

(2001) 02 MAD CK 0035

In the Madras High Court

Case No : Criminal R.C. No. 149 and Criminal M.P. No. 1092 of 1998

P. Palanisamy and Another

APPELLANT

Vs

Shenbagathottam Residents Association

RESPONDENT

Date of Decision : 27-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 107, 109, 143, 146, 147
Tamil Nadu State Housing Board Act, 1961 — Section 18
Tamil Nadu State Housing Board Service Regulations, 1969 — Rule 32, 34

Citation : (2002) CriLJ 704

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : K. Veeraraghavan, for the Appellant;

Final Decision : Allowed

Judgement

A. Ramamurthi, J.—Revision-petitioners/accused in C.C. No. 531 of 1997 on the file of Judicial Magistrate II, Madurai, have preferred the

revision aggrieved against the order of dismissal dated 18-11-1997 in C.M.P. No. 5906 of 1997.

2. The case in brief is as follows :

The revision-petitioners filed a petition to stop the proceedings and discharge from the case on the ground that no sanction u/s 197 of the Code of

Criminal Procedure has been obtained. Petitioners 1 and 2 are working as Assistant Executive Engineer and Executive Engineer respectively in the

Tamil Nadu Housing Board. They used to allot either flats or houses to the persons who purchased for cost and they used to give sale deed on full

payment and till then, the Housing Board is the sole proprietor of the property. The respondent/complainant filed a complaint without any valid title

over the property. Handing over any property for maintenance to any Society will not create title over the property to any individual or any

Society. The Association without any valid permission from the Housing Board started unauthorised construction and thereby created annoyance

to the real purchasers of the property. The first petitioner has acted on the instructions of the superior officers, the second accused. They have

acted only in the discharge of their official duty. To prosecute a public servant for any offence while discharging the official duty, sanction must be

obtained either from the concerned officer, having power to appoint and to remove or from the Government u/s 197 of Criminal Procedure Code

and as no sanction has been obtained, the complaint is not maintainable.

3. The respondent/complainant opposed the application and after hearing the parties, the learned Magistrate dismissed the application filed by the

petitioners and aggrieved against this, the present revision has been filed.

4. Heard the learned counsel of both sides.

5. The points that arise for consideration are-- 1) Whether the order passed by the Court below is proper and correct?

2) Whether any sanction is necessary to prosecute the petitioners?

5A. Points : It is not in dispute that the first petitioner is working as Assistant Executive Engineer and the second petitioner is working as Executive

Engineer. The respondent filed the private complaint against the petitioners for alleged offences under Sections 447 read with Sections 441, 143

read with 147, 150, 147 read with Sections 146, 426 read with Sections 425, 107 read with Sections 109 and 155, I.P.C. The petitioners are

public servants and as such, the petitioners filed the application that without sanction under the competent authority as provided u/s 197 of Criminal

Procedure Code, the complaint is not maintainable and, as such, they should be discharged from the case. Learned Magistrate after hearing the

parties came to the conclusion that before demolition of the construction, no notice was given and since the petitioners are working under the

Housing Board and there is no record to show that it was done in discharge of duty, no sanction is necessary and hence, dismissed the petition.

6. Learned counsel for the revision-petitioners mainly contended that they could be removed from service by the Managing Director is erroneous.

They could be removed only with the sanction of the Government as per Rules 32

and 34 of the Tamil Nadu Housing Board Service Regulation, 1969. The decision in K. Premkumar Vs. Rajangam, has not been properly applied to the case on hand. The learned Magistrate ought not to have taken cognizance of the complaint except with the previous sanction of the State Government.

7. The respondent filed the private complaint against the public servants, who are working as Executive Engineers in the Housing Board. They have also produced the salary certificates showing that each of them is drawing more than Rs. 11,000/- per month. Learned counsel for the revision-

petitioners mainly contended that they cannot be removed without the approval of the State Government and under the circumstance, the sanction

as contemplated u/s 197 of Criminal Procedure Code is necessary. The complainant is only an Association and they have put up unauthorised

construction in the Housing Board limit and on the direction of the second petitioner, the first petitioner had removed the unauthorised construction.

In short, according to the petitioners, they have discharged their official duty only and, as such, sanction is absolutely necessary and in the absence

of the same, the learned Magistrate ought not to have taken cognizance of the complaint. The decision relied on K. Premkumar's case (cited

supra) also indicates that two conditions are prescribed to attract Section 197 of Criminal Procedure Code. The first condition is that the public

servant should be removed only with the sanction of the Government and secondly, the offences alleged against the public servant should have

been committed by him while acting or purporting to act in the discharge of his official duty. The petitioners alleged that they have done their official

duty only.

8. Learned counsel for the petitioners also produced Tamil Nadu Housing Board Act, 1961 and according to Section 18 related to promotions

and punishment of the officers and servants of the Board. According to subsection (c), the punishment can be imposed by the Board, subject to

the previous approval of the Government, in the case of posts, the maximum monthly salary of which exceeds one thousand rupees and officers

and servants holding such posts. It is, therefore, clear that the approval of the State Government is necessary for removal of the petitioners.

9. Learned counsel for the petitioners also relied on the decision reported in

Gauri Shankar Prasad Vs. State of Bihar and Another, relating to sanction u/s 197 of Criminal Procedure Code. The conditions precedent for invoking Section 197 is whether he committed an offence while acting or purporting to act in discharge of his official duty. Test to determine is whether the alleged action which constituted an offence has a reasonable and rational nexus with the official duties required to be discharged by the public servant. If answer is in affirmative then sanction for his prosecution is required to be obtained. If the act alleged to have reasonable nexus with the official duty of the accused, no criminal proceedings could be initiated against him without obtaining sanction. This principle is applicable to the case on hand in all fours.

10. It is, therefore, evidently clear that so far as this case is concerned, the petitioners are also public servants and they can be removed from the office only subject to the approval of the Government. Unfortunately, this has been lost sight of by the Court below and mechanically came to the conclusion that they can be removed by the Board and no approval by the State Government is necessary. This is an erroneous approach of the legal position by the Court below and, as such for want of sanction, the complaint is not maintainable before the Court, and as such, the points are answered accordingly.

11. For the reasons stated above, the revision-petition is allowed and the order passed by the Court below dated 18-12-1997 is set aside and

C.M.P. No. 5906 of 1997 is allowed and consequently, the accused are discharged from the case. CrI. M.P. No. 1092 of 1998 is closed.