

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

CORAM

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

Crl.O.P.No.8359 of 2011

E.Ramana

.. Petitioner

vs

State,
rep. by Inspector of Police,
E-2, Royapettah Police Station,
Chennai.(Crime No.643/2008) .. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the criminal case pending against the petitioner/accused No.1 in P.R.C.No.42 of 2010 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondents : Mr.B.Ramesh Babu
Govt. Advocate (Crl.
Side)

ORDER

The petitioner has come forward with this petition to call for the records in P.R.C.No.42 of 2010 on the file of the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai and quash the same as against him.

2. I heard Mr.R.C.Paul Kanagaraj, learned counsel for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondent.

3. The case of the prosecution is that on 03.05.2008 at 10.30 A.M., the petitioner along with two others came to the defacto complainant's house and demanded to vacate the premises and subsequently, all of them attacked the defacto complainant on his head and shoulder and they have also threatened him with dire consequences. Based on the complaint given by the defacto complainant, the respondent police registered a case in Crime

No.643 of 2008 under Sections 341 and 323 IPC on 04.05.2008. After registering the case, the Inspector of Police visited the scene of occurrence and after examining the witnesses, filed a final report under Sections 341, 448, 323 and 307 I.P.C. against the petitioner and two others before the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai. The learned XVIII Metropolitan Magistrate, Saidapet has taken up the case on its file as P.R.C.No.42 of 2010.

4. The learned counsel for the petitioner submitted that the petitioner is a practising Advocate, who often visits police station fighting for violation of right to liberty of accused persons, and therefore the respondent police developed hatred towards him and are using the complainant as a tool to register the case against him.

5. Qua merits of the complaint, the learned counsel for the petitioner submitted that though initially, the case was registered under Sections 341 and 323, later with an ulterior motive and in order to constitute the offence, the same was altered to Section 307 IPC without any material. He would submit that there was enmity between the defacto complainant and the land owner about the property, for which, the petitioner negotiated for arriving at a compromise. Aggrieved by the same, the defacto complainant had given a false complaint against the petitioner and without properly investigating the matter, the respondent police has also filed the charge sheet against the petitioner.

6. The learned counsel further submitted that there was a delay in registering the complaint and there is no eye witness to the occurrence. The alleged injury stated to have been sustained by the defacto complainant was false. He would further submit that the petitioner has been falsely implicated in this case and prayed for quashing of the same.

7. The learned Government Advocate (Criminal Side) submitted that based on the complaint given by the defacto complainant only the respondent police has acted and the allegation of the petitioner that since the petitioner was questioning the unlawful activities of the respondent police, they had taken the complainant as a tool to register the case against the petitioner is a concocted story for the purpose of filing this petition. He would submit that there is no merit in the petition filed by the petitioner.

8. There is no dispute that the petitioner is a practising Advocate and there was property dispute between the defacto complainant and the land owner, for which, the petitioner was negotiating for arriving at a compromise. Though in the

complaint the defacto complainant stated that the petitioner and other two persons rushed to the house of the defacto complainant and demanded to vacate the house and have attacked him and he had sustained grievous injuries on his head and ear, there was no specific overt act against the petitioner. It is also stated that the petitioner has threatened the defacto complainant with dire consequences.

9. In order to show that the defacto complainant had sustained grievous injuries and also the petitioner threatened him with dire consequences, the defacto complainant has not produced any material. In fact, there are so many contradictions in the complaint as well as Section 161 Cr.P.C. statement of the defacto complainant. In his 161 Cr.P.C. statement, the defacto complainant stated that nobody witnessed the occurrence. On the contrary, the typed set of papers contains statement of one Malliga, who is said to be the neighbour of the defacto complainant, who had stated that she saw three persons standing in front of the house bearing Door No.16 and she was not aware of what had happened.

10. The respondent police examined one Chandrasekar, who was said to be a land broker, who stated that one Dawood Hussain had handed over documents to him in respect of the house bearing Door No.16, V.M. Street for sale and for the purpose of selling, he had informed one Manigandan of Triplicane, who in turn informed him that his tenant Sivanesan wanted to purchase a house. On his request, he had handed over documents to Sivanesan and his brother Ramanan (petitioner) and they were also willing to purchase the house. Since there was a dispute in the property, he had returned all the documents to Dawood Hussain. While so, he heard that on 3.5.2008, Ramanan, Sivanesan and Marimuthu rushed to the house of the defacto complainant and picked up quarrel. He had stated that he was not aware anything further.

11. On a perusal of the entire records, I find that though the defacto complainant had lodged the complaint before the respondent police on 03.05.2008 at 12.45 P.M., the respondent police registered the case on the next day i.e., 04.05.2008 at 12.45 P.M. under Sections 341 and 323 I.P.C. Thus, there was a delay in registering the FIR.

12. According to the prosecution, the petitioner and others attacked the defacto complainant with lethal weapon. But no recovery was effected from the petitioner herein.

13. Qua injuries said to have been sustained by the defacto complainant, admittedly, the injuries are simple in nature, which would be evident from the wound certificate. More over

there was no proof that those simple injuries were caused by the petitioner. Thus, the question of attracting Section 307 IPC would not arise. In the Accident Register, the Doctor who examined the defacto complainant stated that three unknown persons attacked the defacto complainant, which would show that there was no specific overt act against the petitioner.

14. It is pertinent to note that the defacto complainant is said to have lodged the complaint before the respondent police on 03.05.2008 at 12.45 P.M. But in the Accident Register, the time has been noted as 12.50 P.M. When the defacto complainant was able to mention the name of persons attacked him in the complaint, what prevented him from saying the name of the petitioner before the Doctor. Thus, all the above would create a suspicion over the complaint lodged by the complainant against the petitioner.

15. As stated supra, no enmity was attributed against the petitioner by the defacto complainant. On a perusal of the records, it is seen that there were lot of discrepancies in the case of the prosecution against the petitioner and most of the statements, which were recorded by the respondent police were only hearsay in respect of the petitioner. Moreover, as stated supra, the defacto complainant sustained only simple injury and was treated as out-patient. No grave injury was caused to the defacto complainant and thus, the offence under Section 307 IPC has not been made out against the petitioner. Without any concrete evidence, the respondent police has branded the petitioner, who is a practising Advocate as first accused in this case. There are no merits in the prosecution version as far as the petitioner is concerned and therefore, the proceedings in P.R.C.No.42 of 2010 as against the petitioner is liable to be quashed.

16. In the result, the Criminal Original Petition is allowed and the case against the petitioner in P.R.C.No.42 of 2010 pending on the file of the learned XVIII Metropolitan Magistrate, Saidpet, Chennai is quashed. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs

To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
E-2, Royapettah Police Station, Chennai.

Cr1.O.P.No.8359 of 2011

(CS-DR)
EU(28/09/2018)



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