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Crl.O.P.No.7004 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.7004 of 2021

and

Crl.M.P.Nos.4672 & 4673 of 2021

Sivakumar

... Petitioner

Vs.

1. State Rep. by
The Inspector of Police,
Neravy Police Station,
Karaikal.

2. Ahmed Bahavudeen

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C.No.213 of 2018 on the file of the Judicial Magistrate-II, Karaikal and quash the same.

For Petitioners : M/s.A.Swaminathan

For Respondent :Mr.M.V.Ramachandranmuthy, Addl.Public
Prosecutor (Puducherry) assisted by
Mr.A.Alexander (Govt. Advocate) [R.1]
: No Appearance [R.2]



ORDER

The petition is to quash the final report for the offence under Section 381 IPC.

2. It is alleged in the final report that the petitioner had committed theft of a car bearing Registration No.TN.51 AC 3019 which belonged to the 2nd respondent.

3(a). The learned counsel for the petitioner submitted that the impugned prosecution is clearly an abuse of process of law. The drivers working under the 2nd respondent who was running travels business by name Everest Travels had issues with the 2nd respondent with regard to the non-payment of salary. The drivers in order to protest against non-payment of salary refused to work for the 2nd respondent. It is a case of the prosecution that the 2nd respondent was supplying cars to employees of Oil and Natural Gas Commission (ONGC) and the petitioner was one of the drivers employed by the 2nd respondent for the said purpose.



3(b). The 2nd respondent had filed a suit OS.No.478/2015 before the Principal District Munsif cum Judicial Magistrate at Karaikal for a permanent injunction restraining the petitioner and others from attempting to stop the work of operations of the ONGC. The said suit was dismissed by the Principal District Munsif cum Judicial Magistrate, Karaikal. Further, ONGC had written a letter to the 2nd respondent on 18.04.2016, stating that the cars were parked unauthorizedly in their premises which included the car involved in the impugned final report, namely, the car bearing Registration No.TN.51 AC 3019. Further, the 2nd respondent had also taken the delivery of the car from the premises of ONGC on 01.07.2016. All the above would show that the alleged offence of theft is not made out in the instant case.

4. The learned Additional Public Prosecutor submitted that the point raised by the petitioner has to be adjudicated only during trial. The petitioners ought to have informed the 2nd respondent if they had parked the vehicle in the premises of ONGC. The 2nd respondent, therefore, was justified in lodging the FIR and hence prayed for dismissal of the quash petition.



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5. Though notice was sent to the 2nd respondent, it was returned with an endorsement "no such addressee". The learned Additional Public Prosecutor was directed to inform the 2nd respondent about the pending proceedings. The learned Additional Public Prosecutor submitted that the 1st respondent was unable to inform the 2nd respondent as his whereabouts is not known.

6. This Court finds that the impugned prosecution is for the alleged offence under Section 381 IPC. The records reveal that the petitioner and others had a labour dispute with the 2nd respondent. The 2nd respondent entered into a contract with ONGC for providing cars to ONGC officials for their transportation. The petitioner and others had expressed their intention to stop work because of the dispute with regard to their salary hike. The impugned complaint appears to be a malafide action to wreak vengeance. The letter dated 18.04.2016 issued by the General Manager, Logistics ONGC to the de facto complainant confirms the fact that there was no theft. The letter reads as follows:-

" Also, our Security section has informed that, Vehicle Nos.TN 51 Ac 3019, PY 02 N 9648, PY 02 N 9649, PY 02 N 9650, TN 51 AC 2434 and TN 51 AC 2504 are parked unauthorizedly in ONGC Office Campus, Neravy for more than 2 weeks by your Drivers."



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7. The 2nd respondent had approached the learned Magistrate and given a complainant under Section 156(3) in April 2016 and the FIR came to be registered on 11.04.2016 pursuant to the direction of the learned Magistrate. The 2nd respondent was, therefore, aware that the cars were parked in the premises of ONGC. That apart, this Court finds that the petition filed under Section 156(3) is not accompanied by any affidavit as mandated by the Hon'ble Supreme Court in ***Priyanka Srivastava & Anr vs State Of U.P. & Ors.***

8. That apart, this Court finds that the 2nd respondent has also taken the delivery of the cars from the premises of ONGC on 01.07.2016. For all the above reasons, this Court finds that the offence of theft is not made out and the impugned FIR is to wreak vengeance on the petitioner who had protested against the 2nd respondent for pay hike and the impugned final report is an abuse of process of law.



9. For all the above reasons, the impugned FIR is quashed. The Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

28.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

1. The Inspector of Police,
Neravy Police Station,
Karaikal.
2. The Judicial Magistrate-II, Karaikal.



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SUNDER MOHAN. J,

shr

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