

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP Nos.14716 & 14717 of 2015

P.Senapathi .. Petitioner in both Crl.OPs

Vs

1. State rep.by
The Inspector of Police,
Kangayam Police Station,
Tiruppur District. ... Respondent No.1 in
Crl.OP.14716/2015

2.P.Ganeswaran
3.P.Ponnusamy
4.D.Arunachalam
5.Magudapathy ... Respondents 2 to 5 in
Crl.O.P.14716 of 2015
and Respondents 1 to 4
in Crl.O.P.14717 of 2015

Prayer in Crl.OP.14716 of 2015:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to direct the Learned Chief Judicial Magistrate, Tiruppur to dispose the case on merits in C.M.P.No.241 of 2014 in C.C.No.89 of 2013 on the file of the Learned Chief Judicial Magistrate, Tiruppur.

Prayer in Crl.OP.14717 of 2015: Criminal Original Petition filed under Section 482 Cr.P.C, praying to direct the Learned Chief Judicial Magistrate, Tiruppur to conduct the three cases now the trial to be conducted if necessary to grant certain guidelines to the trial Court in C.M.P.No.139 of 2014 in S.C.No.110 of 2013 on the file of the Learned Chief Judicial Magistrate, Tiruppur as per law.

For Petitioner :Mr.M.Saravanakumar
in both Crl.OPs

For Respondent No.1 :Mr.C.Emalias
in Crl.O.P.14716 of 2015 Additional Public Prosecutor

COMMON ORDER

On a complaint lodged by P.Senapathi, the respondent police registered a case in Crime No.280 of 2007 on 29.03.2007 for offences under Sections 341, 294(b), 324, 506(ii) I.P.C against four accused.

2. It is the case of the de-facto complainant that an offence under Section 307 I.P.C was made out, despite which, the respondent police did not include the same in the F.I.R. The respondent police completed the investigation and filed a final report before the learned Judicial Magistrate, Kangeyam, in crime No.280 of 2007, for offences under Sections 341, 294(b), 324, 506(ii) I.P.C. Since the defacto-complainant was not satisfied with it, he filed a private complaint before the same Magistrate and adduced pre-committal evidence.

3. The learned Magistrate, after recording the evidence adduced by the defacto-complainant, committed the private complaint case and also, the police charge sheet case to the Sessions Court and both the cases have been made over to the learned Chief Judicial Magistrate cum Assistant Sessions Judge, for trial. The private complaint case has been numbered as S.C.No.110 of 2013 and the police charge sheet case has been numbered as C.C.No.89 of 2013.

4. It is grievance of the defacto-complainant that in S.C.No.110 of 2013 (private complaint case), the charges were not properly framed by the Learned Chief Judicial Magistrate, inasmuch as, in the first charge, the date and time of the incident has been given as "29.03.2007 morning 9.20" whereas it is the specific case of the defacto-complainant that the incident took place at 9.20 in the night. Similarly, in the second charge, the learned Chief Judicial Magistrate has stated that A1 to A4 had threatened the witness Govindaraj, but according to the defacto-complainant, it should read as Senapathi and not Govindaraj. Therefore, the defacto-complainant filed an application under Section 216 Cr.P.C in C.M.P.No.139 of 2014 bringing out these discrepancies to the learned Chief Judicial Magistrate and prayed for alteration of the charge. The learned Chief Judicial Magistrate has not passed any orders thereon and the said petition is pending. When there are two cases as in this case, the trial Court should conduct the trial simultaneously, but should not club the two cases. In other words, the prosecution must adduce evidence separately in S.C.No.110 of 2013 and C.C.No.89 of 2013, though most of the witnesses in both the cases may be common. It is possible that some documents may also be common in both cases, in which event, the original should be marked in as an exhibit in one case and the certified photo stat copy of it can be marked in the other case, but while marking such a document through a witness, the Presiding Officer should mention in brackets that, the original has been marked as such and such exhibit in the other case.

5. The Public Prosecutor should conduct both the cases, because the trial is under Chapter XVIII of the Code. Similarly, the accused should be examined separately under Section 313 Cr.P.C. and defence witnesses produced by the accused should also be examined separately in each case. The defacto complainant will be entitled to appoint an Advocate of his choice to assist the Public Prosecutor.

6. The final judgment in both the cases should be delivered separately, but on the same day. It must be remembered that this is not "a case and counter", but in respect of the same prosecution/transaction there are two assertions, namely, one by the police and the other by the defacto complainant. Hence, while delivering judgment, the trial Court should not rely upon the evidence adduced in S.C.No.110 of 2013 while deciding C.C.No.89 of 2013 and vice versa.

7. The trial Court is directed to dispose of CrI.M.P.No.139 of 2014 in S.C.No.110 of 2013 and C.M.P.No.241 of 2014 in C.C.No.89 of 2013 within two weeks from the date of receipt of a copy of this order.

With the above directions, these Criminal Original Petitions are disposed of.

sms

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
Kangayam Police Station,
Tiruppur District.
2. The Chief Judicial Magistrate,
Tiruppur
3. -do- thro' The Chief Judicial Magistrate
Tiruppur.
4. The Public Prosecutor,
High Court, Madras.

+ 2 ccs to Mr.M.Saravana kumar, Advocate SR 29638 & 29639

rj(co)
prk7/7

CrI.OP Nos.14716 & 14717 of 2015