



Crl.O.P(MD).No.2667 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 06.07.2023

Delivered On : 17.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.2667 of 2020

and

Crl.M.P.(MD)Nos.1389 and 1390 of 2020

K.Sabapathi

...Petitioner

Vs

The Assistant Sub-Inspector,
Railway Protection Force, (Southern Railway)
Karaikudi.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the entire records pertaining to the case in C.C.No.239 of 2012 pending on the file of the learned Judicial Magistrate, Karaikudi, Sivagangai District and quash the same as against the petitioner.

For Petitioner

: Mr.R.Anand

For Respondent

: Mr.G.Thalaimutharasu

ORDER

This petition is filed to quash the charge sheet in C.C.No.239 of 2012, pending on the file of the learned Judicial Magistrates, Karaikudi, Sivagangai District.



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2. According to the petitioner, on 12.08.2012, the petitioner was travelling as a passenger in Sethu Express to Chennai with II class unreserved ticket by entering into III tier AC coach to ask the ticket examiner to provide a berth. The ticket examiner has not accepted his request and thereby there was wordy quarrel between them. The said incident was taken place when the train reached Paramakudi Railway Station. In fact the ticket examiner for the purpose of accommodating the petitioner into AC coach has demanded illegal gratification but the petitioner was not willing to pay excess amount to the ticket examiner. Hence, there was a wordy quarrel between the petitioner and the ticket examiner. Thereafter, the ticket examiner passed on the message to the respondent and registered a case in Crime No.403 of 2012 under Sections 155 and 146 of Indian Railways Act, 1989. Thereafter, the respondent filed a charge sheet before the jurisdictional Court for taking cognizance and the same was also taken on file as C.C.No.239 of 2012 before the learned Judicial Magistrate, Karaikudi, Sivagangai. The respondent before while filing the charge sheet, has not followed Section 180A and 180B of the Indian Railways Act, 1989, which mandates the Officer authorised has to necessarily commission of offence by way of holding inquiry. Even according to the averments, the ingredients of Sections 146 and 155 of Indian Railways Act was not attracted and the respondent exceeded their limits and violated the



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mandatory procedure. The respondent has no authority to file charge sheet before the learned Judicial Magistrate and therefore, the proceedings are liable to be quashed.

3.No counter was filed by the respondent.

4.The learned counsel appearing for the petitioner has contended that the petitioner is a practicing advocate and when he was travelling in train with II class ticket in the III tier AC coach towards Chennai, the ticket examiner examined the ticket of the petitioner and then the petitioner requested the ticket examiner to provide a berth by accommodating the petitioner to AC coach but the ticket examiner did not accessed the request of the petitioner and thereby, there were some wordy quarrel between them. The ticket examiner without even levying of necessary fine as per Rules he gone to the extent of lodging a criminal complaint. Further the respondent has no authority to file charge sheet before the jurisdictional Magistrate Court. But in this case, the respondent has filed charge sheet before the Magistrate Court on 19.10.2012.

5.According to Section 8(1) of Railway Property (Unlawful Possession)

Act, 1966, the Officer of Railway Protection Force is not empowered with the



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powers of an Officer in-charge making an investigation and he has no power to initiate prosecution by filing charge sheet before the Magistrate Court.

Therefore, there are procedure violation, which cause miscarriage of justice.

Hence, the charge sheet is liable to be quashed.

6.The learned counsel appearing for the respondent has represented that there is no procedure violations in this case. The petitioner travelled in III tier AC coach without having proper ticket and he got ticket for II class and thereby, the ticket examiner asked the petitioner to get down from the AC coach but the petitioner developed wordy quarrel with the ticket examiner and thereby, he lodged complaint and after following the procedure, the report has been filed before the learned Judicial Magistrate. Hence, this petition is liable to be dismissed.

7.This Court has head both sides and perused the materials available on records.

8.In this case, it is admitted fact that the petitioner without having valid ticket for III tier AC coach travelled in the train on the date of occurrence. However, the petitioner got ticket only for the II class. Further it is admitted fact that there is wordy quarrel between the ticket examiner and the petitioner.



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Now the main contention of the petitioner is that the respondent has no power

to file charge sheet before the jurisdictional Magistrate Court.

9.On perusal of records, it is observed that the respondent has filed occurrence report I.e., inquiry report. Further the ticket examiner has also filed complaint before the Sub Inspector, Railway Protection Force, Karaikudi and based on the complaint, the Sub Inspector, Railway Protection Force, conducted an inquiry and then filed report in the form of charge sheet. This Court has perused the entire records and on perusal, it is observed that on 19.10.2012, the Sub Inspector, Railway Protection Force, Karikudi O P had filed a printed format before the learned Judicial Magistrate, Karaikudi by mentioning the crime number, Section of laws and the occurrence. Further in the said form list of witnesses also mentioned and the said format containing the sentence in tamil “ஆகையால் இந்த விசாரணை அறிக்கையை நீதிமன்றம் விசாரணைக்கு எடுத்துக் கொண்டு எதிரிக்கு தகுந்த தண்டனை வழங்கும்படி பிராத்திக்கிறேன்”. The word “விசாரணை அறிக்கை” which denotes 'enquiry report', as per Section 180A of the Indian Railways Act. But the entire format shows that it is charge sheet. Since there is mention about the crime number as 403 of 2012, Railway Protection Force post, Manamadurai and Sections 155 and 146 of Indian Railways Act were also mentioned and there is a column mentioning the STC number, we can infer that the said report is nothing but



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charge sheet. Further the said report was returned by the Magistrate Court as

“there is no such 16 documents filed through the charge sheet as mentioned.

Hence, returned”. Thereafter, the said form along with other papers were re-presented before the learned Judicial Magistrate, Karaikudi on 20.11.012 by the Assistant Sub Inspector, Railway Protection Force through letter. In the said letter, 16 documents were enclosed. The 16th document is mentioned as copy of the charge sheet to accused. Therefore, from the above, it is clear that the Assistant Sub Inspector, Railway Protection Force had filed charge sheet before the learned Judicial Magistrate, Karaikudi based on the complaint given by the Ticket Examiner. Though in the said report submitted by the Assistant Sub Inspector, Railway Protection Force in column 3, there is a mention about the Section 180A of Indian Railways Act, 1989 and 2023, the same is in the form of charge sheet. Further there is a mention about complainant but no mention about the accused or respondent. The learned Magistrate also returned the papers by stating that there is no such 16 documents filed through the charge sheet as mentioned. Therefore, the Magistrate Court also returned the report as charge sheet.

10.The learned counsel for the petitioner relied on the decision of High Court of Chhattisgarh in the case of *Sharad Gupta v. Union of India*, in *Criminal Revision Case No.37 of 2004*. Wherein the High Court of



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Chhattisgarh after referring the judgments in (i)***State of UP v. Durga Prasad***

and (ii)***Balkishan A. Devidayal v. State of Maharashtra***, held that Railway

Protection Force is railway servant within the meaning of Section 34 of the Act, 1989 and has not been conferred with all the power of Officer in charge of Police station making an investigation under chapter XIV of Cr.P.C., and he has no power to initiate prosecution by filing a charge sheet for the offence under Section 143 of Indian Railways Act and before the learned Magistrate under Section 173 of Cr.P.C., and he can initiate prosecution by filing complaint.

11.On careful reading of the above said judgment, it is clear that under Section 8(1) of Indian Railway Property (Unlawful Possession) Act, the Railway Protection Force is not empowered with the powers of an Officer in-charge of a police station making an investigation and he has no power to initiate prosecution by filing the charge sheet before the Magistrate concerned and can initiate prosecution by filing complaint along with Inquiry report. But in this case, on perusal of the records reveals that the respondent Assistant Sub Inspector, Railway Protection Force had filed charge sheet and not filed any complaint and the format filed by the authorized Officer is in the form of charge sheet and not in the form of complaint.



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12.As per Section 180A of Indian Railways Act “for ascertaining facts and circumstance of a case, the officer authorised may make an inquiry into the commission of an offence mentioned in Sub Section (2) of Section 179 and may file a complaint in the competent Court if the offence is found to have been committed. As per Section 179(2), if any person commits any offence mentioned in Sections 137 to 139, 141 to 147, 153 to 157 and 159 to 167 and 172 to 176, he may be arrested without warrant or other written authority by the officer authorised by a notified order of the Central Government.

13.Therefore, from careful reading of the above provisions, it is clear that for the offences mentioned in Sub Section (2) of Section 179 of Indian Railway Act, the authorised Officer has to make inquiry under Section 180A of Indian Railway Act to ascertain the commission of an offence and to file a complaint in the competent Court, if the offence is found to have been committed. In this case also, the offences are Sections 155 and 146 of Indian Railway Act. The authorised Officer is Assistant Sub Inspector of Railway Protection Force, Karaikudi.

14.There is no complaint of Assistant Sub Inspector, Railway Protection Force, Karaikudi found in the case records. It is true that the Assistant Sub



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Inspector, Railway Protection Force, being authorised officer has to make inquiry under Section 180A of Indian Railways Act to ascertain the commission of offence. But through the report they can not initiate prosecution, per contra the authorised Officer I.e. the Assistant Sub Inspector, Railway Protection Force, has to file a compliant along with his Inquiry report. In the case on hand also the Assistant Sub Inspector, Railway Protection Force, Karaikudi made an inquiry under Section 180A of Indian Railways Act, but filed the said report in the form of charge sheet without a complaint. The said format also filed in a printed form containing charge sheet averments and not filed any complaint as mandated under Section 180A of Indian Railways Act. In the absence of complaint, there cannot be any cognizance by the Court under Section 190(1)(a) of Cr.P.C. Therefore, as discussed supra, there is a procedural violation and the same is vitiated entire proceedings. As per Article 21 of Constitution of India: *“Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”* The learned Magistrate also without following the procedure and without proper complaint as mandated under Section 180A of Indian Railway Act had taken the case on file in C.C.No.239 of 2012 and keep on pending for more than one decade. Thereby this case is a fit case to invoke inherit powers of this Court under Section 482 of Cr.P.C. Therefore, the said C.C.No.239 of 2012 on the file of



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P. DHANABAL,J.

Mrn

the learned Judicial Magistrate, Karaikudi is liable to be quashed.
Accordingly, the same is quashed.

15.In view of the above, this Criminal Original Petition is allowed.
Consequently connected miscellaneous petitions are closed.

17.07.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

- 1.The Judicial Magistrate, Karaikudi, Sivagangai District.
- 2.The Assistant Sub-Inspector of Police,
Railway Protection Force, (Southern Railway)
Karaikudi.

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