

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.21918 of 2016

and

Crl.M.P.Nos.10163 and 10164 of 2016

1.Rajiniganth

2.Kumar

3.Nethaji

4.Shanmugam

5.Vijayakumar

6.Jeevarathinam

... Petitioners

Vs.

Elumalai

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records from the District Munsif cum Judicial Magistrate at Uthiramerur in C.C.No.112 of 2016 and quash the same.

For Petitioners : Mr.D.Panchatsaram

RESERVED ON	PRONOUNCED ON
27.09.2016	30.09.2016

ORDER

This petition has been filed to call for the records from the District Munsif-cum-Judicial Magistrate, Uthiramerur in C.C.No.112 of 2016 and quash the same.

2. Heard the learned counsel for the petitioners.

3. For the sake of convenience, the petitioners and the respondent are referred to as accused and complainant respectively.

4. The complainant has initiated a prosecution by way of filing a private complaint in C.C.No.112 of 2016 before the District Munsif-cum-Judicial Magistrate, Uthiramerur against the petitioners/accused for offences u/s 149, 294(b), 323, 324, 326 and 506(ii) IPC, challenging which, the petitioners/accused are before this Court.

5. The learned counsel for the accused submitted that the complainant had made false averments in the complaint and that it is a counter blast for the FIR in Uthiramerur P.S. Cr.No.554 of 2016 dated 02.11.2016 for u/s 294(b), 323 and 355 IPC that has been registered against the complainant, on the complaint given by Rajiniganth [the first petitioner herein]. The learned counsel further submitted that the complainant was not at all injured in the incident and that he got himself admitted in Kilpauk Medical College Hospital only on 26.10.2015 in respect of an incident which is said to have taken place on 11.10.2015.

6. This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioners/accused.

7. On a reading of the complaint, it is seen that the complainant has alleged that Kumbabishekam of the village temple was conducted on 17.09.2015 and the complainant submitted all the accounts to the villagers thereafter. It is further alleged that, on 11.10.2015 at about 8.00 p.m., the accused ostracised the complainant and his family members and prevented them from entering the temple, on account of which an altercation ensued, in which the accused had abused the complainant and assaulted him with a further threat to leave the village lock, stock and barrel. The private complaint was filed before the District Munsif-cum-Judicial Magistrate, Uthiramerur, on 09.12.2015 and thereafter, the complainant witnessed himself as P.W.1 and his wife Jayanthi as P.W.2. After recording the evidence adduced by the complainant, the trial Court has only issued process to the accused for their appearance and immediately the accused have approached this Court for quashing the complaint.

8. It is trite that a complaint cannot be quashed, when it discloses the commission of a cognizable offence and is supported by prima facie materials. The contention of the learned counsel for the accused that the present complaint is a counter blast to the case in Cr.No.554 of 2016 and therefore, this prosecution should be quashed cannot be countenanced, as this Court cannot give a finding based on pleadings. The learned counsel also submitted that the complainant had given a similar complaint to the police and that the police did not take action, which only shows that the case of the complainant is not true.

9. In the opinion of this Court, just because police had not registered an FIR on the complaint given by a person, an inference cannot be drawn that the allegation of the complainant is untrue. This is a private complaint case, in which, it is the duty of the complainant to examine witnesses

u/s 244 Cr.P.C. and only thereafter, the charges can be framed. Even at that stage, the accused can plead for discharge. Hence, the present petition to quash the private complaint, when there are prima facie materials on record, is not sustainable.

In the result, the petition is dismissed. The petitioners/accused are directed to furnish a bond for Rs.5,000/- each with one surety to the satisfaction of the District Munsif-cum-Judicial Magistrate, Uthiramerur, u/s 88 Cr.P.C. within four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

gms

To

1. The District Munsif-cum-Judicial Magistrate,
Uthiramerur.
2. The Public Prosecutor
High Court, Madras 600 104.

+1cc to Mr.D.Panchatsaram, Advocate, S.R.No.56170

Cr1.O.P.No.21918 of 2016

SK(CO)
CA(01/11/2016)

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