

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11..11..2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.23293 of 2016

and

Crl.M.P.No.10897 of 2016

N.Sugumaran ... Petitioner/Accused

-Versus-

1.The State Rep. by
The Inspector of Police,
F-1, Chindatripet Police Station,
Chennai 600 002.

2.N.Muthukumar ... Respondents/Complainant
and Defacto/Complainant

Prayer: This petition is filed under Section 482 Cr.P.C. praying to call for the the records relating to the case in S.C.No.52 of 2012 pending on the file of the learned XIX Additional Sessions Judge, Chennai, and to quash the said case.

For Petitioner : Mr.M.Anandraj

For Respondents : Mr.C.Emalias, APP for R1

ORDER

This original petition has been filed seeking to quash the case in S.C.No.52 of 2012 pending on the file of the learned XIX Additional Sessions Judge, Chennai.

2. On the complaint of N.Muthukumar, the 1st respondent police have registered a case in Crime No.1294 of 2011 and after completing investigation, they filed a final report in P.R.C.No.153 of 2011 before the learned XIV Metropolitan Magistrate, Egmore, Chennai, which was thereafter committed to the Court of Sessions, Chennai, where it was numbered as S.C.No.52 of 2012. Subsequently, the said sessions case was made over to the learned XIX Additional Sessions Judge, Chennai,

for trial and charges were framed under Section 341, 307 and 506 (ii) of IPC against the accused. Since the accused pleaded not guilty, the trial court posted the case for trial and the prosecution on its side examined P.Ws.1 to 12 and marked certain documents. At that juncture, the accused and the de facto complainant have filed a petition before the trial court for compounding of the offences. The accused has also filed a petition under Section 311 of Cr.P.C. to recall Muthukumar (P.W.1) which was allowed. P.W.1 was accordingly recalled on 16.04.2015 and in his further cross examination he has stated that he himself and the accused have arrived at a compromise and wanted the trial court not to proceed with the trial further. Since the trial court did not have power to compound offences under Section 307 of IPC, the trial court has refused to entertain the petition. Hence, the petitioner/accused is now before this court for the above stated relief.

3. Under normal circumstances, this court will not invoke its inherent power under Section 482 of Cr.P.C. to quash the prosecution involving an offence under Section 307 of IPC especially, when evidences have been adduced by the prosecution before court below. However, in this case, the accused N.Sugumar and the de facto complainant N.Muthukumar are brothers by blood. On a reading of final report, it is seen that on 17.10.2011 around 06.00 in the evening, a quarrel ensued between Muthukumar (P.W.1) and Sugumar (Accused) in which Muthukumar and others had assaulted Sugumaran and he sustained injuries on his hand. On the next day, that was, on 18.10.2015, Sugumaran and his nephew Saravana Kumar had gone to the house of Muthukumar for talk for partitioning the properties and at that time, it is alleged that Sugumaran had taken a knife from the kitchen of Muthukumar's house and attacked him in a fit of anger. Saravanakumar, the nephew of both Muthukumar and Sugumaran tried to pacify the quarrelling uncles and that he was also injured.

4. Today, Muthukumar (P.W.1) and Saravanakumar (P.W.2) and also Sugumaran (Accused) are present. They have been identified by Smt.C.Lakshmi, Sub Inspector of Police, F-1, Chindatripet Police Station (L & O), Chennai 600 002, who was present in court.

5. Muthukumar and Sugumaran have filed individual affidavits wherein they have stated that the entire incident took place in a moment of anger and that now they have reconciled their differences. Pending investigation, Sugumaran was arrested, remanded to judicial custody and was released on bail after some time. The parties have also submitted that the dispute with regard to properties has also been amicably settled among themselves.

6. The learned Additional Public Prosecutor submitted his formal objection contending that when the trial is almost complete, this court should not interfere with the same.

7. Be that as it may, it is seen that Muthukumar and Sugumaran are brothers by blood and that now they have reconciled their differences and they are living peacefully.

8. In the affidavit filed by the de facto complainant Muthukumar, he stated as follows:-

"3. I state that the dispute of the subject matter of the case has been settled amicably out of court upon the advice of the elder members of both family. I filed compound petition before the trial court on 16.04.2015 in M.P.No.94 of 2015 and I have given evidence disclosing the compromise arrived between us and inclined to withdraw my complaint as against my own brother before the trial court, but the trial court declined to accept compromise since the offence under Section 307 of IPC is non compoundable. Therefore I was advised to file this affidavit before this Hon'ble Court disclosing my intention to compromise the subject matter of dispute between me and the petitioner herein.

4. I state that the petitioner is my own brother and settled the above said dispute amicably and I filed this affidavit upon my own decision and no one is forced me to file this affidavit."

9. The affidavit filed by Saravanakumar, the nephew of both Muthukumar and Sugumaran is also the above effect.

10. In Yogendra Yadav & Ors. v. State of Jharkhand & Anr., reported in 2014(4) Cr.L.R. (SC) 1258, on similar circumstances, the Hon'ble Supreme Court has quashed the prosecution.

11. In the light of the above legal position and having regard to the facts and circumstances of the present case, this court is inclined to quash the prosecution against the petitioner.

12. In the result, the criminal original petition is allowed and the case in S.C.No.52 of 2012 pending on the file of the learned XIX Additional Sessions Judge, Chennai, against the petitioner is quashed. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The XIX Additional Sessions Judge, Chennai.
- 2 Do Thro The Principal Sessions Judge, Chennai
- 3.The Inspector of Police, F-1, Chindatripet Police Station,
Chennai 600 002.
- 4 The Public Prosecutor, High Court, Madras

+1cc to Mr.M. Anandaraj, Advocate, S.R.No.65318

sk(CO)
md(02/12/2016)

Crl.O.P.No.23293 of 2016

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