

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.09.2023**

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CORAM:

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

Crl.O.P.(MD) No.15503 of 2022

Anton Xavier Vinister

... Petitioner

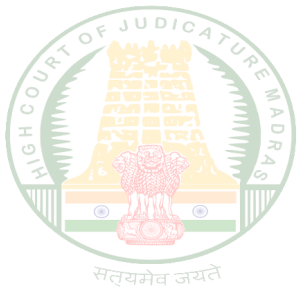
Vs.

1.The Superintendent of Police,
Tirunelveli District.

2.The Inspector of Police,
Radhapuram Police Station,
Tirunelveli District.

..Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the written endorsement being made on the petitioner's complaint in Cr.M.P.No.(Unnumbered) of 2022 dated 12.08.2022 and 18.08.2022 by the learned Judicial Magistrate, Radhapuram, Tirunelveli District and consequently, direct the aforesaid learned Magistrate to pass orders on the said complaint filed under Section 156(3) Cr.P.C, in accordance with law as expeditiously as possible within the time stipulation as prescribed by this Court.



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For Petitioner : Mr.R.Anand
for Mr.P.T.Ramesh Raja

For Respondents : Mr.Veera Kathiravan
Additional Advocate General

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ORDER

This Criminal Original Petition is filed seeking for intervention of this Court under Section 482 Cr.P.C to set aside the written endorsement made on the petitioner's complaint in Cr.M.P.No.(Unnumbered) of 2022 dated 12.08.2022 and 18.08.2022 by the learned Judicial Magistrate, Radhapuram, Tirunelveli District and to direct the learned Magistrate to consider the complaint of the petitioner.

2. Heard Mr.R.Anand, learned counsel appearing for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents and perused the records including the impugned order carefully.

3. According to the learned counsel appearing for the petitioner, on 28.08.2021, one Abinesh was done to death in the petitioner's village, on which, a case has been registered in Crime No.337 of 2021 and the petitioner was falsely implicated in the said case and he was taken to

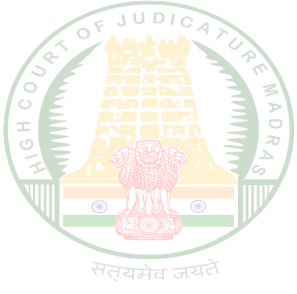


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custody and confined in prison. When the petitioner was in judicial custody, he was also formally arrested in another Crime No.187 of 2021 and on enquiry, he came to know that Crime No.187 of 2021 was registered at the instance of one Thirumal. The petitioner has filed quash petition in CrI.O.P.(MD).No.11574 of 2022 and same was allowed and the FIR in Crime No.187 of 2021 was quashed on 29.06.2022.

4. It is further submitted by the learned counsel appearing for the petitioner that with a sole motive to detain the petitioner only a false case has been registered with false records and thereby, the petitioner has sent a complaint dated 01.07.2022 to the Inspector of Police concerned and the Superintendent of Police to register a case against the Police Officer/proposed accused on 14.07.2022. As there was no response, the petitioner filed a complaint under Section 156(3) Cr.P.C., on 08.08.2022 on the file of the concerned learned Magistrate alleging that the proposed accused 1 to 3 have committed the offence punishable under Sections 166(A), 167, 192, 195, 211 IPC. However, the said complaint was returned with the following eight objections:-

“1. இராதாபுரம் காவல் ஆய்வாளருக்கு அனுப்பிய மனுவும்,
அதற்கான அஞ்சலக ரசீதும் அசல் தாக்கல் செய்யப்படவில்லை.



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2. 6வது ஆவணத்திற்கு நீதிமன்ற முத்திரை கட்டணம் ஒட்டப்படவில்லை.

3. 9வது மற்றும் 11வது ஆவணம் அசல் என குறிப்பிடப்பட்டுள்ளது. ஆனால் அசல் தாக்கல் செய்யப்படவில்லை.

4.'4'வது ஆவணத்தில் உள்ள 161 வாக்குமூலங்கள் எத்தனை நபர்களுக்குரியது என குறிப்பிடவில்லை.

5. மனு குறுந்தலைப்பில் மற்ற காவலர்கள் யார் என்று விரிவாக குறிப்பிடப்படவில்லை.

6. இராதபுரம் காவல் ஆய்வாளரை கட்சி சேர்க்காததற்கு காரணம் ஏதும் குறிப்பிடப்படவில்லை.

7. காவல் ஆய்வாளர் மீது வழக்கு தாக்கல் செய்ய அரசு முன் அனுமதி பெறப்பட்டதற்கான ஆவணம் தாக்கல் இல்லை.

8. கூடுதல் தாள் இணைக்கவும்.”

“1.The Original copy of the Postal receipt and the complaint sent to the Radhapuram Police Inspector is not filed.

2. Court fee stamp not affixed for 6th document.

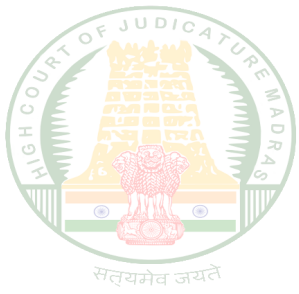
3.9th and 11th document has been mentioned has original whereas original was not filed.

4.It is not stated the 161 statements annexed as 4th document pertains to how many persons.

5.In the petition short cause title, the other police personals details not given.

6.No reasons assigned for not arraying the Inspector of Police, Radhapuram, as a party.

7.No document is available to show the sanction obtained to



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prosecute the Inspector of Police.

8.Enclose Additional Papers.”

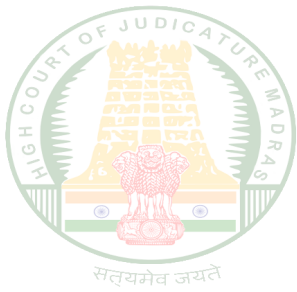
5. The petitioner has allegedly complied the objections on 16.08.2022 and resubmitted the complaint, however, on the very same day, the said complaint was again returned with an endorsement that “previous directions are not yet complied with”.

6. Aggrieved by the written endorsement, the present Criminal Original Petition is filed on the following grounds:

(i) Even though the objections raised by the learned Magistrate have been complied with, the learned Magistrate, without considering the same, has mechanically returned the complaint.

(ii) The Inspector of Police is not a public servant removable by the Government, hence, he will not have any privilege under Section 197 Cr.P.C.

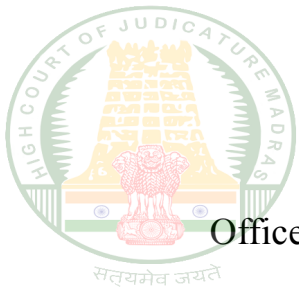
(iii) since the facts narrated in the complaint would attract all the offences alleged, instead of returning the complaint, the learned Magistrate should have passed orders as sought for.



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7. Mr.Veera Kathiravan, learned Additional Advocate General has appeared on behalf of the proposed accused. In normal course prior to issuance of notices to the respondents, the audience cannot be given to represent the proposed accused, but, at the request of the learned Additional Advocate General that since the petitioner has not mentioned all the facts in the complaint, prejudice may likely cause to the proposed accused who are working as Police Officers, the learned Additional Advocate General is permitted to assist the Court. A counter affidavit has also been filed on behalf of the second respondent/the Inspector of Police, Radhapuram Police Station, Tirunelveli District.

8. It is submitted by the learned Additional Advocate General that the petitioner is making an attempt to file a complaint by suppressing the material facts not only before the learned Magistrate but also before this Court. He has submitted that an Enquiry Officer is appointed by the first respondent/Superintendent of Police in respect of complaint of the petitioner and the Enquiry Officer concerned has issued summons to the petitioner and his wife to appear before the Enquiry Officer, accordingly, both of them appeared before the Enquiry Officer and their statements were recorded and a report has also been submitted by the Enquiry



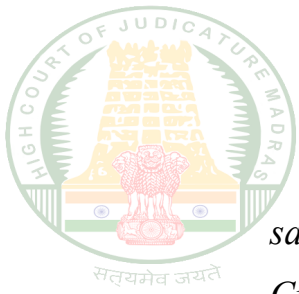
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Officer. The petitioner has also got the report of the Enquiry Officer under the Right to Information Act and the petitioner has been following his complaint on day-to-day basis and these facts have been suppressed before the learned Magistrate in the complaint and also before this Court. It is further submitted that public servants have to be protected from vexatious litigations and that the petitioner, instead of resubmitting the complaint along with explanations to satisfy in respect of maintainability of the complaint before the trial Court, has approached this Court by way of filing this petition.

9. On 12.08.2023, the complaint filed by the petitioner was returned by the learned Magistrate with eight objections, of which, the objection Nos.1, 2, 3, 4, 6 and 8 have been complied with which are purely technical/procedural in nature. So far as objection No.7 is concerned, the petitioner has represented the complaint with following endorsement:

Humble Reply of the petitioner for the 7th query:

The persons shown as accused in the petition are Inspector of Police, Sub-Inspector of Police and the Police Constable and the authority vested with the power to remove them from service is vested with the Inspector General of Police and not the State Government. Therefore, to prosecute them



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sanction from Government is not necessary. Further, the 197 Cr.P.C will not come for the rescue for police officers who have created forged documents. In this regard, the petitioner submits the judgment of Supreme Court and High Court as follows:-

1.(2015) 13 SCC 87

2.(2009) 3 SCC 398

3. Crl.O.P.No.27423 of 2011 order dated 23.10.2017, the Madras High Court has held that the previous sanction of State Government is not required to prosecute above persons.

4. Crl.O.P(MD).No.18735 of 2016 order dated 14.10.2020.

5.Crl.O.P.No.25488 of 2016 order dated 29.09.2021.

6.W.P(MD).No.22081 of 2019 order dated 11.11.2019 in this case, the petitioner filed petition seeking previous sanction of the government for prosecuting Inspector of Police and Sub-Inspector of Police, while the petition came up for hearing, the Additional Public Prosecutor of State of Tamil Nadu argued that for prosecuting the Inspector of Police, the previous sanction from government is not required. Recording the submission, the Hon'ble High Court is closed.

10. However, on 18.08.2023, the complaint was again returned by

the learned Magistrate with an endorsement that “previous directions are



not yet complied with”. Aggrieved by the written endorsement dated 12.08.2023 and 18.08.2023, the petitioner has approached this Court.

11. Once the complaint was returned with some objections, the petitioner should have resubmitted the complaint again with a request to hear the petitioner/complainant in respect of all the objections and to pass speaking orders. In case if the petitioner has resubmitted the complaint again, the learned Magistrate could have considered and heard the petitioner and should have passed some orders. However, instead of resubmitting the complaint and inviting the orders, the petitioner has prematurely approached this Court, challenging the written endorsement.

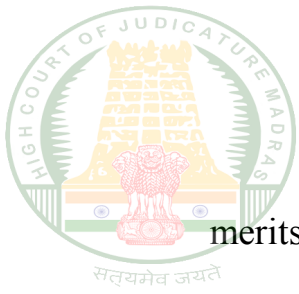
12. Further, on 12.08.2023, the learned Magistrate has returned the complaint with eight objections and on going through the written endorsement, it is clear that the petitioner has complied with some of the objections. On resubmission, if at all the learned Magistrate is of the opinion that some of the objections have not been complied with, the learned Magistrate should have returned the complaint specifically mentioning as to which of the objections has not been complied with by the petitioner. However, the learned Magistrate, on the very same day, has simply returned the complaint as if all the previous objections have



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not been complied with by the petitioner, which is factually in-correct. If at all the learned Magistrate is not convinced with re-submission of complaint by the petitioner, the learned Magistrate should consider the written endorsement and should have taken a decision either to reject the complaint by following the procedure contemplated in Code of Criminal Procedure or to consider the merits of the complaint. Once the learned Magistrate is of the opinion that the complaint is not proper, the learned Magistrate is expected to exercise its powers and consider the complaint taking into consideration all the aspects and pass appropriate orders.

13. Considering the above, since the petitioner has approached this Court prematurely, this Court at this stage cannot direct the learned Magistrate to pass orders under Section 156(3) Cr.P.C., at this stage. Consequently, the petitioner is directed to resubmit the complaint with proper endorsement within a period of two weeks from the date of receipt of a copy of this order and on resubmission of which, the learned Magistrate is directed to consider the same and pass speaking orders if necessary by hearing the petitioner on the Bench in respect of the objections under which the complaint was returned. If the learned Magistrate is satisfied that all the objections raised have been complied with, then the learned Magistrate is directed to consider the complaint on



merits and dispose of the same as expeditiously as possible. It is needless to mention that merely because the proposed accused are heard, the learned Magistrate need not issue notice to the proposed accused during the course of hearing about maintainability as at the time of hearing in respect of admitting the complaint, the accused has no role to appear and contest.

14. With the above observations, this Criminal Original Petition is disposed of.

Index : Yes/No
Internet : Yes/No
ssb

26.09.2023

Note: The Registry is directed to return the original case records if any filed, after substituting the photo copies and on receiving the original complaints.

To
1.The Superintendent of Police,
Tirunelveli District.

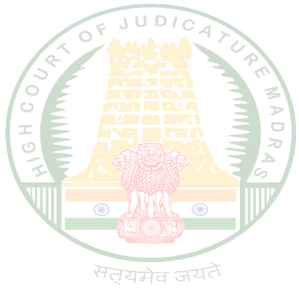
2.The Inspector of Police,
Radhapuram Police Station,
Tirunelveli District.



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3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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DR.D.NAGARJUN. J.

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