

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.22549 of 2016

&

Crl.M.P.No.10507 of 2016

and

Criminal Original Petition No.15134 of 2016

Thirunavukkarasu ..Petitioner in Crl.O.P.No.22549 of 2016

-Versus-

1.State rep. by its
Deputy Superintendent of Police,
Crime Branch CID,
Vellore.
[Crime No.253 of 2009]

2.Krishnamoorthy ..Respondent in Crl.O.P.No.22549 of 2016

Prayer in Crl.O.P.No.22549 of 2016: This petition is filed under Section 482 Cr.P.C. praying to call for the records relating to the case in PRC No.89 of 2014 on the file of the learned Judicial Magistrate-III, Vellore and to quash the said case.

1.A.Arunkumar
2.P.Anandhakumar
3.A.Subhakaran
4.G.Veeramani
5.T.Palani
6.S.Siva
7.P.Arunkumar

..Petitioner in Crl.O.P.No.15134 of 2016

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1.State rep. by its
Deputy Superintendent of Police,
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[Crime No.253 of 2009]

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learned Judicial Magistrate-III, Vellore and to quash the said case.

For Petitioner(s) : Mr.R.Margabandhu for
Petitioner(s) in both
Crl.O.Ps.

For Respondents : Mr.C.Emalias, APP for R1
in both Crl.O.Ps.

Mr.S.Kamadevan for R2 in
both Crl.O.Ps.

COMMON ORDER

These original petitions have been filed seeking to quash the criminal prosecution in PRC No.89 of 2014 now on the file of the learned Judicial Magistrate-III, Vellore, Vellore District, relating the case in Crime No.253 of 2009 registered by Sub Inspector of Police, Pallikonda P.S.

2. The 2nd respondent Krishnamoorthy made a private complaint before the learned Judicial Magistrate-III, Vellore, which was, in turn, forwarded by the learned Magistrate to the Sub Inspector of Police, Pallikonda Police Station, under Section 156(3) of Cr.P.C. based on which a case in Crime No.253 of 2009 was registered on 09.07.2009 under Sections 147, 148, 294(b), 323, 506(ii) of IPC r/w 34 and 109 of IPC and Section 3 of Public Properties Damages Act against the petitioners and 42 others. During the pendency of investigation, Krishnamoorthy filed a petition in Crl.O.P.No.29644 of 2009 for transfer of investigation and this court by order dated 07.12.2009 transferred the investigation from the file of the Inspector of Police, Pallikonda P.S. to the file of the C.B. C.I.D., for investigation. The Deputy Superintendent of Police, C.B.C.I.D., Vellore, took over the investigation and after completing the same, he has filed a final report in PRC No.89 of 2014 before the learned Judicial Magistrate-III, Vellore, for offences under Sections 147, 148, 448 of IPC and 3(i) of Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992 r/w 149 of IPC against A.Arunkumar and 7 others challenging which the accused are now before this court with these original petitions.

3. Heard Mr.R.Margabandhu, the learned counsel appearing for the petitioners; Mr.S.Kamadevan, the learned counsel appearing for Krishnamoorthy, the 2nd respondent and Mr.C.Emalias, the learned Additional Public Prosecutor, appearing for the 1st respondent and also perused the records carefully.

4. Today, when the matter was taken up for hearing, the Deputy Superintendent of Police, C.B.C.I.D., Vellore, has

filed a counter affidavit narrating the facts and circumstances of the case. It is the case of the prosecution that Krishnamoorthy was running a Teacher Training Institute in the name and style "Kennady Teacher Training Institute" at S.N.Palayam, Agaramchery Post, Pallikonda, Vellore District. While so, a group of students led by Arunkumar (A1) went on rampage on 29.06.2009 in the institution and had caused extensive damages to the properties of the institution by breaking the glasses of the widows of the waiting room, computer room, library hall and class rooms. They used chairs as weapon to cause damages to the properties at the Institute.

5. The learned counsel appearing for the petitioners submitted that at the time of the alleged occurrence Krishnamoorthy was not at all present in place of occurrence; that Krishnamoorthy had earlier given a complaint dated 29.06.2009 to the police which did not disclose the name of any of the students; that Krishnamoorthy in his complaint had merely stated that he received information from one Padmavathy, Venkatesan and Mohan, the staff of the institution that some of the students are on rampage; and that they are likely to attack Krishnamoorthy and his son.

6. The learned counsel for the petitioners contended that the institute was authorised to admit only 50 students in the year 2006 and that they had admitted 92 students. Therefore, the excess 42 students were not permitted to take up their examinations which resulted in the students getting frustrated. Therefore, the students had only gone to meet Krishnamoorthy for justice. This has been misinterpreted by Krishnamoorthy to mean as if the students had gone on rampage.

7. The learned counsel for the petitioners placed reliance on the judgement of the Hon'ble Supreme Court in Jamuna Singh and others v. Bhadai Shah, AIR 1964 SC 1541 (1), wherein the Hon'ble Supreme Court has held as follows:-

"It is well settled now that when on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint. When however he applies his mind not for such purpose but for purposes of ordering investigation under S.156 (3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence."

8. The learned counsel for the petitioners also placed reliance on the judgement of the Hon'ble Supreme Court in State of Haryana and others v. Ch. Bhajan Lal and others, AIR 1992 SC 604(1) and contended that the entire prosecution is a

machinery to cover up his misdeeds.

9. Per contra, Mr.R.Kamadavan, the learned counsel appearing for the petitioner submitted that Krishnamoorthy filed a writ petition before this court and got permission for the students to write examinations pursuant to which they had written examination and they are now teachers. He, therefore, contended that as students, the petitioners who had completed teacher training course should have been a role-model to the other incumbent students and that they ought not to have acted in such a high-handed manner by taking law into their hands.

10. Mr.C.Emalias, the learned Additional Public Prosecutor submitted that though the Deputy Superintendent of Police, C.B.C.I.D., had filed a counter affidavit strongly objecting to quashment of the prosecution, yet, Mr.C.Emalias, in his usual fairness submitted that the whole incident had happened because Krishnamoorthy had admitted 92 students as against the sanctioned strength of 50 on account which 42 students did not get the Hall-Tickets in time and they had lost more than one year and even after writing the examinations, their results were delayed. Out of frustration, they had given vent to their anger.

11. This court gave its anxious consideration to the rival submissions.

12. It is true that in the first complaint dated 29.06.2009 Krishnamoorthy had not disclosed the names of the students and had only stated that he received information from his staff that the students are agitated. In the subsequent complaint that was filed before the learned Judicial Magistrate, he has given the names of the students pursuant to which on the orders of the learned Magistrate, the present FIR was registered as stated above.

13. It is obvious that Krishnamoorthy is not an eye witness to the occurrence. On a perusal of the statements of the witnesses recorded under Section 161 of Cr.P.C. cited in the charge sheet, more particularly, the statement of Mohan, a Watchman of the Institute, it is seen that he has named eight persons namely petitioners herein as the students who had damaged the window panes in the waiting room, computer room, library hall and that the total damage that has been estimated by the police is Rs.23,173/- of course at P.W.D. rates.

14. This court considered the judgements relied on by the learned counsel for the petitioners in Jamuna Singh's case cited supra wherein the issue was whether the Magistrate had acted under Section 156(3) of Cr.P.C. or under Section 202 of Cr.P.C. In that context, the Hon'ble Supreme Court has held that in the facts of that case, that the Magistrate had acted

15. In the instant case, the learned Magistrate had not taken cognizance of offence under Section 190 of Cr.P.C. He has merely forwarded the complaint to Pallikonda Police Station under Section 156(3) of Cr.P.C. for investigation. Therefore, the judgement in Jamuna Singh case [cited supra] does not apply to the facts of the present case.

16. As regards, Bajan Lal's case [cited supra], the issue in that case was the parameters for quashing the FIR and not the charge sheet. In the instant case, challenge is to the charge sheet and not to the FIR. On a reading of the statement of Mohan, it is seen that he has given two different versions of incident, viz., one version to the Inspector of Police, Pallikonda Police Station, at the initial state of the investigation and a different version to the C.B.C.I.D. subsequently. It is obvious from his statement to the C.B.C.I.D., wherein in the later portion, he has stated that he had given a different version to Pallikonda Police. In the case of this nature where the entire prosecution case rests on solitary statement of one person, such statement should inspire the confidence of the court. Unfortunately, the statement of Mohan, which is self contradictory as stated above, does not inspire the confidence of the court. Apart from Mohan no other witness has implicated the petitioners. In the above circumstances, this court is of the considered view that if the criminal prosecution is allowed to be continued further the same would only be a wasteful exercise and it would result in serious prejudice resulting in injustice to the accused.

17. In the result, the criminal original petition is allowed and the case in PRC No.89 of 2014 on the file of the learned Judicial Magistrate-III, Vellore, Vellore District, is quashed in its entirety. Consequently, connected MP is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kmk

To

- 1.The Judicial Magistrate-III, Vellore, Vellore District.
- 2.-do- Thro The Chief Judicial Magistrate, Vellore.
- 3.The Deputy Superintendent of Police, Crime Branch CID, Vellore, Vellore District.

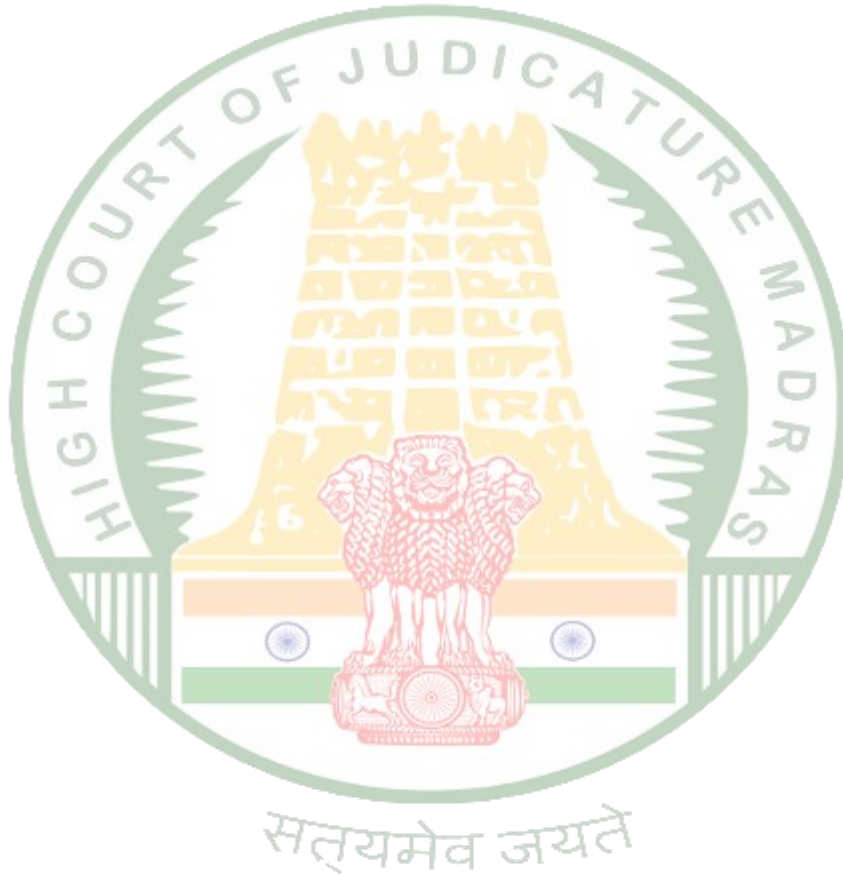
4.The Public Prosecutor, High Court,Madras.

+1cc to M/s.R.Margabandhu, Advocate Sr.66622

+1cc to M/s.S.Kamadevan, Advocate Sr.65904

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KSJ(CO)
RVR 03/01/2017



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