

Crl.OP(MD)No.8116 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.OP(MD)No.8116 of 2024

and

Crl.MP(MD)No.5521 of 2024

K.Pondevi

.. Petitioner

v.

1.State Rep. by
The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

2.Jerlin

.. Respondents

PRAYER: Petition filed under Section 482 CrPC to call for the records relating to CC.No.174 of 2020 on the file of the learned Judicial Magistrate, Eraniel and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.S.Suresh Kumar

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)
for R.1



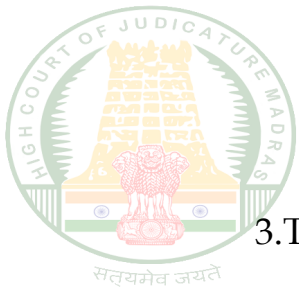
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ORDER

The petitioner / accused, a serving Inspector of Police, has questioned the maintainability of the present prosecution on the ground that no prior sanction, as contemplated under Section 197 of the Code of Criminal Procedure, 1973, has been obtained from the competent authority. Therefore, she has filed this petition to quash the charge sheet in CC.No.174 of 2020 on the file of the Judicial Magistrate Court, Eraniel, insofar as she is concerned.

2.On the complaint of the second respondent / defacto complainant, a case was registered in Crime No.391 of 2019 on the file of the Karungal Police Station, Kanyakumari, for the offences u/s.120(B), 109 IPC r/w Sections 34, 149, 294(b), 147, 148, 365, 342, 352, 386, 380, 379, 392, 506(ii) IPC. After investigation, the final report has been filed and the same was taken on file in CC.No.174 of 2020. The petitioner herein is arrayed as accused no.13.



3.The allegation as against the petitioner is that even though she was aware of the crimes committed by the accused nos.1 to 12, through the third accused, she has not taken any steps to register a case as against the accused persons. It is further alleged that the petitioner, colluding with the other accused, enabled them to commit the offences.

4.The case of the petitioner is that the acts alleged were committed during the course of official duties, and hence, in the absence of sanction u/s.197 CrPC, the proceedings are vitiated.

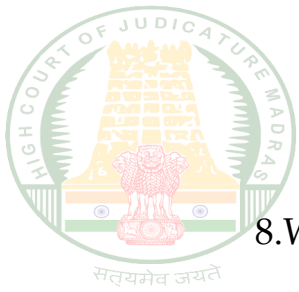
5.Learned Counsel appearing for the petitioner submitted that the alleged acts were committed in the course of official duty, and as such, prior sanction u/s.197 CrPC is mandatory. It was contended that the requirement of sanction is not confined merely to acts strictly within the bounds of official duty, but extends to acts which are purported to be done in the discharge of such duty, or acts done under the colour of or even in excess of authority. The act and the official function are so intimately connected that it can reasonably be inferred that the act in question was



performed in the purported exercise of official duty, though it may have exceeded what was required under the circumstances. On this basis, it was submitted that the absence of sanction renders the prosecution unsustainable.

6.This Court considered the submissions made by the petitioner's Counsel and also perused the materials placed on record.

7.On a careful perusal of the records and the nature of the accusation, this Court is not inclined to accept the petitioner's contention that the acts alleged were committed in the course of discharge of official duties. The allegation against the petitioner/accused is not one of a routine official act, but of purposeful omission—specifically, that despite being in possession of information disclosing the commission of serious cognizable offences by certain individuals, she had deliberately refrained from taking action. It is further alleged that such omission was not inadvertent, but suggestive of connivance, thereby enabling the offence.

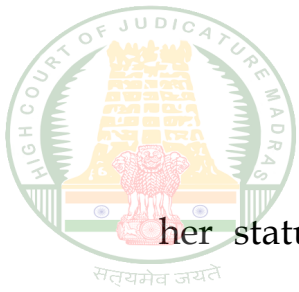


8. While it is well settled that Section 197 CrPC serves as a safeguard against vexatious prosecution of public servants, the protection it affords is neither blanket nor automatic. The provision cannot be invoked to shield acts that are patently unlawful or committed for extraneous reasons. It applies only to those acts which are so integrally connected with the discharge of official duties that they cannot be separated therefrom.

9. In *P.K. Pradhan v. State of Sikkim* [(2001) 6 SCC 704], the Hon'ble Supreme Court has held as follows:-

"15. ... An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty. But if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required."

10. Applying the above principle to the present case, the inaction alleged against the petitioner, particularly when viewed in the context of



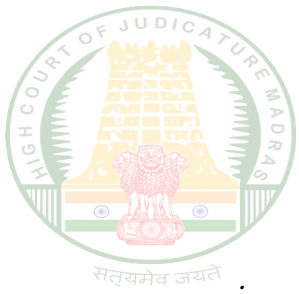
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her statutory obligations under Sections 154 and 156 CrPC, cannot be deemed as acts performed in discharge of official duty. On the contrary, it reflects a conscious abdication of that duty, coupled with a *prima facie* allegation of collusion. Therefore, the bar under Section 197 CrPC does not apply.

11. In *Rakesh Kumar Mishra v. State of Bihar* [(2006) 1 SCC 557], the Hon'ble Supreme Court reiterated thus:-

"12. ... The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. A public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But if the same officer commits an act in the course of service but not in the discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted."

12. In *Choudhury Parveen Sultana v. State of West Bengal* [(2009) 3 SCC 398], the Hon'ble Supreme Court has observed as under:-



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“14. ... However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered *de hors* the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.”

13. Similar views have been expressed in *State of Orissa v. Ganesh Chandra Jew* [(2004) 8 SCC 40], where the Hon'ble Supreme Court emphasized that Section 197 CrPC is not intended to be a cloak for illegal acts done under the guise of official duty. Likewise, in *Prakash Singh Badal v. State of Punjab* [(2007) 1 SCC 1] and *Bhagwan Prasad Shrivastava v. N.P. Mishra* [(1970) 2 SCC 56], the Hon'ble Supreme Court held that acts done for personal benefit or without any legal justification fall outside the protective ambit of Section 197.

14. This Court, in *Maheswari v. State of Tamil Nadu* [WP(MD) No. 2448 of 2015], also held that misuse of official power, such as custodial



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violence, cannot be construed as discharge of official duty so as to attract

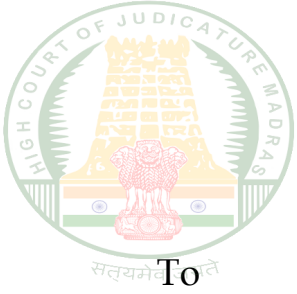
Section 197 CrPC protection.

15. In view of the above principles, and applying them to the facts on hand, this Court is of the view that the acts alleged against the petitioner do not arise from any lawful discharge of her official duties. Instead, they reflect a *prima facie* misuse of position and a deliberate dereliction of duty. As such, the requirement of prior sanction under Section 197 CrPC does not arise.

Accordingly, the objection raised by the petitioner / accused in regard to the absence of sanction is rejected and this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
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To
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- 1.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.
- 2.The Judicial Magistrate,
Eraniel.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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