated under Section 197 of Cr.P.C. Admittedly, the son of the respondent was taken to custody and he was tortured. Therefore, the petitioners were discharging their duties for the alleged occurrence committed by them. Therefore, it requires sanction under Section 197 of Cr.P.C. It is relevant to extract the provision under Section 197 of Cr.P.C., which reads as follows :-

197. Prosecution of Judges and public servants.-

(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 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the



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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 referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 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.]

Explanation.-For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166-A, section 166-B, section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 370, section 375, section 376, section 376-A, section 376-C, section 376-D or section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring



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therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

8. Thus, it is clear that when the person who is a public



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servant not removed from his office, the Government or the sanction of the Government is accused of any offence, no Court shall take cognizance of such offence except with the previous sanction. Admittedly, the respondent did not obtained any sanction in order to prosecute the petitioners before the Trial Court. Therefore, the entire proceedings is vitiated and it is liable to be quashed. Now the proceedings in C.C.No.446 of 2014 is transferred from the file of the Judicial Magistrate No.VI, Coimbatore to the file of Judicial Magistrate No.II, Coimbatore in C.C.No.1403 of 2021.

9. In view of the above, the proceedings in C.C.No.446 of 2014 on the file of the Judicial Magistrate No.VI, Coimbatore, is hereby quashed. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

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Internet: Yes
Index : Yes/No
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