

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P.No.20321 of 2010
and
M.P.No.1 of 2010

Packiaraj

... Petitioner

Vs.

1. State represented by
Inspector of Police,
Sirkali Police Station,
(Crime No.234/2003)

2. Kanagaraj ... Respondents
(2nd respondent impleaded as per order
of this Court dated 24.9.10 in
MP.No.3/2010)

Prayer:

Criminal Original Petition filed under Section 482 of
Cr.P.C., to call for the records in connection with C.C.No.179
of 2006 pending on the file of Judicial Magistrate, Sirkali and
quash the same.

For Petitioner : Mr.T.Munirathnam Naidu

For Respondents : Mr.P.Givindarajan (for R1)
Additional Public Prosecutor

No Appearance (for R2)

ORDER

This criminal original petition is preferred by the
petitioner/accused A1 to call for the records in connection with
C.C.No.179 of 2006 before the learned Judicial Magistrate,
Sirkali and quash the same.

2.Brief case of the petitioner/accused:

The prosecution case is that on 15.3.2003 the petitioner
along with his brother entered into the house of the defacto

complainant and threatened him with dire consequences due to prior enmity. The complaint was given on 17.3.2003 i.e. 2 days later to the respondent police. On 15.3.2003 at about 6.30 PM the defacto complainant and others due to previous enmity entered into the petitioner's house at Thenpathi village and assaulted his mother and also attempted to outrage her modesty by knowing well that no male members are in the house. The petitioner's mother immediately lodged a complaint before the respondent police and the same was registered in crime No.235 of 2003 against the defacto complainant and others. As a counter blast, a false complaint was lodged against the petitioner and his brother on 15.3.2003 alleging that they threatened the defacto complainant with dire consequences and the same was registered in crime number 234 of 2003 by the respondent police. The respondent police acted as hand and glove with the defacto complainant and filed a final report in this case within 8 days without conducting any proper investigation due to the influence of one Murugavel (H.C.915) working as Head Constable in the respondent police station. The learned Magistrate took the case on file in C.C.No.179 of 2006. Aggrieved over the same this quash petition is filed.

3.The learned counsel for the petitioner submits that at the time of alleged occurrence the petitioner was working as constable in C.R.P.F. 141 Battalion, Hyderabad. The petitioner was in duty on the alleged date of occurrence and the same was clearly proved by the certificate issued by the Higher Officer of the 141 Battalaion, Hyderabad.

4.The learned counsel for the petitioner submits that the petitioner was transferred from Unit V to 141 Battalion C.R.P.F. Hydrabad and he was joined in duty only on 10.3.2003 at Hyderabad. Therefore the petitioner was not present at the time of occurrence and he has been falsely implicated in the case.

5.The learned counsel for the petitioner submits that even in the complaint the date and time of occurrence was inserted by way of correction and it clearly shows that the complaint was prepared with intention to implicate the petitioner in a criminal case in order to remove him from the job and also there is no allegation of abusing them.

6.The learned counsel for the petitioner submits that the commandant, 141 Battalion, Hydrabad also written a letter dated 29.4.2003 vide proceeding No.W.V. 1/2003-141- E.C.4 addressed to District Collector, Nagapattinam and also to the Superintendent

of Police, Nagapattinam informing that the petitioner is on duty at the time of said occurrence.

7.The learned counsel for the petitioner submits that the proceedings against the petitioner is mere abuse of process of law on the ground that the complaint was given with malafide intention to harass the petitioner due to previous enmity and there is no allegation against the petitioner in the complaint.

8.The learned counsel for the petitioner submits that the petitioner is now working as Constable In C.R.P.F. 19TH Battalion, Rourkela of Orissa and hence seeking the dispense with his personal appearance before the trial Court and undertakes to appear as and when required by the trial Court.

9.The learned Additional Public Prosecutor appearing for the 1st respondent police sought for dismissal of the quash petition.

10.This Court through its order dated 24.9.2010 directed the petitioner to implead the defacto complainant as second respondent.

11.I heard Mr.T.Munirathnam Naidu, learned counsel for the petitioner and Mr.P.Govindarajan, learned Additional Public Prosecutor for the 1st respondent and perused the entire materials available on record. No representation on behalf of the 2nd respondent.

12.It is seen from the records that, both parties preferred separate complaints in Cr.No.234 of 2003 and 235 of 2003. One case in Cr.No.234 of 2003 instituted by the 2nd respondent was taken vigorously and final report was filed within 8 days and the learned Magistrate took cognizance of the offence, resulted in filing this quash petition.

13.The other complaint preferred by the petitioner's family was completely ignored and the petitioner who was working as constable in CRPF 141, Battalion, Hyderabad was added as the accused. Further in the annexures, it is seen that the petitioner was transfer from Unit V to 141 Battalion and joined in duty on 10.3.2003. Therefore, virtually the petitioner was not present at the time of occurrence and he was falsely roped with the respondent police.

14.The only aim of the respondents is to remove the petitioner from the Government Service by using these criminal proceedings as a tool to wreck vengeance which can be seen from the statements collected by the 1st respondent.

15.Therefore, the proceedings in C.C.No.179 of 2006 before the learned Judicial Magistrate, Sirkali against the petitioner/accused A1 is nothing but a clear abuse of process of law.

16.In the result, this criminal original petition is allowed and the proceedings pending against the petitioner/accused A1 in C.C.No.179 of 2006 before the learned Judicial Magistrate, Sirkali is quashed. It is made clear that the findings/observations made herein, are only for the purpose of disposal of this petition and the trial Court need not be influenced by the same while proceeding against the other accused and the 2nd respondent herein is also liberty to work out his civil remedy before the competent forum in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Judicial Magistrate, Sirkali.

2. The Inspector of Police,
Sirkazhi Police Station.

3. The Public Prosecutor,
High court, Madras-104

+1cc to Mr.T.Munirathnam Naidu, Advocate, S.R.No.45377

Cr1.O.P.No.20321 of 2010
and
M.P.No.1 of 2010

GJII(CO)
CS/14/03/2019