



CrI.O.P(MD).Nos.1704 and 3321 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.07.2023

Pronounced on : 24 .07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

CrI.O.P(MD).Nos.1704 and 3321 of 2019

and

CrI.M.P(MD) Nos.910,911, 1872 and 1873 of 2019

CrI.O.P(MD).No.1704 of 2019

Felix Suresh Petitioner

..Petitioner

Vs

J.Samuel Ponnusmay

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the C.C.No.94 of 2018 on the file of the learned Judicial Magistrate, Ambasamudram and quash the same as illegal

For Petitioner : Mr.B.Janath Ahmed@ B.Janarthkumar

For Respondent : Mr. R.Anand

CrI.O.P(MD).No.3321 of 20;19

1. P.Kaliappan
2. A.Ravi
3. Pakkir Peer Mohammed

...Petitioners

Vs

J.Samuel Ponnusmay

...Respondent



Crl.O.P(MD).Nos.1704 and 3321 of 2019

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the C.C.No.94 of 2018 on the file of the learned Judicial Magistrate, Ambasamudram and quash the same as illegal

For Petitioners : Mr.B.Janath Ahmed@ B.Janarthkumar

For Respondent : Mr. P.Samuel Gunasingh

COMMON ORDER

These Criminal Original Petitions have had been filed to quash the proceedings in C.C. No 94 of 2018 on the file of the learned Judicial Magistrate, Ambasamudram.

2. The petitioner in Crl.O.P(MD) No.1704 of 2019 is arrayed as A1 and the petitioners in Crl.O.P(MD) No.3321 of 2019 are arrayed as A2 to A4 respectively in the above said C.C. No.94 of 2018

3. According to the petitioners the respondent herein filed a private complaint before the learned Judicial Magistrate, Ambasamudram for taking cognizance for the offences under sections 120(B),166,195,323,339,340,357 and 506(i) of IPC. The learned Magistrate had taken cognizance against the petitioners on 20.04.2018



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for the offences under Sections 294(b),325 and 352 of IPC and issued summons to the petitioners.

4. The petitioner /A1 was working as a Inspector of Police, Ambasamuthiram Police Station and the petitioners/A2 to A4 were working as Sub Inspector of Police, Head Constable and Constable respectively in the same police station during the year 2010. On 21.02.2010, a First Information Report in Crime No.43 of 2010 was registered as against the respondent and her daughter-in-law for the offences under Sections 294(b),323,307 and 506(ii) of IPC and subsequently charge sheet was laid and trial was conducted in S.C.No. 346 of 2016 on the file of the Subordinate Judge, Ambasamuthiram and the accused persons got acquitted. Further another case in Crime No. 42 of 2010 was registered against one Issac Pandian, who is the son of the respondent for the offences under Sections 294(b),323 and 506(i) of IPC, subsequently charge sheet was laid in C.C. No. 153 of 2010 and after full trial the accused was acquitted. Hence after eight years the respondent has chosen to prefer a private complaint with *malafide* intention. The allegation against the petitioners is that on 20.02.2010 the petitioners herein beaten the complainant and thereafter on 21.02.2010 the petitioners abused in filthy language and taken him to the police station and beaten him. Subsequently he and his son got acquitted on 09.01.2012 and 06.09.2016 from the said cases. The said



private complaint is nothing but abuse of process of law. Further son of the defacto complainant is a history sheeted rowdy and these petitioners had discharged their official duty for that in the manner of threatening the present private complaint has been preferred with the *malafide* intention and hence the proceedings in C.C.No.94 of 2018 on the file of the learned Judicial Magistrate, Ambasamuthiram is liable to be quashed.

5.No counter was filed by the respondent.

6. The learned counsel for the petitioners contended that the second respondent preferred complaint before the learned Magistrate and the learned Magistrate has also taken cognizance for the offences under Sections 294(b),325 and 352 of IPC and issued summons to the petitioners. Even according to the complaint the alleged occurrence had taken place in the year 2010 and the petitioners who are police officers have discharged their duty and while acting as public servants the alleged occurrence had taken place and thereby prior sanction of the prosecution under Section 197 of Cr.P.C is necessary in this case and sanction was not granted. The defacto complainant and his son are also accused in criminal cases and thereafter the case against the defacto complainant ended in their favour and they were acquitted by



the concerned courts. Taking advantage of the above acquittal the defacto complainant preferred a private complaint before the learned Magistrate and the learned Magistrate without considering any materials had taken cognizance and issued summons to the petitioners. The petitioners discharged their duty entrusted to them and they only arrested the accused and remanded them into judicial custody for that in order to wreck vengeance after acquittal from those cases the present petition has been filed, which is a pure abuse of process of law and it is liable to be quashed.

7. The learned counsel for the second respondent/defacto complainant contended that the petitioners in the name of search had entered into the house of the defacto complainant and asked about the presence of his son and the petitioners had assaulted him with hands and broken the teeth. Thereafter the petitioners have taken the defacto complainant to the police station and there also they have beaten him black and blue manner, due to which the victim sustained injuries. Further the petitioners also used abusive words. Further the police officers has misused their power, thereby the defacto complainant has given complaint before the learned Magistrate, Ambasamudram. Based on the above complaint and after satisfying that *prima facie* materials available proceeded as against the petitioners. The trial court has taken cognizance for the offences under sections 294(b), 325 and 352 of



IPC. The offences charged against the petitioners are grave in nature and the petitioners have misused their power and committed the above said offence, therefore the petition is liable to be dismissed.

8.Heard both sides and perused the materials available on record.

9. The main contention of the petitioners is that the petitioners are police officials and while discharging their official duty the alleged occurrence had taken place. Whiles for sanction for prosecution is necessary under section 197 of Cr.P.C. In this context the learned counsel for the petitioners relied on the following decisions:

a)Kannan -vs- S.M. Noor Ahamed reported in 2018(2)L.W.Crl.576

b)A.Vanitha -vs- Mariappan in Crl.O.P(MD) No.7571 of 2017 dated 26.02.2021

c)Om Prakash -vs- State of Jharkhand through the Secretary, Department of Home, Ranchi and another reported in (2012) 4 MLJ(crl.)433 (SC)

d)P.Jeyakodi and others -vs- C.Subbiah @ Kadambur Jeyaraj in Crl.O.P(MD) No.15820 of 2016

e)D.T.Virupakshappa -vs- C.Subash reported in 2016-1 L.W. (Crl.)430.



10. On careful reading of the above said judgements it is clear that while the Government officials are discharging their official duty previous sanction is required for prosecuting against them under Section 197 of Cr.P.C., but the learned counsel for the respondent argued that as per section 197 of Cr.P.C previous sanction is required from the State Government but as per police manual, the Inspector General of Police can dismiss the Inspector of Police, Sub Inspector of Police and thereby sanction is not required. In support of his contention he relied on the decision of this Court in the case of **Nagarajan -vs- Anthony Joseph** reported in **2017 SCC Online Mad 32387**, wherein this Court after referring the Supreme Court judgement has held as follows:

9. With regard to obtaining of the prior sanction for prosecution of Constable, Head Constable, Inspector of Police, in the decision reported in Hon'ble Apex as held

i) CDJ 2013 SC 1089 (Fakhruzamma V.State of Jharkhand & Another) as follows:-

"Whether sanction under Section 197 of Cr.P.C is necessary from State Government before prosecuting Appellant as Sub-Inspector of Police. The question that has come up for consideration in this case is whether sanction under Section 197 Cr.P.C is necessary from the State Government before prosecuting the Appellant, though he was removed from service following the procedure laid down Police Manual and an Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the State Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty".(emphasis supplied)



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ii) *In the CDJ 2003 APHC 412 (IS.A.Azeez V.Pasam Hari Babu and another) it is held that:-*

In the second cited supra, there is no dispute that when a public servant is to be prosecuted in respect of the official acts of such public servant, sanction to prosecute him is necessary. The object of Section 197 Cr.P.C is to protect public servants against irresponsible, frivolous or vexatious proceedings for acts done in discharge of official duty, and to see that no prosecution is started unless there is some foundation for the charge brought. The immunity from prosecution without sanction extends only in acts which can be shown to be done in discharge of official duty or to purport to be done in such discharge, but an offence arising out of abuse of official position by an act not purporting to be official does not require any sanction". (emphasis supplied)

11. From the reading of the above judgements it is clear that Inspector of Police, Sub Inspector of Police, Head Constable and Constable can be removed from service by the Inspector General of Police, thereby sanction from the Government is not required under section 197 of Cr.P.C. Therefore the arguments advanced by the learned counsel for the petitioners is not acceptable with regard to the sanction under section 197 of Cr.P.C.,

12. The main allegation against the petitioners are that in the year 2010, the son of the defacto complainant namely Issac Pandian involved in a criminal case for which search was conducted and the petitioners herein entered into the house of the victim and abused in



filthy language and asked the defacto complainant about the presence of his son. At that time A3 assaulted the petitioner on his face and dragged out him to the street, thereafter all the petitioners assaulted together and due to that assault his teeth was also broken. Thereafter he was taken to Ambasamuthiram Police Station there also the petitioners assaulted the defacto complainant all over the body with sticks. The first accused kicked him with boots and thereafter on the next day on 22.02.2010 at about 10.00 a.m., that first accused asked the other accused not to remand him now since he was having injuries. Then on the same day at about 9.00 pm., he was produced before the Magistrate and he was not even allowed to see the Magistrate and thereafter he was taken to Central Prison, Palayamkottai where after noticing the injuries sustained by the defacto complainant he was admitted in the jail hospital. The alleged occurrence said to have taken place on 21.02.2010 and 22.02.2010 but the defacto complainant has not taken any steps to give complaint immediately. After the lapse of eight years he has given the complaint and there is no reason stated by the defacto complainant for the inordinate delay in presenting the present complaint before the learned Magistrate.

13. Further the said offences were committed while discharging their official duty. Though no sanction is required to prosecute as against the petitioners the defacto complainant has not stated any



reason for the inordinate delay of eight years. Further the learned Magistrate has taken cognizance for the offences under sections 294(b), 325 and 352 of IPC and further for taking cognizance under section 325 of IPC no medical witnesses were examined to show that *prima facie* materials available for the offence under section 325 of IPC. The petitioners have produced only a reply given by the jail authorities for his RTI petition and that alone is not sufficient to take cognizance as against the petitioners for the offence under Section 325 of IPC. The alleged occurrence is said to have taken place in the year 2010. Even according to the complaint, after the alleged occurrence the defacto complainant was remanded to judicial custody and he was produced before the Magistrate. But according to the complainant the petitioners did not allow to say anything before the Magistrate and thereafter at the time of admission in the jail the defacto complainant was referred to hospital. If he was assaulted by the petitioners on 20.02.2010, the defacto complainant ought to have represented before the learned Magistrate at the time of remanding. At the time of remand there is no any remarks recorded by the Magistrate. Even according to the complainant he was produced before the learned Magistrate but he did not say anything about the assault made by the accused. But the accused person had said something and he did not know what he said. While so nothing prevented the second respondent to state about the alleged assault made by the petitioners to the Magistrate when he sustained injuries in tooth. But the complainant has not stated anything



before the Magistrate while produced for remand.

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14. The allegations against the petitioners are not specific and are vague. Even the averments of the complaint are true cognizance was taken by the learned Judge for the offences under Sections 294(b), 325 and 352 of IPC. As far as offence under Section 325 of IPC is concerned the second respondent has not examined the doctor to prove the said grievous injuries. Further no medical records were produced. Per contra only produced the RTI reply received from the jail authorities. The RTI reply is not sufficient to prove the grievous injuries sustained by the second respondent. Further the second respondent did not mention about which teeth was broken. Without any medical evidence the court cannot take cognizance for the offence under Section 325 of IPC. Therefore the offence under Section 323 of IPC alone is made out as per the complaint. Therefore even according to the complainant only offences under Sections 294(b), 323 and 352 of IPC are made out.

15. As per Section 468 of Cr.P.C limitation for the offences under Sections 294(b), 323 and 352 of IPC is three years, thereby the case is barred by limitation. The complainant ought to have lodged the



complaint within three years from the date of alleged occurrence, but the complaint was lodged only after eight years. The date of alleged occurrence is 21.02.2010 but the complaint was lodged on 24.03.2018. Therefore even according to the vague averments of the complaint the limitation was barred. Thereby also the trial court could not took cognizance. Admittedly no petition was filed under Section 473 of Cr.P.C was filed by the complainant before the trial Court for condoning the delay in presenting the complaint. On that ground also the proceedings in C.C. No.94 of 2018 is liable to be quashed.

16. Therefore the cognizance taken by the learned Magistrate without any sufficient material and that too after eight years from the date of occurrence is not proper, therefore the entire proceedings is liable to be quashed. Further on perusal of the record, it is observed that already criminal case was registered as against the second respondent in S.C. No.346 of 2016 and the same was acquitted on 06.09.2016 and as against the son of the defacto complainant a case in C.C. No.153 of 2010 was filed and the same was also acquitted on 09.01.2012. The second respondent waited till the result of the above two criminal cases and after acquittal he filed this complaint after eight years from the alleged date of occurrence, hence for the above reasons the charge sheet is liable to be quashed.



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17. Accordingly these Criminal Original Petitions are allowed and the proceedings in C.C. No.94 of 2018 on the file of the learned Judicial Magistrate, Ambasamuthiram is hereby quashed. Consequently connected miscellaneous petitions are closed.

24.07.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

- 1.The Judicial Magistrate, Ambasamuthiram
2. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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P. DHANABAL,J.

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