

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.20501 of 2009
and
M.P.Nos.1 and 2 of 2009

Ramesh ...Accused 2/Petitioner

vs.

1. State by: The Inspector of Police,
Kanakammachathiram Police Station,
(Cr.No.353/2003) Thiruvallur District.

2.Devasaiyal ...Complainant/ Respondents
(Impleaded the 2nd respondent as per the
order of this Court dated 14.10.2009
in M.P.No.3 of 2009)

Prayer: Criminal Original Petition filed under Section 482 of
Criminal Procedure Code, to call for the records in P.R.C.No.28
of 2004, pending on the file of the Judicial Magistrate,
Tiruttani and quash the same.

For Petitioner : Mr.R.C.Paul Kanagaraj
for M/s.V.K.Rajagopalan

For Respondents: Mr.B.Ramesh Babu (for R1)
No Appearance (for R2)

JUDGMENT

The petitioner has come up with the present petition to
quash the proceedings in PRC.No.28 of 2004 pending before the
learned Judicial Magistrate, Thiruthani, in Crime No.353 of 2003
on the file of Kanagamma Chathiram Police Station, Thiruvallur
District.

2.The case of the petitioner is that he is the 2nd accused
in Cr.No.353 of 2003 on the file of Kanagamma Chattiram Police

station, Tiruvallur Police Station. The said case was registered based on the complaint of the Defacto-Complainant namely Devasaiyal for the offence under Sections 147, 148, 324, 307 of IPC. According to the complaint, the alleged occurrence said to have taken place on 22.11.2003 at about 19.00 hours. In the complaint it is further alleged that the petitioner along with six others waylaid the Defacto-Complainant with deadly weapons assaulted and inflicted bleeding injurious upon him and thereafter, at about 22.00 hours the complaint was lodged.

3.The learned counsel for the petitioner would submit that, subsequently the case was taken up for investigation by the respondent and final report was filed and the same was taken on file by the learned Judicial Magistrate, Thiruthani for the offence under Sections 147, 148, 324, 307 of IPC. Earlier, the very same petitioner filed a Crl.O.P.No.8406 of 2004 for the transfer of investigation of the instant case in Cr.No.353 of 2003 from the file of Kanagamma Chatram Police Station, Thiruvallur, to the CBCID Police. However, another Crl.O.P.No.31924 of 2004 was also filed by the petitioner for the relief of quash and another application in Crl.O.P.No.31896 of 2004 was also filed for the transfer of investigation to be conducted by the CBCID police. This court by its order dated 12.10.2004 directed the petitioner to approach the learned trial court for relief sought for. Subsequently, by the order dated 09.11.2004, the learned Judicial Magistrate, Thiruthani permitted for further investigation in respect of PRC Nos.28 and 29 of 2004. Now, the petitioner has come up with the present petition contending that he has not committed any offence and the lodging of the First Information Report itself is imaginary.

4.Moreover, according to the Learned Counsel for the petitioner that the perusal of the complaint given by the Defacto-Complainant would show that though on 22.11.2003 at about 19.00 hours, the alleged occurrence said to have taken place and the complaint was lodged on the same at about 22.00 hours, the First Information Report was registered on the next day at 08.30 hours. The Counsel appearing for the petitioner would submit that the petitioner himself and his family members were assaulted on 22.11.2003 at about 7.15 p.m. by one Arul Jothimani and some others. So, immediately including the petitioner, the persons who suffered with injuries got admitted at Government Hospital, Thiruthani and thereafter referred by the hospital authorities of Government Hospital, Thiruthani to the Government General Hospital in Chennai. On the way to Chennai, the petitioner at about 9.50 p.m. on 22.11.2003 itself lodged a complaint with the respondent police against one Arul Jothimani and others. Thereafter on 23.11.2003 in the mid-night

that is 00.30 hrs, the petitioner and the other injured, got admitted at the Government Hospital, Chennai. However, the petitioner subsequently came to know that the respondent registered the instant case by obtaining a complaint from the Defacto-Complainant with false allegations.

5. On the other hand, the Learned Government Advocate criminal side submitted that the Inspector of Police, conducted investigation properly as for as Crime No.353 of 2003 and 354 of 2003 are concerned. At the completion of the investigation, final report was filed in the both crime numbers before the learned Judicial Magistrate, Thiruthani and he took cognizance on both crime numbers and they were taken on file as PRC.No.28 of 2004 and 29 of 2004 respectively. Further, it is contented by the learned Government Advocate, Criminal side that the learned Judicial Magistrate, Thiruthani after having perusal of all the relevant records, and got satisfied with the investigation, took cognizance on both cases as per law. Therefore, the quash petition filed by the petitioner is devoid of merits and the consideration of merits of the case in the petition filed under section 482 of Cr.P.C., is impermissible. Therefore, he prays for the dismissal of the quash petition as sufficient materials are available to frame charges against the petitioner.

6. I heard Mr.R.C.Paul Kanagaraj for M/s.V.K.Rajagopalan, learned counsel appearing for the petitioner and Mr.B.Ramesh Babu, learned counsel appearing for the 1st respondent and there was no representation on behalf of the 2nd respondent and all the materials available on record are perused.

7. It is the specific case of the petitioner that on 22.11.2003 he and his family members were assaulted by Arul Jothimani and others. For the injuries sustained, the injured took treatment initially at Government Hospital at Thiruthani and thereafter Government Hospital at Chennai. The petitioner has stated that for the occurrence of assault on the petitioner and his family members on 22.11.2003, immediately at about 9.30 p.m. itself he lodged a complaint but it was belatedly registered on the next day at about 10.30 a.m. on 23.11.2003 according to the First Information Report in Crime No.354 of 2003. This court subjected the First Information Report in Crime No.354 of 2003 on the file of respondent, wherein, it is mentioned that the information about the occurrence was given by the petitioner in person with one Mr.A.A.Doss, Sub-Inspector of Police of the respondent police station, on the other hand, the discharge summary of the Government Hospital, Chennai disclosed that the petitioner got admitted in the Government Hospital

Chennai on 22.11.2003 and was discharged on 23.11.2003 at 11.15 a.m. When the petitioner has proved that he was in Chennai Government Hospital at 11.15 a.m. on 23.11.2003, definitely he could not be appeared before the Sub-Inspector of police of the respondent police station. However, the counsel for the petitioner would submit that earlier one Sudhakaran of the petitioner village lodged complaint against the Sub-Inspector of police Mr.A.A.Doss in the said complaint the brother of the petitioner Mr.V.M.Venkateswaran and one Pitchaimuthu who is the 3rd accused in Cr.No.355 of 2003 gave statement as against the very same Sub-Inspector of Police before the Superintendent of Police, Thiruvallur. In this connection, the said Sub-Inspector police was dissatisfied and shown his antipathy at the petitioner as if he lodged complaint in person on 23.11.2003 at 10.30 a.m., knowing the fact that the petitioner was taking treatment at the relevant time at Government Hospital, Chennai.

8.Further, when this court perused the complaint given by the Defacto- Complainant it came to light that the Defacto-Complainant in occupation is a Coolie worker and the same is mentioned in column No.6-F of the First Information Report in Crime No.353 of 2003. Further, the perusal of the complaint would show that the Defacto-Complainant has given railway timing that he was assaulted on 23.11.2003 evening 19.00 hours and lodged complainant on the very same day at about 22.00 hours. In the normal circumstances, it is indisputable, if a person lodged a complaint, he would not have given railway timing, but the police authorities would usually use to mention railway timings in their records. This court is wondering in appreciating the complaint given by the Defacto-Complaint, but taking judicial notice of the same. Though, in general and normal circumstances, this court will not go into the merits of the case, but that would not mean that this court is having no such power to appreciate the nature of the complaint. In appreciating the allegation of the case and the manner in which the complaint is drafted is not satisfactory in the opinion of this Court. Apart from that this would create very serious doubt on the case of prosecution. Moreover, the statement of the witnesses recorded during the time of investigation do not inspire confidence to hold that sufficient materials are available to frame charges against the petitioner. In the considered opinion of this court, these factors are deserved for consideration in favour of the petitioner. Further the prosecution has not given satisfactory reply to this court on these aspects.

9.So, the registration of the First Information Report in Crime No.353 of 2003 by receiving complaint from the petitioner as if on 23.11.2003 by 10.30 a.m., is against the discharge

summary issued by the Government Hospital, Chennai in respect of the petitioner and the lodging of complaint by mentioning railway timing by the Defacto Complainant is unusual. At the same time, the statement of witnesses and others records available are in the considered opinion of this court are not sufficient to frame charge in respect of PRC No.28 of 2004 and this court has considered that it is the fit case to consider that the proceedings in PRC.No.28 of 2004 pending on the file of the learned Judicial Magistrate, Thiruthani, is liable to quash and accordingly quashed.

10.In the result, this criminal original petition is allowed and the proceedings in PRC.No.28 of 2004 pending before the learned Judicial Magistrate, Thiruthani, in Crime No.353 of 2003, on the file of Kanagamma Chathiram Police Station, Thiruvallur District, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Judicial Magistrate,
Thiruthani.
2. The Inspector of Police
Kanakammachathiram Police Station,
Thiruvallur District
3. The Public Prosecutor
High Court, Madras

Copy to

The Section Officer
Criminal Section
High Court, Madras

+1 CC to Mr.V.K. Rajagopalan, Advocate sr 18981

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and
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