



Crl.R.C.No.1312 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1312 of 2024

B.M.Prakash

... Petitioner

Vs.

State by its
Sub-Inspector of Police,
Sholingur Police Station,
Sholingur,
Ranipet District.
(Crime No.425 of 2021).

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C,to set aside the order in C.M.P.No.3359 of 2023 in R.C.S.No.24 of 2022, dated 29.01.2024 on the file of the Judicial Magistrate, Sholingur, Ranipet District.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER



The petitioner/defacto complainant has filed a protest petition in Crl.M.P.No.3359 of 2023 before the learned Judicial Magistrate, Sholinghur challenging the closure report of FIR in Crime No.425 of 2021 as Mistake of Fact. The learned Judicial Magistrate, Sholinghur by impugned order, dated 29.01.2024 dismissed the petition, against which, the present criminal revision is filed.

2.The learned counsel for the petitioner submitted that on 11.11.2021, the petitioner called to appear for enquiry in Arulmigu Sholinghur Perumal Temple Office, pursuant to his complaint to the Commissioner of Hindu Religious and Charitable Endowment. The petitioner made allegations against one Jaya, Executive Officer/Assistant Commissioner, Hindu Religious and Charitable Endowment, Sholinghur alleging that in collusion with select bidders, the said Jaya rejected tenders of the competitive bidders. Pursuant to the petitioner's complaint, the Commissioner, Hindu Religious and Charitable Endowment deputed two Audit Officers from the Regional Audit Office, Vellore to conduct enquiry. When the petitioner appeared at about 11.30 a.m for enquiry on 11.11.2021, the said Jaya abused and threatened the petitioner claiming that nothing can be done and she is



politically well connected. Initially, the petitioner lodged a Police complaint to the respondent Police on 11.11.2021 at about 11.00 p.m and CSR.No.504 of 2021 assigned but no action taken, thereafter, approached higher Police officials and on their direction, FIR in Crime No.425 of 2021 for offence under Section 294(b) IPC registered against the said Jaya on 15.02.2021. Thereafter, investigation conducted and finally on 08.01.2022, a closure report filed as “Mistake of Fact” and notice in RCS.No.1 of 2022 served to the petitioner. The petitioner appeared before the learned Judicial Magistrate, Sholinghur filed protest petition, made objection, produced eleven documents and listed four witnesses in support of his contention. The learned Judicial Magistrate, Sholinghur on considering the petitioner's protest and materials submitted came to a conclusion that the grievance of the petitioner appears to be primarily for the malpractice in tender process for which he has to approach the Vigilance and Anti Corruption Department and further gave a conclusion that the Audit Officers and Staffs of the Temple stated that there was only exchange of words between the petitioner and said Jaya, nothing more and dismissed the protest petition which lacks proper consideration of materials and reasoning.



3.He further submitted that the said Jaya, Executive Officer/Assistant Commissioner, Hindu Religious and Charitable Endowment, Sholinghur in collusion with bidders committed malpractice and adopted corrupt practice in the open tender conducted on 09.11.2021. Due to which, the petitioner made complaint to the Commissioner of Hindu Religious and Charitable Endowment who deputed two Audit Officer viz., Saroja and Panneerselvam to conduct enquiry. When the petitioner appeared for enquiry on 11.01.2022, the said Jaya abused and gave life threat to the petitioner. He further submitted that the said Jaya caused loss of nearly Rs.15,00,000/- to the Temple coffers, but the Lower Court not considered the same and relied upon the counter complaint lodged by the said Jaya alleging that the petitioner along with two henchmen entered into the Temple office, abused and threatened the Superintendent Vijayan who complained to Jaya and she intervened and questioned the act of the petitioner, at that time, the petitioner said to have abused and threatened Jaya and others, hence FIR in Crime No.377 of 2021 registered against the petitioner, Umashankar and two others for offence under Sections 294(b), 353 and 506(ii) of IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2000. He further submitted that the petitioner's complaint considered as afterthought and no



proper investigation conducted. In the closure report, eight witnesses shown, their statement recorded, of which the petitioner is shown as LW1 and LW2 & LW3 are Audit Officers, LW4 is the Superintendent of the Temple, LW5 is the Office Assistant, LW6 and LW7 are witnesses for the Observation Mahazar and Rough Sketch and LW8 is the Investigating Officer. All the witnesses are from the Temple Administration and related persons and no independent person examined as witness. The specific case of the counter complainant is that the petitioner came with two others and committed the offence. It is to be noted that the petitioner immediately lodged a complaint on 11.11.2022 and CSR.No.504 of 2021 assigned by the respondent Police and FIR registered only on 15.12.2021. The Lower Court giving reason that the complaint of the petitioner is at a later point of time is not proper. Finding of the Lower Court that the complaint is with regard to malpractice in tender, for which the petitioner to approach the Vigilance and Anti Corruption Department is also not proper. The complaint is with regard to threat and abuse by the said Jaya in presence of the Enquiry Officers and others during enquiry on 11.11.2021.

4.The learned counsel further submitted that the allegations in the



complaint constitutes not only offence under Section 294(b) but also 506(ii) of IPC, on the other hand, the respondent Police conducted investigation in a perfunctory manner to save the Executive Officer of the Temple and not followed the Police Standing Order 566. Though the respondent Police stated in the counter that the investigation in Crime No.377 of 2021 completed on 08.05.2023 and charge sheet filed before the Lower Court, the same is false for the reason that the petitioner filed a copy application before the Lower Court on 29.08.2024 and the same was returned on 30.08.2024 for the reason that '*Charge sheet not yet submitted, 161 statement cannot be given in this FIR stage, hence returned.*'. This confirms no charge sheet as on date filed.

5.The learned Additional Public Prosecutor appearing for the respondent Police filed counter objecting the petitioner's submissions and submitted that on the complaint of the petitioner, CSR.No.504 of 2021 assigned on 11.11.2021 at about 23.00 hours. The complaint was against one Jaya, Assistant Commissioner/Executive Officer of the Temple who said to have abused and threatened the petitioner. Earlier to the complaint of the petitioner, the said Jaya lodged a complaint on 11.11.2021 at about 22.00



hours and FIR in Crime No.377 of 2021 registered against the petitioner, Umashankar and two others for offence under Sections 294(b), 353 and 506(i) of IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2000. After preliminary enquiry, FIR in Crime No.425 of 2021 registered on the complaint of the petitioner. Thereafter, investigation conducted, statement of witnesses viz., the petitioner/LW1, Enquiry Officers Saroja and Panneerselvam/LW2 & LW3, Superintendent Vijayan/PW4, Office Assistant Narasingarajan/LW5, Dhayalan and Mani/LW6 & LW7 and Investigating Officer/LW8 recorded. All witnesses clearly stated except exchange of heated words, there is nothing more. More specifically there was no threat or abuse.

6.He further submitted that the petitioner questioned the tender process conducted on 09.11.2021 and in support of one Mohan/unsuccessful tenderer questioned the tender process and sent a complaint to the Commissioner of Hindu Religious and Charitable Endowment, thereafter during enquiry, the petitioner in a combative mood threatened, abused and created unpleasant situation in the Office. The act of the petitioner proved during investigation and charge sheet filed. For the allegation of malpractice in the tender process on 09.11.2021, the petitioner can approach the



Vigilance and Anti Corruption Department for further action in this regard and not by foisting and projecting case as though he was threatened and abused. The petitioner's primary ground of attack is based on the RTI report collected with regard to tender process. The present Police complaint by the petitioner is only to add muster to the allegations made in the tender process. Considering all these aspects, the respondent Police closed the FIR in Crime No.425 of 2021 as Mistake of Fact and served notice in R.C.S.No.1 of 2022 to the petitioner on 08.01.2022. The Lower Court finding that the petitioner not participated in the tender and the grievance of the petitioner appears to be primarily on the malpractice in tender process and also finding no threat or abuse caused to the petitioner on 11.11.2021, dismissed the protest petition by a well reasoned impugned order which needs no interference.

7.This Court considered the rival submissions and perused the materials available on record.

8.It is seen that the petitioner accusing the malpractice committed in open tender for collection of hair on 09.11.2021, made a complaint to the Commissioner of Hindu Religious and Charitable Endowment Department.



In response to the same, the Commissioner nominated two Audit Officers from the Regional Office for enquiry. The petitioner was summoned to appear for enquiry. In response to the same, the petitioner appeared on 11.11.2021 at 11.30 a.m. At that time, Jaya, Assistant Commissioner/Executive Officer of the Temple, Sholinghur said to have abused and threatened the petitioner. The Executive Officer/Assistant Commissioner of the Temple Tmt.Jaya lodged Police complaint to the respondent Police and FIR in Crime No.377 of 2021 registered against the petitioner, Umashankar and two others for offence under Sections 294(b), 353 and 506(i) of IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2000 and charge sheet filed. On the complaint lodged by the petitioner on 11.11.2021, CSR.No.504 of 2021 assigned and thereafter on 15.12.2021 FIR in Crime No.425 of 2021 registered against the said Jaya. In Crime No.425 of 2021, investigation conducted, eight witnesses examined, their statements recorded, closure report as Mistake of Fact filed and notice in R.C.S.No.1 of 2022 served to the petitioner.

9.The primary objection of the petitioner against the closure report is that the respondent Police not followed the Police Standing Order 566. The



Investigating Officer finding that the case filed by Jaya, Assistant Commissioner/Executive Officer is true, conducted investigation, recorded the statements and filed charge sheet before the Lower Court. Since both the complaints alleged to arise out of the same incident, Police Standing Order 566 followed. The Investigating Officer after investigation filed charge sheet in Crime No.377 of 2021 and dropped the case in Crime No.425 of 2021 as “Mistake of Fact.”

10.In the protest petition, it is seen that the petitioner's complaint primarily on the malpractice in the tender. Admittedly, the petitioner is not a Tenderer, for one Mohan he raised objections, complained to the Commissioner of Hindu Religious and Charitable Endowment and collected documents through RTI with regard to the tender. As regards the incident on 11.11.2021, there are two complaints received by the respondent Police. One is from the Executive Officer and another one is from the petitioner. The Investigating Officer found fit to investigate both cases, filed charge sheet on the complaint of the Executive Officer and closed the case of the petitioner. The petition filed by the petitioner before the Lower Court under Section 173(8) Cr.P.C considered as protest petition. The learned counsel argued for not following the procedure contemplated under Section 566 of



Police Standing Order. The thrust of the petition is only with regard to malpractice in tender procedure and the incident happened on 11.11.2021.

As regards the complaint on the tender procedure, the Lower Court rightly not considered the same recording it is for the petitioner to pursue the complaint with the concerned agency. As regards the incident on 11.11.2021, the Lower Court passed a detailed order confirming the closure report. This Court finds the impugned order is proper and the same is hereby confirmed.

11.The Hon'ble Full Bench of this Court in the case of “***T.Balaji and another v. The State rep. by The Inspector of Police, New Washermenpet Police Station, Chennai*** reported in ***CDJ 2024 MHC 4506***” issued guidelines for Police Standing Orders. In paragraph No.58 A(i)(b)iv, it had held as follows:

“iv. *The party whose complaint is found to be false or is found to be the aggressor by the IO resulting in the case being referred as a mistake of fact, shall serve RCS notice to the complainant. The complainant/victim may file a protest petition and proceed further in a manner known to law.*”



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12.In the light of the above decision, the petitioner to proceed further in the manner known to law is that the petitioner is not denude of filing a private complaint if he so desires. The Lower Court on filing of any such complaint can consider the same on its own merits and in accordance with law. It is made clear that the observations made in the above order is only for the disposal of the present criminal revision.

13.In the result, this criminal revision case stands dismissed.

03.09.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

- 1.The Judicial Magistrate,
Sholingur.
- 2.The Sub-Inspector of Police,
Sholingur Police Station,
Sholingur,
Ranipet District.



3. The Public Prosecutor,
Madras High Court.

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M.NIRMAL KUMAR, J.

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