

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.11649 of 2011
and
M.P.No.1 of 2011

1.Dr.M.S. Kadirvelu

2.Dr.Sivananthakumar

... Petitioners

vs.

1. The State rep. by

The Inspector of Police,
B-1, North Police Station,
Chennai - 600 001.

2. Dr.Antony Selvaraj

... Respondents

(Impleaded the 2nd respondent as per the
order of this Court dated 12.06.2017
in Crl.MP.No.7108/2017 in
Crl.OP.No.11649 of 2011.)

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C. No.478 of 2011 and quash the final report filed in F.I.R. No.695 of 2010 in C.C.No.478 of 2011 pending on the file of VII Metropolitan Magistrate Court, George Town, Chennai and consequently direct for further investigation on the case and counter cases of complaints in F.I.R. No.695 of 2010 and C.S.R. No.205 of 2010 dated 27.09.2010, on the file of the 1st Respondent Police.

For Petitioners : Mr.S.Vijayakumar and
Mr.Durai Gunasekaran

For Respondents : Mr.P.Govindarajan (for R1)
Additional Public Prosecutor
Mr.G.Jeremiah (for R2)

JUDGMENT

This petition seeks to call for the records in C.C. No.478 of 2011 and quash the final report filed in F.I.R. No.695 of 2010 in C.C.No.478 of 2011 pending on the file of the VII

Metropolitan Magistrate Court, George Town, Chennai and consequently direct for further investigation on the case and counter cases of complaints in F.I.R. No.695 of 2010 and C.S.R. No.205 of 2010 dated 27.09.2010, on the file of the 1st Respondent Police.

2.The case is one wherein the petitioners herein are alleged to have been committed the offences under Sections 143, 448, 323 and 506(i) of IPC.

3.The petitioners are the medical practitioners and had been in their profession for more than 45 and 2 years respectively. The 1st respondent has registered a case in F.I.R. No.695 of 2010 on the false complaint given by the 2nd respondent (defacto complainant) against these petitioners for the alleged offences under Sections 143, 448, 323 and 506(i) of IPC.

4.The 1st respondent has failed to conduct proper enquiry regarding the incident occurred on 27.09.2010, but contrary to that, they have conducted biased enquiry favouring the 2nd respondent. Further the 1st respondent has failed to conduct any enquiry or investigation on the complaint given by these petitioners on 27.09.2010 and the same was registered in CSR No. 205 of 2010 on the file of the 1st respondent police.

5.Before I enter into this present petition, the facts of the case as emerged from the records need to be noted for deciding the issues raised in this petition.

6.The brief facts of the petitioners' case:

The petitioners had entrusted some civil cases to the 2nd respondent, the defacto complainant, an advocate by name Dr.Antony Selvaraj, who is practicing at Chennai. In order to institute a civil suit for specific performance, the petitioners had paid a sum of Rs.38,00,000/- (Rupees Thirty eight lakhs only) towards expenses for the Court fees and other filing charges and the 2nd respondent had also issued a receipt for such amount received from the petitioners. But to the shock and surprise of the petitioners, the 2nd respondent has not filed any civil suit for specific performance and on enquiry the petitioners came to understand that the 2nd respondent has filed only a bare injunction suit instead of filing a suit for specific performance. Immediately the petitioners had approached the 2nd respondent and requested to give consent for change of vakalat to proceed the above suit through their family advocate.

7.Thereafter on several occasions the petitioners requested the 2nd respondent to give consent for change of vakalat. But

even after repeated request made by the petitioners, their then counsel, who is the 2nd respondent herein neither conceded their request for change of vakalat nor repaid the amount collected towards the court fees. Hence the petitioners left with no other alternative remedy have filed a complaint before the Bar Council of Tamil Nadu.

8.While so, on 27.09.2010, the 1st petitioner along with his son Dr.Sivananthakumar, who is the 2nd petitioner herein went to the Court to attend the hearing of his civil suit, which is pending before the learned XIV Assistant City Civil Court, Chennai and after attending his case, the 1st petitioner along with his son went to the Office of the Bar Council of Tamilnadu to know about the status of his complaint given against his then advocate Mr.Antony Selvaraj, the 2nd respondent/defacto complainant herein. At that time, the petitioners were waylaid by the said advocate Mr.Antony Selvaraj and ten others and assaulted the petitioners with hits and blouse all over their body. Consequently, both are sustained severe bodily injuries. That apart the above said advocate along with 10 others assaulted the petitioners and threatened to kill them if they proceed with any such complaint.

9.Thereafter, the petitioners were escorted by the Police and brought to the Police Station. But after reaching the Police Station, to the shock and surprise of the petitioners, the 1st respondent Police acted in a biased manner and registered a case against the petitioners on the complaint given by the 2nd respondent alone. In fact, prior to that the petitioners had already given a complaint against the 2nd respondent and even after receipt of the said complaint, the 1st respondent failed to register it and also not even conducted any investigation on the said complaint given by the petitioners. This petition seeks to call for the records in C.C.No.478 of 2011 and quash the final report filed in F.I.R. No.695 of 2010 in C.C.No.478 of 2011 pending on the file of the VII Metropolitan Magistrate Court, George Town, Chennai and consequently direct for further investigation on the case and counter cases of complaints in F.I.R. No.695 of 2010 and C.S.R. No.205 of 2010 dated 27.09.2010 on the file of the 1st Respondent Police.

10.According to the petitioners, the 1st respondent ought to have registered the complaint given by the petitioners and conducted an enquiry and to register a case. But contrarily, they brushed aside the 2nd respondent/defacto complainant, registered a case against these petitioners and thereafter filed a final report before the VII Metropolitan Magistrate Court, George Town, Chennai in F.I.R. No.695 of 2010. Thus, the act of

the 1st respondent in filing the final report without conducting impartial enquiry on the complaint given by the petitioners is unjust and illegal.

11. Therefore, the petitioners herein have approached this Court by filing this present petition to call for the records in C.C. No.478 of 2011 and quash the final report filed in F.I.R. No.695 of 2010 in C.C. No.478 of 2011 pending on the file of the VII Metropolitan Magistrate Court, George Town, Chennai and consequently direct for further investigation on the case and counter cases of complaints in F.I.R. No.695 of 2010 and C.S.R. No.205 of 2010 dated 27.09.2010 on the file of the 1st Respondent Police.

12. At the time of advancement of arguments, the petitioners' counsel submitted the points for consideration as follows:

The act of the 1st respondent Police in conducting the investigation was in a biased manner and also impartial. The 1st respondent ought to have followed the Tamil Nadu Police Standing Order (PSO) 566, while conducting the investigation.

As per the PSO 566 the Investigation to be impartial ...

(1) Investigating Officers are warned against prematurely committing themselves to any view of the facts for, or against a person. The aim of an investigating officer should be to find out the truth, and to achieve this purpose, it is necessary to preserve an open mind throughout the Inquiry.

(2) Charge-sheets in cases and counter cases - In a complaint and counter complaint obviously arising out of the same transaction the investigating officer should enquire into both of them and adopt one or the other of the two courses, viz, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he should find them untrue. He should place before the court a definite case which he asks it to accept. The investigating officer in such cases should not accept into one complaint and examine only witnesses who support it and gave no explanation at all for the injuries caused to the other side. It is his duty to exhibit the counter - complaint in the court, and also to prove medical certificates of persons wounded on the opposite side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the court to enable it to arrive at the truth and a just decision.

(3) If the Investigating Officer finds that the choice of either course is difficult, viz., to charge one of the two cases or to throw out both, he should seek the opinion of the Public Prosecutor of the district and act accordingly. A final report should be sent to in respect of the case referred as mistake of law and the complaint or the counter - complainant as the case may be, should be advised about the disposal by a notice in Form No. 90 and to seek remedy before the specified Magistrate, if he is aggrieved by the disposal of the case by the Police.

13.As per the above referred PSO, the 1st respondent has to conduct the investigation while at the stage of case and counters and ought to have investigated the case simultaneously without any biased manner. In the instant case, the 1st respondent prima facie taken the 2nd respondent complaint alone and taken on file, investigated and filed a charge sheet before the learned Magistrate Court.

14.But on receipt of these petitioners complaint vide CSR No.205 of 2010, the 1st respondent not even enquired and investigated the matter and this is patently violating the Police Standing Orders as referred above. In this regard, the learned counsel appearing for the Petitioners relying upon the judgment of our Madurai Bench of Madras High Court in CrI.O.P. (MD) No.13177 of 2016, dated 29.08.2016 and it was held in paragraphs 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 28 & 29 that

...

"7. ... What is a result of the case registered in Crime No.654 of 2012? This question assumes importance, because of the statement made by the defacto complainant in Crime No.653 of 2012, wherein he would state that when they were pelted with stones, they retorted the attack by pelting with stones in the same manner. Thus, it is clear that though two cases have been registered, as if, it is two different occurrences at two different time, the statement recorded under 161Cr. P.C. would clearly show that the cases in Crime No.653 of 2012 and 654 of 2012 are one and the same occurrence and it can be called as cross cases or cases in counter.

8.If that be so, what is the mode of investigation contemplated under the Police Standing Orders? and what is the mode adopted by the Investigating Agency in this case?, is the crucial question.

9.Investigation? is defined in Section 2(h)of the Cr.P.C. to include all the proceedings under it for

the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Chapter XII deals with investigation of a cognizable offence. Section 156 states under Clause (1) that Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

10. Indian Law has conferred vast discretionary powers to the police. The language in the Code of Criminal Procedure is so structured that it has delegated considerable scope for discretion to the police in matters of arrest, search, seizure, and other functions that form part of the investigation of an offence.

11. When the Police enjoys such wide powers, with wide discretion, does it mean that the discretion can be used to prosecute persons according to the whims and fancies of the defacto complainant and leave the other case, without being investigated. Certainly, such discretion is not contemplated.

12. So far as this case is concerned, the charge sheet in Crime No. 653 of 2012 does not mention anything about the result of investigation in Crime No. 654 of 2012. In fact, it is nowhere stated in the counter affidavit also, as to the result of investigation in Crime No. 654 of 2012. The counter affidavit peculiarly says institution of counter case will in no way be construed as no prima facie case is made out.

14. What is the procedure contemplated, when there are two complaints in respect of the same incident, each complaining against the other.

15. It is relevant to focus attention on Rule 588-A of the Madras Police Standing Order, which stipulates as under: "In a complaint and counter complaint arising out of a same transaction, the investigation Officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course

is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter-complainant, as the case may be, should be advised about the disposal by a notice in Form-96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the police."

16.It is the settled law that both the cases in counter have to be tried together so as to find out the real aggressor.

17.The investigating Officer should have taken up the investigation in both the cases together and the investigation is to be held side by side so as to find out the truth attached to both the complaints by rival parties, particularly in view of the fact that the parties are one and the same and the causes of action alleged are also either same or similar.

18.The Hon'ble Supreme Court has held that the provisions of P.S.O. 145 is administrative in nature and therefore, it has no force of Law. However, it would be relevant to point out that so far as P.S.O.588A is concerned, it was an outcome of the Judgment rendered in the case of Thota Ramakrishnayya Vs. State, reported in (1954 MWN Cr 9), wherein P. N. Ramaswami, J. thought it fit to make certain observations as to how a complaint made and a counter complaint made, have to be dealt with by the Investigating Agency. At that time, P.S.O. 588A was not available.

18.1. Mr.V.Sairam, learned counsel for petitioners in Cri M.P.No.3861/1989, represents that P.S.O. 588A was the outcome of the decision in Ramakrishnayya's case. The learned Judge observed, that it is improper for the police to prosecute at the same time two counter cases in regard to the same occurrence, one of which must be false. The Police cannot charge both cross-cases and must either find out the truth and charge that version which is true, or if they are unable to do so to throw out both the cases or charge one version leaving it open to the aggrieved party to resort to his own remedies. If he finds out that the choice of either course is difficult, he should seek the opinion of the Public Prosecutor of the District and act accordingly. A Magistrate before whom such a

case is charged by the police and a private complaint from the party whose case had been referred should hear both the cases together and commit both of them to the Sessions, even if only one of them is exclusively triable by a Court of Sessions. The procedure suggested is salutary and may help the Investigating Agency when they are confronted with two complaints in respect of the same occurrence.

28. ... When the origin of occurrence itself is doubtful and when the manner of occurrence and the number of persons involved and the motive for occurrence are not established, it will not be in the interest of justice to allow the prosecution to continue. It is dangerous to allow the prosecution of the accused persons, especially when a case registered under Section 307 IPC is without any material. Under the said circumstances, the proceedings as against the accused are ordered to be quashed.

29. ... In the result, this Criminal Original Petition is allowed and the entire proceeding in P.R.C.No.27 of 2014 pending on the file of the learned Judicial Magistrate No.VI, Madurai as against the petitioner alone is hereby quashed. Consequently connected Miscellaneous Petitions are closed.

15. The petitioners' counsel submits that the above said reported judgment is squarely applicable to this case in hand.

16. Per contra, the learned Public Prosecutor submits that the 1st respondent has not conducted impartial enquiry and followed the procedure as contemplated in the Police Standing Orders and there is no violation in this case.

17. The learned counsel for the 2nd respondent/defacto complainant submits that the prayer in this present petition is not maintainable since the petitioners sought for the relief quash and also direct the 1st respondent to investigate the complaint filed by the petitioners and the defacto complainant.

18. The petitioners' counsel requested this Court to relinquish the second prayer, seeking for the relief of first prayer alone in this petition. The learned counsel appearing for the 2nd respondent submit that no violation in this case and was correctly conducted by the 1st respondent.

19. Having heard learned counsels for the parties and having perused the relevant provisions of law and as also judicial pronouncement, I am of the view that the 1st respondent has not followed the Police Standing Orders in the instant case. Instead only taken on 2nd respondent/defacto complainant's case and registered the F.I.R., thereafter investigated and filed a charge-sheet before the concerned magistrate. The 1st respondent has not followed the Police Standing Orders. As per the Police Standing Orders, if a complaint and a counter complaint arising out of the same transaction, the Investigation Officer should enquire into both the cases and adopt one or the other of the two courses:

(1) to charge the case where the accused were the aggressors.

(2) to refer both the cases if he should find them untrue. The Investigation Officer should place before the court a definite case which he asks it to accept and in such cases should not accept into one complaint and examine only witnesses who support it and gave no explanation at all for the injuries caused to the other side.

(3) It is his duty to exhibit the counter - complaint in the court, and also to prove medical certificates of persons wounded on the opposite side.

(4) If the Investigating Officer finds that the choice of either course is difficult, viz., to charge one of the two cases or to throw out both, he should seek the opinion of the Public Prosecutor of the district and act accordingly.

(5) A final report should be sent to in respect of the case referred as mistake of law and the complaint or the counter - complainant as the case may be, should be advised about the disposal by a notice and to seek remedy before the specified Magistrate, if he is aggrieved by the disposal of the case by the Police.

20. Therefore, I am of the view that the 1st respondent has not followed the procedures contemplated under the Police Standing Orders in this case. The 1st respondent police has only taken the case filed by the 2nd respondent/defacto complainant and has not taken the petitioners' case. Also I am accepting the view taken in the recent order made in CrI.O.P.(MD) No.13177 of 2016 a case of Prasath Vs. The Inspector of Police, Avaniyapuram Police Station & another by this Court in a similar issue. As per the above recent order, the Investigation Officer has not followed the above standing orders and conducted impartial enquiry.

21.In the result, this Criminal Original Petition is allowed and the entire proceedings in C.C.No.478 of 2011, pending on the file of the learned VII Metropolitan Magistrate Court, George Town, Chennai, as against these petitioners are hereby quashed.

22.Therefore, accordingly, this CrI.O.P.No.11649 of 2011 is allowed and the connected Criminal Miscellaneous Petition is closed. There is no order as to costs.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

vs

To

- 1.The Inspector of Police,
B-1, North Police Station,
Chennai - 600 001.
- 2.The Vii Metropolitan Magistrate,
George Town, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to M/S.S.Vijayakumar, Advocate Sr.48466

Pre-Delivery Judgment in
CrI.O.P No.11649 of 2011
and
M.P.No.1 of 2011

SK(CO)
VR(20/07/2017)

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