IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 22.02.2021

PRONOUNCING ORDERS ON : 26.02.2021

CORAM

THE HONOURABLE JUSTICE **MR.N.ANAND VENKATESH**

Crl.O.P No.2514 of 2020
and
Crl.MP.No.1536 of 2020

A.Radhika ... Petitioner

.Vs.

Wilson Sundararaj ..Respondent

PRAYER**:** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to Crl.MP.No.23751 of 2019 in S.C.No.123 of 2015, on the file of the Hon'ble XVII Additional Judge, City Civil Court at Chennai and quash the same as not maintainable either in law or on facts.

For Petitioner : Mr.V.Lakshmi Narayanan
for Mr.K.P.Anantha Krishna

For Respondent : Mr.B.R.Shankaralingam

ORDER

This Criminal Original Petition has been filed challenging the summons issued by the Court below directing the Petitioner to attend an enquiry initiated by the court below based on the complaint given by the Respondent under Section 340 of The Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.").

2. The Respondent who was arrayed as A3 in S.C. No. 123 of 2005 before the Additional District and Sessions Court, FTC III, Chennai, faced trial along with 3 other accused persons for an offence under Sections 120B, 307, 450, 451, 384, 506-Part II of the Indian Penal Code, 1860 (hereinafter referred to as "I.P.C") read with Section 109, I.P.C. The FIR in this case was registered in Crime No. 473 of 2002 by the F-2 Police Station, Egmore and later on the investigation was transferred to the file of the CBCID. The Petitioner who was then the Deputy Superintendent of Police, CBCID was assigned the task of investigating the case. It was based on the final report filed by the Petitioner, the accused persons faced the trial before the concerned court.

3. The trial court on appreciation of the oral and

documentary evidence and after considering the facts and circumstances of the case was pleased to acquit all the accused persons from all the charges through a judgement dt. 23.02.2006.

4. This judgement was taken on appeal by the CBCID before this Court in Crl. Appeal No. 52 of 2010. This Court by a judgement dt. 22.06.2017, dismissed the appeal and confirmed the judgment passed by the trial court.

5. The Petitioner thereafter, filed a complaint before the court below in the year 2019 under Section 340, Cr.P.C. against the defacto complainant and the Petitioner herein, on the ground that they have committed an offence under Section 211, I.P.C., and the entire case was a malicious prosecution against the Respondent.

6. The court below on receipt of the complaint proceeded to issue summons to the Petitioner to conduct an enquiry before acting upon the complaint. Aggrieved by the summons issued by the court below, the present petition has been filed before this Court.

 7. Mr. V. Lakshminarayanan, learned counsel appearing on

behalf of the Petitioner submitted that the Petitioner had only investigated the FIR after it was transferred to CBCID and the mere fact that the Respondent was acquitted by the court will not attract an offence under Section 211, I.P.C. The learned counsel further submitted that if the offence under Section 211, I.P.C. cannot be made applicable against the Petitioner, there was no occasion for the court below to even conduct a preliminary enquiry by issuing summons to the Petitioner. It was submitted that the sum and substance of the complaint given by the Respondent is that there was a malicious prosecution against the Respondent and if the claim made by the Respondent is taken to be true, the Respondent can only file a suit claiming for damages for malicious prosecution before the competent court, and it cannot be a ground to file a complaint under Section 340, Cr.P.C.

8. The learned counsel in order to substantiate his submissions relied upon the following judgements of the Hon'ble Supreme Court:

a.***Singh Marwah v. Meenakshi Marwah***, reported in ***(2005) 4 SCC 370***;

b. ***Santokh Singh &Ors. v. IzharHussan&Anr***. reported in ***(1973) 2 SCC 406;***

c. ***Sasikala Pushpa v. State of T.N***, reported in ***(2019) 6 SCC 477***; and

d. ***S. MukanchandBothra v. Rajiv Gandhi Memorial Educational Charitable Trust &Ors***. reported in ***2015 SCC OnLine Mad 11421***.

9. Per contra, the learned counsel appearing on behalf of the Respondent submitted that the findings given by the trial court and this Hon'ble Court in the criminal appeal clearly show that the entire case is false and the Respondent has been intentionally roped in as an accused for having filed a Habeas Corpus Petition questioning an illegal arrest made by the police. The learned counsel further submitted that the court below has only called the Petitioner for a preliminary enquiry and whatever grounds are raised by the Petitioner in the present petition, can be raised before the court below and the court below will take a decision in accordance with law. Therefore, the Petitioner cannot be allowed to rush to this Court even without giving an explanation to the court below by attending the enquiry. The learned counsel in order to substantiate his submissions relied upon the judgement of the Hon'ble Supreme Court in ***Perumal v. Janaki*** reported in ***(2014) 5 SCC 377***.

10. This Court has carefully considered the submissions

made on either side and the materials available on record.

11. It is true that the court below has issued a summon to the Petitioner to attend an enquiry in order to enable the Court to take a decision on the complaint given by the Respondent. The complaint is given on the basis that the Petitioner has committed an offence under Section 211, I.P.C. If the allegations made in the complaint, even if taken as it is, do not make out an offence under Section 211, I.P.C., there is no requirement for the Petitioner to go through the ordeal of an enquiry before the court below.

12. In view of the above, this Court will test the complaint given by the Respondent to satisfy itself as to whether an offence under Section 211, I.P.C. has been made out against the Petitioner. This is the only limited scope that is involved in the present petition.

13. For proper appreciation, Section 211, I.P.C. is extracted hereinunder:

211. ***False charge of offence made with intent to injure.—****Whoever, with intent to cause injury to any*

person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, [imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

14. The essential ingredients for invoking Section 211, I.P.C. are that the complaint must have falsely charged a person with having committed an offence. The complainant, at the time of giving the complaint must have known that there is no just or lawful ground for making a charge against the person. This complaint must have been given with an intention to cause injury to a person.

15. The Hon'ble Supreme Court on various occasions has dealt with the scope of Section 211, I.P.C. and the same can be taken note of before coming to a conclusion in this case.

16. The essentials to be satiated in order to attract an

offence under Section 211, I.P.C. was elucidated by the Hon'ble Supreme Court in ***Santokh Singh &Ors. v. IzharHussan&Anr***. (cited *supra*). The relevant paragraph is extracted hereinunder:

> *"10. […] This section as its marginal note indicates renders punishable false charge of offence with intent to injure. The essential ingredient of an offence under Section 211 IPC is to institute or cause to be instituted any criminal proceeding against a person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge. Instituting or causing to institute false criminal proceedings assume false charge but false charge may be preferred even when no criminal proceedings result. It is frankly conceded by Shri Kohli that the appellant cannot be said to have instituted any criminal proceeding against any person. So that part of Section 211 IPC is eliminated. Now, the expression "falsely charges" in this section, in our opinion, cannot mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. To "falsely charge" must refer to the original or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when speaking to prove the false charge by*

making deposition in support of the charge framed in that trial. The words "falsely charges" have to be read along with the expression "institution of criminal proceeding". Both these expressions, being susceptible of analogous meaning should be understood to have been used in their cognate sense. They get as it were their colour and content from each other. They seem to have been used in a technical sense as commonly understood in our criminal law. The false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings. In other words, it must be embodied either in a complaint or in a report of a cognizable offence to the police officer or an officer having authority over the person against whom the allegations are made. The statement in order to constitute the "charge" should be made with the intention and object of setting criminal law in motion. […]".

17. The learned counsel for the Respondent placed heavy reliance upon the judgement of the Hon'ble Supreme Court in ***Perumal v. Janaki***(cited *supra*). The relevant portions of the judgement is extracted hereinunder:

"***5.****The case of the appellant herein in his complaint is that though Nagal alleged an offence of*

cheating against the appellant which led to the pregnancy of Nagal, such an offence was not proved against him. Upon the registration of Crime No. 18 of 2008, Nagal was subjected to medical examination. She was not found to be pregnant. Dr Geetha, who examined Nagal, categorically opined that Nagal was not found to be pregnant on the date of examination which took place six days after the registration of the FIR. In spite of the definite medical opinion that Nagal was not pregnant, the respondent chose to file a charge-sheet with an allegation that Nagal became pregnant. Therefore, according to the appellant, the charge-sheet was filed with a deliberate false statement by the respondent herein.

6.*The appellant, therefore, prayed in his complaint as follows:*

"*It is, therefore, prayed that this Hon'ble Court may be pleased to take this complaint on file, try the accused under Section 193 IPC for deliberately giving false evidence in the court as against the complainant, and punish the accused and pass such further or other orders as this Hon'ble Court deems fit and proper."*

The learned Magistrate dismissed the complaint on the ground that Section 195 CrPC bars criminal courts to take cognizance of an offence under Section 193 IPC except on the complaint in writing of that court or an officer of that court in relation to any proceeding in

the court where the offence under Section 193 is said to have been committed and a private complaint such as the one on hand is not maintainable.

9.*The facts relevant for the issue on hand are that:*

9.1.*The appellant was prosecuted for the offences under Sections 417 and 506 Part I IPC. (The factual allegations forming the basis of such a prosecution are already noted earlier.)*

9.2.*The respondent filed a charge-sheet with an assertion that the appellant was responsible for pregnancy of Nagal.*

9.3.*Even before the filing of the charge-sheet, a definite medical opinion was available to the respondent (secured during the course of the investigation of the offence alleged against the appellant) to the effect that Nagal was not pregnant.*

9.4. *Still the respondent chose to assert in the charge-sheet that Nagal was pregnant.*

9.5. *The prosecution against the appellant ended in acquittal.*

9.6. *The abovementioned indisputable facts, in our opinion, prima facie may not constitute an offence under Section 193 IPC but may constitute an offence under Section 211 IPC. We say prima facie only for the reason that this aspect has not been examined at any stage in the case nor any submission is made before us on either side but we cannot help taking notice of the*

basic facts and the legal position."

18. In the present case, it must be borne in mind that the allegations in the complaint is to the effect that an offence has been committed as referred to in Section 195(1)(b), Cr.P.C. and therefore, it becomes important to understand the scope of this provision since it forms the basis for proceeding further with the complaint under Section 340, Cr.P.C. It is as this juncture, this Court wants to place reliance upon the judgement of the Hon'ble Supreme Court in ***Iqbal Singh Marwah v. Meenakshi Marwah*** (cited *supra*) and the relevant paragraphs are extracted hereinunder:

> *"23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests*
>
> *of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This*

expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint."

"**33.** *In view of the discussion made above, we are of the opinion that SachidaNand Singh [(1998) 2 SCC 493 : 1998 SCC (Cri) 660] has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis."*

19.The principle behind holding a preliminary enquiry under

Section 340, Cr.P.C. was summarized by the Hon'ble Supreme Court in ***Sasikala Pushpa v. State of T.N***, (cited *supra*) by placing reliance on ***Iqbal Singh Marwahv. Meenakshi Marwah***(cited *supra*) and the relevant paragraphs are extracted hereinunder:

> *"10. It is fairly well settled that before lodging of the complaint, it is necessary that the court must be satisfied that it was expedient in the interest of justice to lodge the complaint. It is not necessary that the court must use the actual words of Section 340 CrPC; but the court should record a finding indicating its satisfaction that it is expedient in the interest of justice that an enquiry should be made. Observing that under Section 340 CrPC, the prosecution is to be launched only if it is expedient in the interest of justice and not on mere allegations or to vindicate personal vendetta. In Iqbal Singh Marwah v. Meenakshi Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] , this Court held as under: (SCC pp. 386-87, para 23) […]*
>
> *11. Before proceeding to make a complaint regarding commission of an offence referred to in Section 195(1)(b) CrPC, the court must satisfy itself that "it is expedient in the interest of justice". The language in Section 340 CrPC shows that such a course will be adopted only if the interest of justice requires and not in every case. It has to be seen in the facts and circumstances of the present case whether any prima facie case is made out for forgery or making a forged document warranting issuance of directions for lodging the*

complaint under Sections 193, 467, 468 and 471 IPC."

20.This Court had an occasion to consider the judgement of the Hon'ble Supreme Court in ***Perumal v. Janaki*** (cited supra) in the judgement in ***S. MukanchandBothra v. Rajiv Gandhi Memorial Educational Charitable Trust &Ors*** (cited *supra*). The relevant paragraph is extracted hereinunder:

> "*7. It is our duty to point out that the alleged offence of the Sub-Inspector informing in the charge sheet the pregnancy of the girl concerned despite her medical certificate informing otherwise, would not and cannot fall within the definition of Section 211 IPC. It also is to be seen that Perumal had faced prosecution pursuant to a Magistrate taking cognizance. Fortunately, offence of making a false charge does not stand attracted as otherwise, it would be unfair to prosecute the Sub-Inspector who filed the charge sheet, while not doing so, the Judicial Magistrate who took cognizance thereon. As explained by the Supreme Court in Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406], 'the essential ingredient of an offence under section 211 IPC is to institute or cause, to be instituted any criminal proceeding against a person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground*

for such proceeding or charge. Instituting or causing to institute false criminal proceedings assume false charge but false charge may be preferred even when no criminal proceedings result. Now, the expression "falsely charges" in this section, in our opinion, cannot mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. "To falsely charge" must refer to the original or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in that trial. The words "falsely charges" have to be, read along with the expression "institution of criminal proceeding". Both these expressions, being susceptible of analogous meaning should be understood to have been. used in their cognate sense. They get as it were their colour and content from each other. They seem to have been used in a technical sense as commonly understood in our criminal law. The false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings. In other words, it must be' embodied either in a complaint or in a report of a cognizable offence to the police officer or to an officer having authority over the person against whom the allegations are made. The statement in

order to constitute the "charges" should be made with the intention and object of setting criminal law in motion."

21. The above judgements set out the procedure while dealing with an application under Section 340, Cr.P.C. Firstly, in order to initiate proceedings under Section 340,Cr.P.C., an application has to be made to the Court upon which the Court can initiate an inquiry into any offence referred to in Section 195(1)(b), in respect of a document produced or given in evidence in a proceeding in that Court. Secondly, offences as set out in the complaint have to be made out. In the present case, the complainant alleges that an offence under Section 211, I.P.C. has been made out.

22. In the present case, based on the complaint given by one Mr. Rajamani, the FIR was registered by the F-2 Police Station, Egmore and the arrest was also carried out by the said police. The Petitioner came into the scene only at a later point of time when the case was transferred to the file of the CBCID. The language used under Section 211, I.P.C. regarding false charge can only relate to the original or initial accusation through which the criminal law was set in motion.

Admittedly, it was not the Petitioner who had set the criminal law in motion. That apart, as held in ***Iqbal Singh Marwah'sCase*** (cited *supra*) the offences referred to under Section 195(1)(b), Cr.P.C. will get attracted only with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in *custodia legis*.

23. In the present case, the main grievance of the Respondent seems to be that he was unnecessarily made to undergo the agony of a malicious prosecution. Since this prosecution was investigated by the Petitioner, the Respondent wants to rope in the Petitioner as if the said officer prosecuted a false charge. If investigating officers are going to be exposed to such proceedings in all cases where the accused persons are acquitted from all charges, it will directly interfere with the independence of the authority in conducting an investigation. This is the reason why the Hon'ble Supreme Court in ***Santokh Singh's Case*** (cited *supra*) held that the words "false charges" must be read along with the expression "institution of criminal proceedings", which relates back to the initiation of criminal proceedings and it can never be related to an alleged false charge framed after the

filing of the final report.

24. This Court after considering the judgement of the Hon'ble Supreme Court in ***Perumal v. Janaki*** (cited *supra*) has come up with this fine distinction in the case of ***S. MukanchandBothra***(cited*supra*). That apart, the facts of the present case is clearly distinguishable from the facts of the case dealt with by the Hon'ble Supreme Court in ***Perumal v. Janaki***.

25. In view of the above discussion, this Court holds that the offence under Section 211, I.P.C. has not been made out against the Petitioner. The Respondent cannot pick and choose certain observations made by the trial court and this Court, and make it a basis for filing an application under Section 340, Cr.P.C. to punish the Petitioner under Section 211, I.P.C.

26. A careful reading of the petition filed by the Respondent at the best makes out a case for malicious prosecution. In a case of malicious prosecution, which gives rise to a tortious liability, only a suit for damages can be filed by establishing the ingredients to maintain

such a suit. The grounds for maintaining a suit for malicious prosecution cannot form the basis for filing a petition under Section 340, Cr.P.C. since it has to independently satisfy the requirements of Section 195(1)(b), Cr.P.C.

27. In view of the above finding rendered by this Court, the Petitioner need not undergo the ordeal of facing an enquiry before the court below. Consequently, the impugned summons issued to the Petitioner in Crl M.P. No 23751 of 2019 is hereby quashed and this Criminal Original Petition is accordingly allowed. Consequently, the connected miscellaneous petitoin is closed.

26.02.2021

Index : Yes
Internet : Yes
KP

To

XVII Additional Judge,
City Civil Court,
Chennai.

N. ANAND VENKATESH,. J.

KP

Pre-Delivery order in
Crl.OP No.2514 of 2020

26.02.2021