

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

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

Cr1.O.P.No.5454 of 2011

1.S.Nathan

2.M.Anbazhagan

3.S.Rajendran

4.R.Santhanam

5.Charles

6.P.Radhakrishnan

7.V.Agoram

8.S.Ranganathan

9.Sujatha

10.S.Ezhila

... Petitioners

1.State rep. By
The Sub-Inspector of Police,
G-5, Melmaruvathur Police Station,
Kanchipuram District.

2.Kanaga

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to C.C.No.95 of 2010, on the file of the learned Judicial Magistrate Court, Madurantagam and quash the same.

For Petitioners : Mr.K.Govi Ganesan

For Respondents : Mr.B.Ramesh Babu (for R1)

Government Advocate (Cr1.Side)

No Appearance (for R2)

JUDGMENT

The petitioners herein are practicing Advocates at Maduranthagam Town, Kaancheepuram District. They are arrayed as accused Nos.1 to 6, and 9 to 12 respectively in C.C.No.95 of 2010 on the file of the learned Judicial Magistrate Court, Maduranthagam.

2.They have come up with the instant Criminal Original Petition seeking this court to invoke its inherent power under section 482 of Cr.P.C to quash the above final report laid against them under sections 147, 294(b), 323, 506 part - II of IPC on the basis of the 2nd respondent's complaint dated 06.09.2009.

3.The facts in nutshell according to the petitioners as follows:

The 9th petitioner was appointed as Advocate Commissioner by the District Munsiff Court, Maduranthagam in I.A.No: 1223 of 2004 in O.S.No: 234 of 2009 to inspect the suit properties and note down its physical features in a suit filed by one Subhaya gounder as against a temple represented by its trustee Kuppusamy Naidu who happened to be the uncle of defacto complainant.

4.Pursuant to above commission appointed, the 9th petitioner Advocate Commissioner (Miss.Sujatha) aged about 25 years along with her friend viz the 10th petitioner herein namely S.Ezila aged about 25 years along with the Counsel for the plaintiff i.e., 5th and 6th petitioners herein visited the suit property. Previously as the defendant was not in station and he was out of village, hence, notice to him was served to his relative, the defacto complainant namely Kanaga, the 2nd respondent herein, who also happened to the village Panchayat President of the village.

5.In said factual backdrop when the advocate commissioner was about to survey and note down the physical features of suit properties, all of a sudden the 2nd respondent/defacto complainant along with the other accused in Crime No: 390, 391/09 attacked the commissioner and other advocates and they all were confined.

6.When the above illegal act of the defacto complainant reached the Advocate Bar Association, the petitioners 1 to 4, 7

and 8 rushed to the spot to recover petitioners 5, 6, 9 and 10, however, they were also attacked, besides roping into the false complaint.

7.While so, at the intervention of public they were saved. Immediately the 9th petitioner, Advocate Commissioner and the 5th petitioner lodged complaints over the brutal attack on them by the 2nd respondent herein. Thereby FIR in Crime No.391, 393 of 2009 were registered as against the 2nd respondent and other accused under Sections 147, 148, 294(B), 323 and 506 (II) of IPC.

8.However, as the 2nd respondent was the then Panchayat President and that one of the petitioners' car was set fire by the 2nd respondent to overcome the said offence and also by her influential capacity, she managed to lodge a false complaint against the petitioners which came to be registered in FIR in Crime No.392 of 2009.

9.It is further case of the petitioners that the defacto complainant not stopping thereby also managed to put the 1st respondent police to file final report in as much as Crime No.392 of 2009 alone is concerned as against the petitioners. Whereas she was successful in restraining filing of final report in other two crime numbers pending action against the 2nd respondent. The filling of final report is utter abuse of process of law and the same is liable to be quashed as an abuse of process of law and court.

10.I heard Mr.K.Govi Ganesan, Learned Counsel for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent and there is no representation for the 2nd respondent/defacto-complainant.

11.On perusal of the typed set of papers dated 02.03.2011, from page No.1 viz., Advocate Commissioner Warrant issued by the District Munsif Court, Madhuranthagam it is noticed that the 9th petitioner namely Miss.Sujatha was appointed as Advocate Commissioner Vide I.A.No.1223 of 2009 on 01.10.2009 and entrusted with duty to visit the suit property and note its physical features.

12.On further examination of FIR in Crime No.390 of 2009 dated 06.10.2009 it is found to be lodged by the 5th petitioner, the counsel for the plaintiff in the suit complaining that when the Advocate Commissioner was about to proceed with commission. All of a sudden the 2nd respondent/defacto complainant and her hooligans by attacking the commissioner and 5th petitioner have confined them.

13.From FIR in Crime No.391/2009, it disclose to be a complaint lodged by the 2nd petitioner namely M.Anbazhagan as

against the 2nd respondent for having attacked the 4th petitioner, R.Santhanam, the Secretary of Bar Association, Mathuranthagam.

14.At this juncture, it is shocking surprise for this court to see the FIR in Crime No.393 of 2009 registered on the basis of the complaint made by the Advocate Commissioner E.Sujatha, it is seen that on the date of her inspection, the 2nd respondent and her accomplice have attacked the Advocate Commissioner and she was dragged all along the road by the 2nd respondent.

15.It is misfortunate to see that the Advocate Commissioner was also abused in front of not less than 50 inmates of the street. The complaint also discloses that the Advocate Commissioner phone was seized by the 2nd respondent personnel. That apart the commissioner was also found to be intimidated and confined by the 2nd respondent.

16.From the above complaints, this court is able to see that the 2nd respondent regardless of the fact that the Advocate Commissioner as an officer entrusted by the court for a specific purpose is being harassed and attacked by the 2nd respondent for having proceeded with the Commission.

17.It is needless to say that Advocate Commissioner being an officer of the court is casted with duty to comply with the warrant issued by the court of law. It is usual that the Advocate Commissioners are appointed for field appraisal with physical features so as to arrive at a proper and correct decision by the Court.

18.In such factual status, the conduct of parties to the litigation complaining and roping into criminal cases as against an Advocate Commissioner while exercising duties under a warrant of Court is entertained the same will be a blow touching upon the duty as well as power of the Court in safeguarding Advocate Commissioner's life and limb.

19.It is needless to say that the advocates play pivotal role in social reformation as evidenced in pre and post Independence period. Their part and function in assisting the Courts are indispensable in administration of justice. However, this Court is highly displeased with the attitude prevailing, nowadays as if advocates are threat to peace as such involving in law and order problems.

20.It is quiet natural that an advocate having knowledge of law will agitate on its violation, unlike a layman who may take an oppression or suppression as fate.

21.This Court on evaluating the contentions of FIR and the allegations on 2nd respondent, it is precise that the allegations

against the advocates are untenable and intended to overcome the obstruction and attack over the Advocate Commissioner and the Learned Counsel for the plaintiff. This Court is also able to see that as a matter of practice followed by Courts in appointing juniors with an opportunity to serve the Court through commission, such that it would be helpful both academically and financially, the Trial Court had appointed Miss.Sujatha who then aged about 25 years at the relevant point of time.

22.It is equally important to note that the petitioners 1 to 4, 7 and 8 are victimized as they attempted to rescue the petitioners 5, 6, 9 and 10.

23.It is worthwhile to state that an act of the Court shall prejudice no person. The said principle cannot be solely applicable on point of delay or fault in procedure followed in a Trial, but will also applicable to a peculiar case as on hand.

24.For the foregoing reasons, this Court finds the instant case is a fit case to exercise its Inherent Power under Section 482 of Cr.P.C. to quash the final report laid against the Advocate Commissioner as well the other Learned Counsels.

25.In the result, this criminal original petition stands allowed and quashing the C.C.No.95 of 2010 on the file of the learned Judicial Magistrate Court, Maduranthagam.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vs
To

The Judicial Magistrate Court, Madurantagam.

+1cc to Mr.K.Govi Ganesan, Advocate SR.No.20615

Cr1.O.P.No.5454 of 2011

GMV (08/11/2018)