



Crl.O.P.(MD)No.16803 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD) No.16803 of 2019
and Crl.M.P.(MD).Nos.9986 & 9987 of 2019

R.Sakthivel

... Petitioner/Accused No.1

Vs.

A.Sivakumar

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.109 of 2017, pending on the file of the learned Judicial Magistrate No.II, Kulithalai and quash the same in so far as the petitioner is concerned.

For petitioner : Mr.B.Ramanathan

For Respondent : Mr.T.Balakrishnan

ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.109 of 2017, pending on the file of the learned Judicial Magistrate No.II, Kulithalai, as far as the petitioner is concerned.

2.The respondent herein filed the private complaint with the following allegations. He purchased a property in S.No.152/2A from one



Anjalai on 28.07.2016. For the purpose of transfer of patta, he approached the first accused on 03.08.2016. He seated in front of the first accused, which was objected by him. He was insulted, abused, criminally intimidated. He asked the second accused to evict him from the office. He was dragged out of the office of the first accused, criminally intimidated and insulted.

3.He gave a complaint against them. But, however, he received a counter complaint from the accused No.1 through the second accused and registered a case in Crime No.568 of 2016 under Sections 294(b), 323, 353, 506(ii) of IPC. He was granted anticipatory bail by this Court. Later, he sent the complaint through post. As per the Standing Order, 566(2), the Inspector of Police, ought to have enquired both the complaint simultaneously. Since there was no action, the complainant approached this Court by way of filing of Crl.O.P.(MD).No.17934 of 2016 and that was also ordered by this Court. Without proper enquiry, the complaint that was given by the petitioner was closed. So he wants the accused to be punished for the appropriate offences.

4.Seeking quashment of the same, the first accused is before this Court. During the course of enquiry, it was stated that a compromise was



reached between the second accused in Crl.O.P.(MD).No.16365 of 2017 and complaint was quashed as against the second accused. So far as this petitioner is concerned no compromise was reached between the parties.

5.Finding that it is a trivial issue between the complainant and Government Officials, I asked the parties to try out a settlement. But that was not carried on and no compromise was reached between the parties.

6.Now, the question which arises for consideration is whether any *prima facie* materials has been placed by this petitioner before the trial Court for initiation of the criminal proceedings. Reading of the complaint shows that the complaint that was given by him was not properly enquired. So he moved Crl.O.P.(MD).No.17934 of 2016 and a direction was issued to the Enquiry Officer to undertake the enquiry in accordance with the law laid down by the Honourable Supreme Court in the case of ***Lalitha Kumari Vs. State of Uttar Pradesh*** reported in ***(2014) 2 SCC 1***. Now, the grievance of the petitioner is that even after such a direction, no proper enquiry was undertaken and that was also closed without giving proper intimation. But, whether any protest petition was filed by this petitioner before the concerned Court is not stated by him. Nothing has also been produced by this petitioner before



the trial Court also. Against him, on the basis of the complaint given by this petitioner, the case was registered in Crime No.567 of 2016. Even though anticipatory bail was granted to the respondent in that matter, the further development is not known.

7.The next grievance is that even though it is a counter complaint, it was not properly enquired in accordance with Police Standing Order. No doubt, that it is a counter complaint. But, the fact remains that against this petitioner FIR was registered on 03.08.2016. But, the counter complaint has been given by this petitioner only on 09.08.2016, which is much after the registration of the FIR against the respondent. So it can be taken only as a plea of defence and that cannot be construed as counter complaint. When the petitioner entered into the compromise with the second accused, why it could not be reached between this petitioner and respondent herein is not understandable. It appears that he wanted to pursue the matter against this petitioner alone. The enquiry report in respect of the respondent's complainant also shows that only to escape from the above registration of the case in Crime No.516 of 2016, the counter complaint has been given. So it is a mistake of fact. Over which it appears that no protest petition has been filed, in stead of, he filed the private complaint.



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8.The learned counsel for the petitioner would rely upon the judgment of the ***Kannan Vs. S.M.Noor Mohamed*** reported in ***2018-2-L.W.(Crl.).576*** for the purpose of argument that this petitioner being a public servant, the sanction under Section 197 Cr.P.C., is very much required. But, without obtaining proper sanction, the above said private complaint has been filed. But, the allegations does not attract the necessity of getting sanction. Here, it is a simple issue that he was criminally intimidated, pushed out of the office of the petitioner and criminal intimation has been made. So no part of this act will attract the necessity of getting sanction order under Section 197 Cr.P.C. The act alleged to have been committed by this petitioner may not be legitimate action with the discharge of the official duty. Insulting, criminally intimidating and pushing a person can no where have reference to discharging official duty. So this argument is not at all available to the petitioner herein.

9.But from the facts narrated above, it is clearly seen that this is nothing but a malafide prosecution initiated by the respondent to overcome the criminal proceedings against him. So this will amount to clear abuse of process of the law and Court. On the sole ground this petition is liable to be allowed.



Cr1.O.P.(MD)No.16803 of 2019

10. Accordingly, this criminal original petition is allowed, the proceedings in C.C.No.109 of 2017, pending on the file of the learned Judicial Magistrate No.II, Kulithalai, in respect of the petitioner, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

16.03.2023

Index : Yes/No

Internet : Yes/No

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To

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



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G.ILANGOVA. J.

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