



CrI.O.P.(MD) No.13386 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.08.2023**

CORAM:

THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

CrI.O.P.(MD) No.13386 of 2023

L.N.Nithyanandam

... Petitioner

Vs.

1.D.Anitha Arockiamary

2.Muthuramalingam

3.Muthuvel

4.Balaji

5.D.Radhakrishnan

..Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the learned Judicial Magistrate Court No.1, Pudukottai to take the petition preferred by the petitioner under Section 190 r/w 200 Cr.P.C., on the file, number the same and decide it on merits in the manner known to law within the time as may be stipulated by this Court.



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For Petitioner : Mr.K.Jeyamohan

ORDER

This petition is filed seeking for a direction to the learned Judicial Magistrate, Court No.1, Pudukottai to take the petition preferred by the petitioner under Section 190 r/w 200 Cr.P.C., on file, number the same and decide it on merits in the manner known to law within the time as may be stipulated by this Court.

2.It is submitted by the learned counsel for the petitioner that the petitioner has filed a private complaint under 200 Cr.P.C., for the offences under Section 30 of Protection of Human Rights Act, 1993 against the proposed accused that respondent Nos.1 to 4 who are working as police officials and respondent No.5 who was working as a Driver in a Primary Health Centre, Pudukkottai.

3.One Ramadoss, who was working as Child Specialist in Vaitheeshwara Children Special Hospital, Pudukkottai gave a complaint dated 10/12/2021 against the petitioner with false allegations as if the petitioner has received a sum



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of Rs.1,50,00,000/- with a promise to secure a Government job to his daughter-in-law. The respondent Nos.1 to 4 police went to the petitioner's house on 01.06.2020 at 02.00 pm., and threatened his old mother, by name Kanmani, the petitioner's employee, by name Nithya and one relative by name, Arun Raj and enquired them about the petitioner's whereabouts. The respondent Nos.1 to 4 police have video graphed and took photos of the petitioner's premises in breach of privacy of the petitioner. The respondent police have also threatened the petitioner's mother to arrest and the police have also coerced the petitioner to sign a compromise deed, as if the petitioner accepted to give back the money to Ramadoss as per the terms of the compromise. The petitioner was verbally abused and was also threatened with dire consequences, by the respondents/accused.

4. The petitioner gave a complaint to the higher Police officials and also filed Crl.O.P.(MD) No.1776 of 2021 before this Court seeking for a direction to the respondent police not to harass him and vide order dated 30.03.2021, this Court has quashed the compromise deed dated 02.06.2020 directing the Director General of Police to initiate disciplinary proceeding on the respondent No.1



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police within two weeks. Thereafter, the said Ramadoss stated to have preferred an appeal before the Hon'ble Apex Court by filing SLP (Criminal) No.8637 of 2021 and the same was dismissed by the Hon'ble Apex Court vide order dated 10.12.2021.

5. The petitioner has filed a complaint before the learned Judicial Magistrate No.1, Pudukkottai on 12.12.2022, against the respondents/accused but, the learned Magistrate has returned the said petition stating that prior sanction has to be obtained before initiating any proceedings against the official respondents under 197 Cr.P.C.,

6. It is submitted that the petitioner has represented the complaint before the learned Judicial Magistrate, Court No.1, Pudukkottai stating that the sanction is not necessary, for prosecution, as the allegation of the petitioner against the official respondents are that they have misused their powers and in collusion with private individuals, a false case has been registered. It is also submitted that the learned Judicial Magistrate, Court No.1, Pudukkottai has kept the complaint resubmitted by the petitioner pending without any orders, thereby sought for



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7.Heard the learned counsel for the petitioner and perused the records.

8.According to the petitioner, the respondent Nos.1 to 4, who have been working in the police department in various capacity, have harassed the petitioner and extracted the documents, etc by colluding with the private individuals beyond the scope of their official duties. The petitioner stated to have filed a private complaint before the learned Judicial Magistrate, Court No.1, Pudukkottai and the same was returned with an objection that since the respondent Nos.1 to 4 are the Government Officials, sanction is required under 197 Cr.P.C.

9. Section 197 Cr.P.C., runs as under:-

“197. Prosecution of Judges and public servants:-

1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of



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a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression " State Government" occurring therein, the expression " Central Government" were substituted.

2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.



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3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted.

a) Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

b) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act,



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1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

10. The petitioner has filed a complaint under 200 Cr.P.C., against the respondents/accused alleging that the respondent Nos.1 to 4 have committed various offences. The learned Magistrate can either refer the complaint to the police under Section 156(3) or he can also take the cognizance of the offences directly for the offences alleged against the accused.

11. If the accused is a public servant, sanction is necessary as per Section 197(b) prior to taking cognizance of the offences. That means the sanction is not



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necessary for registration of a case for investigating a case and filing the charge sheet.

12.It is settled legal position that the sanction is required, in case if the complaint is filed against the respondents in respect of any of the acts alleged to have been committed by the respondent Nos.1 to 4 while discharging their official duties. Therefore, at that time of referring the complaint to the police, the Court insist for the sanction from the Government.

13.Considering the circumstances, this Petition is disposed of directing the learned Judicial Magistrate, Court No.1, Pudukkottai to number and dispose of the application filed by the petitioner without insisting for sanction so far as referring the complaint to the Police is concerned, as quickly as possible, but not later than 3 weeks from the date of receipt of a copy of this order.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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mm/mvs.

To

- 1.The Judicial Magistrate,
Court No.1, Pudukkottai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

DR.D.NAGARJUN. J.

mm/mvs.



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