



WEB COPY



Crl.R.C.No.741 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.R.C.No.741 of 2023 &
Crl.M.P.No.5765 of 2023

C.Kubendrakumar

... Petitioner
Vs.

1.The Inspector of Police,
(Law and Order),
N1 Royapuram Police Station,
Chennai – 600 013.

2.Martin Roberts,
S/o Roberts,
Assistant Commissioner of Police,
Police Control Room,
Fort St. George Town,
Chennai – 600 009.

... Respondents

(R2 impleaded as per order
dated 06.06.2023 made in
Crl.M.P.No.7632 of 2023 in
Crl.R.C.No.741 of 2023)

PRAYER: Criminal Revision Petition filed under section 397 r/w 401 Cr.P.C., to set aside the order dated 06.07.2022 in Crl.M.P.No.16762 of 2021 in R.C.S.No.2 of 2021 passed by the Principal Sessions Judge, City Civil Court, Chennai and dispose of the same on merits.



Crl.R.C.No.741 of 2023

For Petitioner : Mr.V.Anand

For respondent 1 : Mr.A.Damodaran,
Additional Public Prosecutor

For respondent 2 : Mr.M.Mohamed Riyaz

ORDER

This revision has been filed to set aside the order dated 06.07.2022 passed in Crl.M.P.No.16762 of 2021 in R.C.S.No.2 of 2021 by the learned Principal Sessions Judge, City Civil Court, Chennai

2. The petitioner had filed a complaint and the case in Crime No.1160 of 2013 has been registered. The petitioner is a practising Advocate at George Town Court, Chennai. On 22.02.2011 at about 10 pm, there was a quarrel near his residence. The petitioner made several requests to stop the quarrel, but it got aggravated and thereafter, the petitioner called the police control room. One M.Martin, Inspector of Police (Crime), in charge of law and order, N2 Kasimedu Police Station, Chennai – 600 013 along with team arrived at the place of occurrence at 10.30 p.m. and enquired who called the



Crl.R.C.No.741 of 2023

police, for which the petitioner answered him that he only called the control room. Thereafter, they were asked to disburse and they refused to do so. The petitioner claiming that he is an advocate and he cannot be deterred by the police and thereafter, he was dragged and taken to the vehicle and also questioned his birth and also about his mother. The petitioner was arrested and a false case against him has been registered in Crime No.262 of 2011. On completion of the investigation, charge sheet filed in C.C.No.1479 of 2021 before the trial court. The petitioner was forced to face the trial in the aforesaid case and thereafter, the trial court by judgment dated 29.11.2022 acquitted the petitioner finding that the case against the petitioner is not proven.

3. On the other hand, the petitioner's complaint was not properly enquired, despite the petitioner making representations to the Commissioner of Police and the Deputy Commissioner of Police. The petitioner had also filed a direction petition under section 482 Cr.P.C before this Court in Crl.O.P.No.7153 of 2021 and thereafter only case has been registered. Even at each stage, the petitioner had to file one after another petition for proper



investigation. The petitioner had filed a petition seeking transfer of investigation from the local police to CCB and that also did not yield the desire result and finally the case was closed as mistake of fact. Referred charge sheet filed. The petitioner filed protest petition and the lower court failed to consider the petitioner's submissions in the protest petition and dismissed the same and the present petition has been filed.

4. The contention of the petitioner is that he is a practising advocate and when he was in his house, there saw a quarrel in the street. The petitioner tried to convince the quarrel, but it got further aggravated. He nly called emergency number 100 and thereafter, Inspector of Police, Kasimedu Police Station along with his team had arrived at the scene of occurrence. They immediately threatened and chased away the persons present there. The petitioner being an advocate, had questioned the forcible action of the police, which offended them and thereafter he was dragged and taken to the police station and at that time, he was abused and questioned about his birth as well as his mother's character for which the petitioner got angry. The petitioner lodged a complaint to the first respondent police, but no action



Crl.R.C.No.741 of 2023

has been taken. The petitioner being a practising advocate, was pushed to such a dire state. Thereafter, he had to run from pillar to post and after several attempts, the case came to be registered and the investigation started. The persons named in the complaint being the police personnel, the entire police had supported them and not conducted a proper investigation. The petitioner had faced the case in C.C.No.1479 of 2021 and finally he was acquitted. While acquitting the petitioner, the trial court had clearly recorded the contradictions of the police personnel about the incident and also about the persons viz., Ezhil and Sekar. Further, the witnesses LW7 and LW8 which are listed in the charge sheet were found to be not available in the said address. The witness for observation mahazar had not supported the case of the prosecution stating that the signature was not that of them. The doctor gave an opinion that unless blood test and urine test are taken, the intensity of the alcohol cannot be proved. Considering all these aspects, after a prolong fight, the petitioner got honorary acquittal. On the other hand, the police personnel who had harassed and assaulted the petitioner have left free. Hence, challenging the dismissal of the protest petition, he filed the present petition.



WEB COPY

5. Learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioner was in a drunken state and was creating a nuisance in the area. When the information was received by the police control room, the respondent police went to the scene of occurrence. At that time, the other persons who had created nuisance got disbursed and the petitioner claiming to be a practising advocate, abused the police officials and threatened them. With force, the petitioner was taken to the police station and then, taken to the hospital where the doctors examined him and found alcohol smell on him and also the way he behaved, but he refused to give blood and urine samples to confirm the alcohol percentage in his body. The police personnel PW1 to PW4 who picked the petitioner up from the scene of occurrence have clearly stated about the incident and the petitioner's conduct. The lower court had given an acquittal for the reason that the two other independent witnesses were not available at the said address, the observation mahazar witness does not support the case of the prosecution and the petitioner's consumption of alcohol not proved. This would not give a licence to the petitioner to straight-away prosecute the



Crl.R.C.No.741 of 2023

police personnel attached to the respondent police who have acted on an emergency call from the patrol team. The petitioner had not denied the call to the control room. The police party reached the scene of occurrence and the petitioner was picked up along with others from the scene of occurrence. It is only degree of handling the petitioner is being questioned. This cannot be termed to be an illegal act and further, cannot be termed as the respondents' act is not in discharge of their official duty. Considering all these factors, the closure report had been filed. The lower court after giving opportunity to the petitioner and after hearing the petitioner in detail, dismissed the same. The order of the lower court is detailed and well reasoned, which needs no interference and hence, prayed for dismissal of the petition.

6. The second respondent/Inspector who lead the team on 22.02.2011, after getting the emergency call from the control room submitted that he had gone along with his police team. Since the said call was an emergency call from the control room, to maintain law and order at the late night hours, he went to the place and found that there was a nuisance, creating disturbance



Crl.R.C.No.741 of 2023

and also a chance of a ensuing law and order problem. The police had cleared the persons present in the scene of occurrence, the petitioner who was in a drunken state, abused the police team and also attempted to assault. Thereafter, he was taken to the police station and thereafter he could not be controlled and was taken to the Government Hospital for medical examination, where the petitioner had refused to give blood and urine samples which is recorded in the accident register. On the other hand, now he takes a stand that the case against him not proved. The respondent has no personal animosity against the petitioner. It was their duty to maintain law and order. Apart from this, the petitioner and the second respondent have no other dispute or incident wherein the second respondent has some motive to falsely implicate the petitioner. He further submitted that if the second respondent had not attended the emergency call, he would be held for disciplinary action. On the other hand, for attending the emergency call, he cannot be penalised. The lower court acquitting the petitioner in CC.No.1476 of 2021 might be for many reasons, which cannot be attributed against the police personnel and stated that the complaint of the petitioner against the second respondent is not genuine, but an harassment, initiated to



wreck vengeance.

WEB COPY

7. Considering the submissions, made on either side and perusal of the materials, it is seen that the petitioner is a practising advocate. The incident took place on 22.02.2011. The second respondent on the call from the control room along with the patrol team had gone there and thereafter, the petitioner was taken to the police station. Since the petitioner was repulsive, acted in a defiant manner, doubts were caused to the police about the petitioner's consumption of alcohol, he was taken to the hospital. Doctors confirmed the alcohol smell, but he was within the limits. Thereafter, the case has been registered. Now, the petitioner was acquitted from the case against him. The petitioner's complaint against the second respondent and others for attending to emergency call, is part of their duty which cannot be termed as a motivated one and excessive, in the absence of any motive and reason, the act of the second respondent discharging his duty cannot be faulted upon. The investigation concluded and thereafter, closed as mistake of fact, which the lower court considered and dismissed the protest petition with reason. This Court finds no reason to interfere with



Crl.R.C.No.741 of 2023

the findings of the lower court order.

WEB COPY

8. Hence this Criminal Revision is dismissed. Consequently, connected miscellaneous petition is closed.

23.11.2023

nl

Index: Yes/No

Speaking Order/Non-speaking order

Neutral Citation: Yes/No

To

1.1.The Inspector of Police,
(Law and Order),
N1 Royapuram Police Station,
Chennai – 600 013.

2. The Principal Sessions Judge, City Civil Court, Chennai

3. The Public Prosecutor,
High Court of Madras



WEB COPY



Crl.R.C.No.741 of 2023

M. NIRMAL KUMAR, J.

nl



WEB COPY



Crl.R.C.No.741 of 2023

Crl.R.C.No.741 of 2023

23.11.2023