



CRL OP(MD). No.2644 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 20.02.2024

CORAM

The Hon`ble Mr.Justice M. DHANDAPANI

**CRL OP(MD) No.2644 of 2022 and
Crl.M.P.(MD) Nos.1964 and 1965 of 2022**

Selvam

... Petitioner

Vs

T. Praveen Kumar

... Respondent

PRAYER :- Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records relating to the Private Complaint in C.C.No. 510 of 2021 on the file of the Judicial Magistrate Court No.II, Madurai and quash the same so far as the petitioner/Accused No.2 is concerned.

For Petitioner : M/s. R. Raja
For Respondent : No appearance

ORDER

This petition has been filed seeking to quash the charge sheet in CC No.510/2021 on the file of the learned Judicial Magistrate, No.II, Madurai.

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2. Though notice was served on the respondent, neither the respondent nor his counsel is present today to prosecute the matter. Since no adverse orders are going to be passed against the respondent, the case is taken up for final hearing.

3. The case of the complainant is that pursuant to the call made by the sister of the complainant on 20.06.2020, the complainant along with his parents had rushed to the house of his sister to settle the dispute. While they reached, the police officials attached to the Tallakulam Police Station were there. It is alleged that at that time, the petitioner said to have abused the complainant and the complainant and his cousin were taken to the police station and they were brutally attacked by the police officials including the petitioner herein. Hence, a complaint came to be preferred by the complainant and since no action was taken against the petitioner and others, the complainant said to have preferred a petition under Section 200 r/w 190(1) (c) of Cr.P.C., pursuant to which, cognizance was taken and the said complaint was taken on file in C.C.No.510/2021 for offences under Sections 342, 294(b), 323, 324, 326 and 506(I) IPC, for quashing the same, the petitioner is before this Court.



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4. The learned counsel for the petitioner would submit that the petitioner is a Police Constable and on 20.06.2020, a call was made by the sister of the complainant, viz., Kayalvizhi. He would further submit that pursuant to the said call, the petitioner along with other police official and the Sub Inspector of Police, who were on patrolling, rushed to the place of occurrence. He would further submit that the petitioner, in order to discharge his lawful duties, had gone to the place of occurrence, thus, it would not be stated to be in violation of law. It is the specific contention of the learned counsel that before taking cognizance against the public servant/police officials, sanction is required under Section 197 of the Code of Criminal Procedure and hence, without any such sanction, the learned Magistrate would not take cognizance and taking cognizance against the police officials, who are discharging their official duties, is per se illegal. He would further submit that the petitioner and prays for interference.

5. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.



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6. From the records, it is seen that while the petitioner along with other officials were on patrolling, on the information came from the control room (emergency No.100) to which the complainant's sister made a call, the petitioner and others reached the place of occurrence, i.e., the house of the sister of the complainant. While so, it is the case of the complainant that the police officials attacked them is not based on any materials. It is further to be seen that though it is the case of the petitioner that they had reached the place of occurrence on the information from the control room, to prove the same, necessarily there should be some entries with regard to the call details or to the information received. However, in order to prove the case of the petitioner, the petitioner has not placed the same before this Court. However, the petitioner has simply annexed the duty chart alone in the typed set of papers.

7. It is the further case of the petitioner that prior to take cognizance of the complaint against the officials of the State/public servant by the learned Magistrate, prior sanction under Sections 195 and



197 of Cr.P.C. is mandatory. However, it is the specific case of the petitioner that prior sanction has not been obtained by the learned Magistrate before taking cognizance. In order to appreciate the said contention, it is necessary to extract the relevant provisions, ie., Section 197 of Cr.P.C., which is 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 his official duty, no Court shall take cognizance of such offence except with the previous sanction—

(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 whole acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government

(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

(3A) 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

(3B) 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, 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.”

8. In the present case, though it is the case of the petitioner that the petitioner has discharged his lawful duties and hence, it cannot be said to be against law, the petitioner has not even produced the call details or information received from the control room and he discharged his official duty. The petitioner has simply annexed the duty chart, except that there is no material whatsoever available to prove the case of the petitioner. Hence, in the above circumstances, the trial court has rightly taken the



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case on file and this Court is of the considered view that no prejudice would be caused to the petitioner, if he is subjected to due trial as sufficient opportunity would be given to him to put forth his defence. The petitioner cannot be let by quashing the charges framed against him as that would completely undermine the alleged act, which is the subject matter of criminal trial pending against him. The grounds that are raised by the petitioner shall be raised at the time of trial. Useful reference in this regard can be had to the decision of the Hon'ble Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)***.

9. For the reasons aforesaid, this Court finds no ground or scope to quash C.C.No. 510 of 2021 on the file of the Judicial Magistrate Court No.II, Madurai. Accordingly, this petition, being devoid of merits, is dismissed. Consequently, connected miscellaneous petitions are dismissed.

10. The learned counsel appearing for the petitioner submitted that this Court may consider dispensing with the personal appearance of the petitioner before the court below. Taking into consideration the request



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as made by the learned counsel for the petitioner, the appearance of the petitioners before the trial court is dispensed with except for his appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioner is necessary, the trial court, at its wisdom, shall direct his appearance on those days.

20.02.2024

NCC : Yes/No
Index : Yes/No
RR

TO

The Judicial Magistrate Court No.II,
Madurai.



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M.DHANDAPANI. J

RR

**ORDER
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