

## BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
01.02.2018	12.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH****Crl.R.C.(MD)No.66 of 2018**

S.Saravanan : Petitioner

Vs.

Mr.Paulraj,  
Inspector,  
Kovilpatti East Police Station. : Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for records relating to the order dated 02.11.2017 made in Crl.M.P.No.4295 of 2017, on the file of the learned Judicial Magistrate No.1, Kovilpatti and set aside the same by allowing this Criminal Revision Case.

For Petitioner : Mr.J.Senthilkumaraiah

**ORDER**

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On the complaint lodged by S.Saravanan, the petitioner herein, the Sub-Inspector of Police, Kovilpatti West Police Station, registered a case in Crime No.148 of 2017, on 21.03.2017, under Sections 294(b), 307 and 506(ii) IPC against one Ramesh and two others.

2. It is the case of S.Saravanan that he is a practising advocate in the High Court; that in respect of his own case, he went to Kovilpatti Police Station on 21.03.2017, around 12.20 hours and thereafter, heard sounds of someone breaking the locks of factory in his custody; that when he questioned those persons, they abused him in filthy language and one of them attacked him with a knife, on account of which, he suffered injuries on his left hand. He has named three assailants in his complaint and hence, First Information Report has been registered against them, as stated above. While so, it is the grievance of S.Saravanan that the police are not taking any action to arrest the accused named by him; and that the accused are still at large.

3. S.Saravanan filed a private complaint before the learned Judicial Magistrate No.I, Kovilpatti, in Cr.M.P.No.4295 of 2017 for the alleged offences under Sections 166, 166-A, 167, 191, 213, 217, 218, 221 and 294(b) IPC against Paulraj, Inspector of Police, East Police Station, Kovilpatti. The learned Judicial Magistrate recorded the sworn statements of S.Saravanan and his two witnesses, namely, M.Velmurugan and S.Karthik and after considering the evidence adduced by S.Saravanan, has dismissed the complaint in Cr.M.P.No. 4295 of 2017, on 02.11.2017 by a detailed order, aggrieved by which, Saravanan has filed the present Criminal Revision Case.

4. Heard Mr.J.Senthilkumaraiah, learned counsel appearing for S.Saravanan.

5. The learned counsel appearing for the petitioner submitted that S.Saravanan was attacked indiscriminately with lethal weapons by one Ramesh (A1), Sundarrajan (A2) and Seenivasan (A3), who are the accused in Crime No.148 of 2017. But, however, Paulraj, Inspector of Police, Kovilpatti Police Station, was not taking effective step to arrest them. Therefore, he submitted that the trial Court ought not to have dismissed the private complaint and should have taken

cognizance of the offence against Paulraj and issued process to him.

6. To appreciate the grievance of S.Saravanan, it may be relevant to extract the averments in his private complaint in Cr.M.P.No.4295 of 2017, which are as under:-

"7. I submit that Respondent/Accused is well aware that accused Seenivasan and his associates are wanted person and illegally he is helping Ramesh and his associates and he escorted them. The accused Ramesh and his associates Sundarrajan, Seenivasan has political power, money and muscle power in and around the said area.

8. Thereafter, I filed a detailed representation on 20.04.2017 to Superintendent of Police, Thoothukudi District and copies sent to Deputy Inspector General of Police, Tirunelveli Range, Inspector General of Police, Madurai Zone and Director General of Police, Chennai, against Respondent/Accused Mr.Paulraj and Mr.Rajesh, Inspector, West

Police Station to take necessary action. Even after receipt of said complaint, Respondent never bothered to take any action against said accused. I apprehend that anything may happen to me and my family at any moment by the Respondent/Accused.

9. The Respondent/Accused planned to arrest me for the purpose of closing the case [Crime No.148/2017] and also cornering me to withdraw the complaint, which is made against him. So, he sent summon to me regarding the 19.04.2017 incidents which is mentioned in the para No.6. He signed summon on 17.05.2017 and the post was dispatched from him on 22.05.2017 at about 10.57 a.m. It contains the information such as I have to appear before him on 23.05.2017 at about 10.00 a.m, but the post was received by my father on 23.05.2017 at about 01.50 p.m. So, I am not able to appear before him. He is purposely created the evidence of non-appearance for that summon

and he is planned to issue warrant for that non-appearance. He is misusing Section 90 and Section 160 Cr.PC. Misusing the power of the Government Servant is punishable. Based on principles of natural justice "Laxim Maxim - *Nemo iudex in causa sua* [No - one should be a Judge in his own cause]". The complaint made by me to the higher police officials on 20.04.2017 against the Respondent/Accused for the above said averments dated 19.04.2017. The enquiry on his complaint is still pending, in the meantime, the Respondent/Accused enquired the same issue. This is against the natural justice".

7. This Court also perused the sworn statements of S.Saravanan and his two witnesses namely, M.Velmurugan and S.Karthik. It may be necessary to re-state here that S.Saravanan, admittedly, is a practising Advocate and he is supposed to know the law. The Hon'ble Supreme Court in **Joginder Kumar vs. State of U.P.** in **1994 SCC (4) 260**, has clearly held that the power of police to arrest a person is

one thing and the exercise of power is yet a different thing. In other words, the police have been given a discretion to arrest or not to arrest an accused.

**8.** In this case, the First Information Report in Crime No.148 of 2017 has been registered on the complaint given by Saravanan by the Sub-Inspector of Police, **Kovilpatti West Police Station**, Kovilpatti, but, whereas Paulraj was the Inspector of Police, **Kovilpatti East Police Station**. [Emphasis supplied].

**9.** It is the grievance of Saravanan that he found the accused in Crime No.148 of 2017 standing in a shop near South Bazaar, which falls within the jurisdiction of Kovilpatti East Police Station and that he informed Paulraj about the presence of the accused within his jurisdiction, despite which, Paulraj did not effect arrest of the accused. Thus, for the alleged failure of Paulraj to arrest an accused, who is involved in an offence, registered by a different police station, the private complaint has been filed to prosecute him for dereliction of duty.

**10.** Saravanan seems to be unaware of the guidelines given by

the Supreme Court in **Arnesh Kumar vs. State of Bihar and another, [(2014) 3 MLJ (CrI) 353 (SC)]**, wherein the Supreme Court has stated that the police should not effect arrest mechanically and there should be sufficient grounds for arresting a person, since every arrest would abridge the right guaranteed by Article 21 of the Constitution of India. In **M.C.Abraham vs. State of Maharashtra [2003 (2) SCC 649]**, the Supreme Court has held that even if the Anticipatory Bail application of an accused is dismissed, it does not mean that the accused should automatically be arrested by the police. It is again the discretion of the Investigating Officer to effect arrest or not and no Court can direct the Investigating Officer to arrest a person or take action against him under the Indian Penal Code for not arresting the accused.

**11.** It is further alleged by Saravanan in Paragraph No.9 of his private complaint (extracted supra) that the Inspector of Police had sent summons under Section 160 Cr.P.C., belatedly and that he was trying to create evidence against him. This allegation appears to be a figment of imagination of Saravanan. Perhaps, he is seeing ghost in every shadow.



**12.** There are contradictions galore between the averments in the complaint and the averments in the sworn statements of the witnesses, which have all been meticulously recorded by the Magistrate in the impugned order. This Court does not find any infirmity in the order passed by the learned Judicial Magistrate, warranting interference.

**13.** This Court places on record its appreciation to Mr.J.Jeya Sudhakar, M.Sc., L.L.M., learned Judicial Magistrate No.1, Kovilpatti, for the thorough manner, in which he has analyzed the evidence and passed the impugned order.

**14.** In the result, this Criminal Revision Case is devoid of merits and the same is dismissed. accordingly.

सत्यमेव जयते **12.02.2018**

Index : Yes/No

Internet:Yes/No

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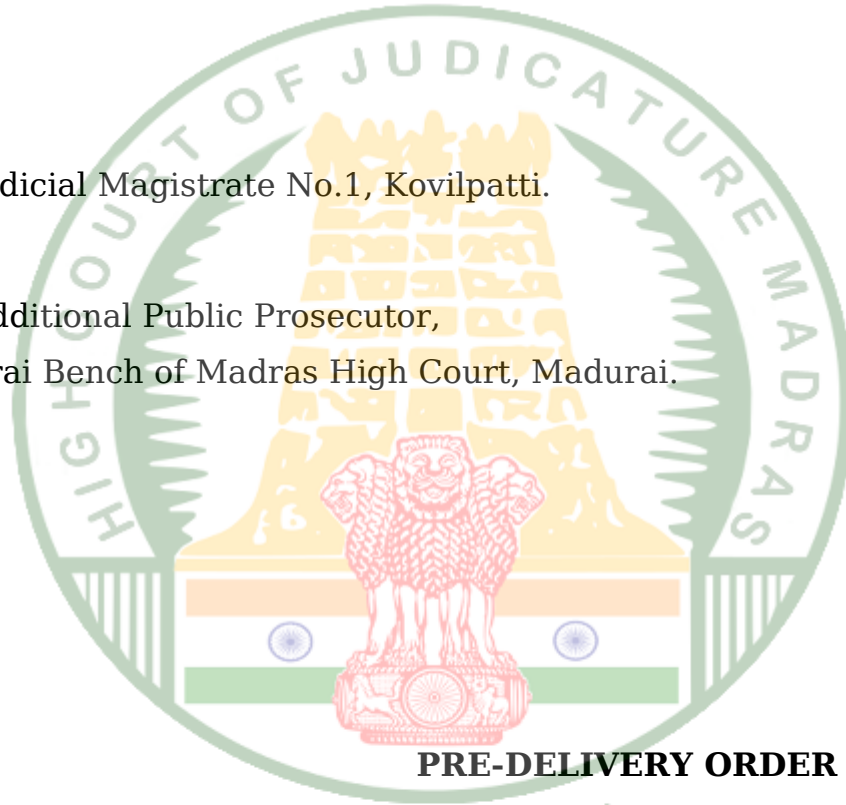
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**P.N.PRAKASH, J.**

NB

To

- 1.The Judicial Magistrate No.1, Kovilpatti.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.



**PRE-DELIVERY ORDER MADE IN**

**CrI.R.C.(MD)No.66 of 2018**

**WEB COPY**

Dated:-

**12.02.2018**