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Crl.O.P.No.20411 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Pronounced on : 07.07.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.20411 of 2022

and

Crl.M.P.Nos. 13385 & 13387 of 2022

George Lawrence

... Petitioner / Accused

Vs.

E.Venkadesan

... Respondent / Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings as against the petitioner in C.C.No.396 of 2022, pending on the file of the Judicial Magistrate No.II, Thiruvallur.

For Petitioner : Mr.M.Mohamed Riyaz
For Mr.R.Sasikumar

For Respondent : Mr.K.Sivakumar



ORDER

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Seeking to quash the proceedings in C.C.No.396 of 2022, pending on the file of the learned Judicial Magistrate No.II, Thiruvallur, the petitioner is before this Court with this petition.

2. The gist of the case is that the respondent/complainant along with his friend had gone to Pattabiram, Chennai, to attend funeral of his friend, at that time, a man, who was in an inebriated state, obstructed the complainant and there was quarrel. The complainant along with his friend one Manikandan had quarrelled with the drunken man. At that time, the Sub Inspector of Police and Head Constable attached to the Pattabiram Police Station came there, took the complainant to the Police Station, where the petitioner, Inspector of Police, who handcuffed the complainant and another and also detained them in the Police Station till 11.00 p.m. Thereafter, a case under Section 75 of the City Police Act is said to have been foisted against him.

3. Mr.M.Mohamed Riyaz, the learned counsel appearing for the petitioner would submit that the respondent / complainant not sent any complaint to Police officials, not produced any material to prove that a complaint has been earlier sent by him and the same not acted upon. On the other hand, the complainant directly approached the learned Judicial Magistrate No.II, Thiruvallur and the



learned Magistrate after recording the statement of the complainant, took the complaint on file in C.C.No.396 of 2022. After recording the sworn statement, the learned Magistrate had taken cognizance for the offences under Sections 323 and 341 IPC alone. Thus, it is apparent that the entire statement of the complainant has not been satisfactory to take cognizance.

4. Learned counsel for the petitioner contended that this Court and the Hon'ble Supreme Court time and again held that the sanction under Section 197 Cr.P.C. is required even though there might be excess in discharging official duty. Here, the admitted case of the complainant is that the petitioner was in the Police Station, when the complainant present and the petitioner had given certain directions to the subordinates against him. This utmost can be excess in discharge of his official duty, for which, the sanction under Section 197 Cr.P.C., is necessary. Further, learned counsel for the petitioner submitted that the offence under Section 323 I.P.C. is in respect of simple injury, but the complainant has not taken any treatment to confirm that he was injured while he was detained in Pattabiram Police Station.

5. The learned counsel for the petitioner, in support of his contentions, has relied on the Judgment of the Hon'ble Apex Court in **D.Devaraja Vs. Owais Sabeer Hussain** reported in **(2020) 7 SCC 695**, wherein it has been held as follows-



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“65. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.

66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government.

68. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public



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servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.

69. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a police man assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

70. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government sanction for initiation of criminal action against him.

71. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

72. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the



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official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.”

6. The learned counsel for the petitioner also relied upon yet another judgment of the Hon'ble Supreme Court in ***N.S.Madhanagopal & Anr Vs. K.Lalitha*** reported in ***(2022 Live Law (SC) 844)***, wherein it has been held as follows:-

“The complaint also fails to disclose the necessary ingredients to constitute the offence of wrongful restraint. In order to attract application of Section 341 which provides for punishment for wrongful restraint, it has to be proved that there was obstruction by the accused; (ii) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; and (iii) the accused caused such obstruction voluntarily. The obstructor must intend or know or would have reason to believe that the means adopted would cause obstruction to the complainant. The averments made in the complaint according to us are not sufficient to even constitute the offence of wrongful restraint. In the overall view of the case, we are convinced that no case is made out against the appellants herein as alleged by the complainant. Taking cognizance of an offence under Section 190(1) of



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the Cr.P.C. and issue of process under Section 204 are judicial functions and require a judicious approach. This is a proposition not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed cannot be put to any harassment by the issue of process. Issuance of process must be preceded by an application of judicial mind to the material before the court to determine if there is ground for proceedings against the accused. When the allegations made in the complaint are found to be too vague and general without giving any material particulars of the offence alleged against the accused then the order of the Magistrate issuing process on the basis of the complaint would not be justified as there must be material prima facie, for issuance of process. We have our own doubts whether even the verification of the original complainant on oath was recorded before taking cognizance and issuing process.”

7. The learned counsel for the petitioner further relied on the judgment of the Hon'ble Supreme Court in the case in **A.Srinivasulu vs. The State Rep.by the Inspector of Police [Criminal Appeal No.16 of 2011 and Criminal Appeal No.2444 of 2010]**, wherein, at paragraphs 50 and 51, held as follows:-

“50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too



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general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to (2007) 1 SCC 1 act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Badal cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.

51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the



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purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.”

8. Mr.K.Sivakumar, the learned counsel appearing for the respondent / complainant would submit that on 26.06.2022, while he was on the way to attend funeral of his friend, at that time, a man in an inebriated state, obstructed the complainant and there was quarrel. At that time, the Sub Inspector of Police and Head Constable attached to the Pattabiram Police Station came there, took the complainant to the Police Station where the petitioner, Inspector of Police, ill-treated the complainant, beaten, kicked with boot, hand, cuffed for more than six hours and not even permitted to drink water. Thus, even if the acts alleged might have been committed in the colour of duty of the Inspector of Police, as it took place in the Police Station, it cannot be construed to have purportedly been committed in lawful discharge of his official duties and the question of protection under Section 197 of Cr.P.C., does not arise in this case. Further, the petitioner was humiliated, handcuffed, for nearly six hours, for the reasons the respondent questioned the police action, the respondent was let off after a case was forged against him under Section 75 of City Police Act, the respondent has not admitted the case and he shall fight out the same in court of law, it was further submitted that not everyone question the colonial mindset and action of police, on the respondent complaint the trial Court examined the respondent recorded the statement and thereafter took cognizance, and issued summons. The petitioner



instead of appearing before the trial Court and putforth his contention and defence, rushed to this Court. The contention of the petitioner are disputed, to be decided during trial. Hence, the learned counsel for the respondent prays for dismissal of the petition.

9. I have heard the learned counsels appearing on either side and perused the materials available on record.

10. Law is well settled that before taking cognizance of an offence, the learned Magistrate should satisfy himself that there is a sufficient ground available in the complaint or other materials filed along with the complaint for proceeding against the accused. The order passed by the learned Judicial Magistrate taking cognizance should reflect, whether the learned Judicial Magistrate has applied his mind and satisfied from the materials available on record, a cognizable offence is made out, which is sufficient to initiate a proceedings against the Accused. Further, the order should reflect that the learned Magistrate has carefully considered the materials brought on record and he has examined the nature of allegations made in the complaint placed before him.

11. In the case on hand, a cursory reading of the order of the Court below



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would reveal that it has passed an unreasoned order while taking cognizance and issuing summon to the accused. A cursory reading of the complaint would further reveal that the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by *mala fides* and instituted with ulterior motive. The Apex Court in the case of **Pepsi Foods**, held that summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. Hence, I have no hesitation to come to a conclusion that the order of Court below needs interference of this Court in order to prevent abuse of process of the Court.

12. In fine, this Criminal Original Petition is allowed and the proceedings in C.C.No.396 of 2022, pending on the file of the learned Judicial Magistrate No.II, Thiruvallur, is quashed. Consequently, the connected miscellaneous petitions are closed.

07.07.2023

Index : Yes/No
Internet : Yes / No

To

1.The Judicial Magistrate No.II,
Thiruvallur.

2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

VV2/SMN2

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