

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.27741 of 2010
and
M.P.No.1 of 2010**

1.Sellamuthu

2.Sellakili

3.Sellammal

4.Periyasamy

... Petitioners

vs.

1.Periyasamy

2.The Sub Inspector of Police,
Kunnam Police Station,
Perambalur District.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the order of the Principal District and Sessions Judge, Perambalur in Criminal Revision No.13 of 2009 dated 10.03.2010 wherein setting aside the order in Crl.M.P.No.6205 of 2009 on the file of the Judicial Magistrate, Perambalur and allow the Criminal Original Petition.

For Petitioners : Mr.S.Senthilkumar

For Respondent : Mr.P.Tamilavel (for R1)

Mr.B.Ramesh Babu (for R2)
Government Advocate (Crl. Side)

JUDGMENT

The petitioners have filed this Criminal Original Petition to call for the entire records pertaining to the orders the Principal District and Sessions Judge, Perambalur in Criminal Revision No.13 of 2009 dated 10.03.2010 wherein setting aside the order in Crl.M.P.No.6205 of 2009 on the file of the Judicial Magistrate, Perambalur and allow the Criminal Original Petition.

2.The petitioners have come up with the Criminal Original Petition to set aside the order passed by the learned Principal District and Sessions Judge, Perambalur made in Criminal Revision Petition No.13 of 2009 dated 10.03.2010. According to the petitioners herein, there was a previous enmity between the petitioners and the 1st respondent herein and in this regard a criminal case was filed in Crime No.134 of 2003 by the 2nd respondent police, and the same was referred to the Principal District and Sessions Court, Perambalur in P.R.C.No.118 of 2003 and the same is

pending disposal. While so, due to the previous enmity, the petitioners 1 to 3 herein at the instigation of the 4th petitioner herein assembled in front of 1st respondent house on 14.04.2009 at about 11.00 a.m. and scolded with filthy language and when the 1st respondent herein questioned the illegal act of the petitioners, the petitioners 1 to 3 have beaten him with hands and kicked him by legs and thereby caused unbearable pain all over the body. Further the petitioners herein threatened the 1st respondent that they would pour petrol and set fire on him, if he failed to withdraw the case pending against them.

3.The further case of the petitioners is that after the occurrence the 1st respondent/complainant was admitted into Government Hospital, Ariyalur and taken treatment. On the same day, he lodged a complaint before the 2nd respondent's Police Station against the petitioners herein and the same was registered in Crime No.153 of 2009 for offence under Sections 294(b), 323, 506(i) IPC. However, the 2nd respondent police have closed the above said case as "Mistake of Fact".

4.Therefore, the 1st respondent herein filed private complaint against the petitioners under Section 200 of Cr.P.C. before the learned Judicial Magistrate, Perambalur in CrI.M.P.No.6205 of 2009. The learned

Magistrate after examining the witnesses and perusing the records, has dismissed the private complaint by order dated 30.11.2009 on the ground that due to previous enmity between the 1st respondent and the petitioners and also in order to counter blast the case registered against the 1st respondent herein in Crime No.152 of 2009, the 1st respondent herein might have lodged a criminal case against the petitioners herein.

5. Aggrieved over the dismissal of the above said private complaint, the 1st respondent herein prepared Criminal Revision Petition No.13 of 2009 before the learned Principal District and Sessions Judge, Perambalur and the learned Principal District Judge was pleased to allow the revision by order dated 10.03.2010 whereby setting aside the order passed by the learned Judicial Magistrate, Perambalur with a direction to take the complaint of the 1st respondent herein filed under Section 200 of Cr.P.C and to proceed with further.

6. I heard Mr.S.Senthilkumar, learned counsel appearing for the petitioners, Mr.P.Tamilavel, learned counsel appearing for the 1st respondent and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 2nd respondent and the entire materials available on record are perused.

7.The learned counsel for the petitioners would contend that the private complaint filed by the 1st respondent herein is only to counter blast the complaint of the petitioners herein against the 1st respondent which was registered in Crime No.152 of 2009 for the offence under Sections 294 (b), 323, 506 (i) IPC r/w 109 of IPC. Further in the FIR there is no mention about the name of the witnesses namely PW2 Vivekanandan, PW3 Saravanan and PW4 Arivalagi and they were examined in the private complaint only to substantiate the allegations leveled against the petitioners herein. Apart from that the other contention of learned counsel for the petitioners is that the statement of Periyasamy, the 1st respondent herein recorded under Section 161 (3) of Cr.P.C., he has clearly and candidly admitted that he only went to the house of the 4th petitioner herein and beaten the 1st petitioner herein namely Sellamuthu. From the above it is clear that the 1st respondent herein only committed the offence as mentioned above and for that a case in Crime No.152 of 2009 was registered by the 2nd respondent police. Hence the 2nd respondent police have closed the case registered against the petitioners herein in Crime No.153 of 2009 as false and closed as "Mistake of Fact". Considering the overall circumstances of the facts involved in this case, the learned Judicial Magistrate, Perambalur has rightly dismissed the private complaint and the same is not warranting

interference by this Court. But without considering the above said facts of the case, the learned Principal District Judge, Perambalur has erroneously reversed the order of learned Magistrate and the same is liable to be set aside.

8.Per contra, the learned counsel for the 1st respondent would submit that the Learned Judicial Magistrate though has rightly come to the conclusion that prima facie from the evidence it appears that the offences as alleged by the complainant/1st respondent herein is made out. However, the learned Magistrate has erroneously held that the presence of witnesses was not mentioned in the FIR. But the Learned Principal District Judge in the Criminal Revision No.13 of 2009 has rightly held that simply because of non-mentioning the names of PW2 to PW4 in the earlier complaint lodged by the 1st respondent herein before the 2nd respondent police cannot be the reason to reject the evidences of witnesses and the same can be decided only at the time of trial, by issuing process to the petitioners herein. Hence the learned counsel for the respondent prayed that there is no justifiable reason to set aside the order passed by the learned Principal District Judge, Perambalur.

9.A perusal of the order passed by the learned Judicial Magistrate

and the learned Principal District Judge, this Court finds that there are certain materials available on record to proceed with the case further. As rightly pointed out by the learned Principal District Judge the FIR is not an encyclopedia. After registration of FIR, investigation will have to be conducted and during the course of the investigation if sufficient materials are gathered, even if such materials or the name of the witnesses are not mentioned in the FIR, the same can be taken into consideration to come to a conclusion that there is a prima facie case is made out to take cognizance of the offence. Therefore, the finding of the lower Court regarding the statements of witnesses namely Vivekanandhan, Saravanan and Arivalagi, were not mentioned in the FIR and the same cannot be the basis for taking cognizance of the private complaint is in my considered opinion is not hold good. When the Learned Magistrate come to the conclusion that from the evidence of the witnesses mentioned above prima facie the offences alleged by the complainant is made out, then it is not proper on the part of the learned Magistrate to dismiss the private complaint by holding that there was a previous enmity between the petitioner and the accused which resulted in giving a false complaint.

10.As stated above the finding of the learned Principal District Judge to the effect that the learned Magistrate ought to have conducted trial by issuing process to the petitioners herein. During the course of the trial

only the learned Magistrate ought to have considered the evidence given by PW2 to PW4 is acceptable or not by corroborating with other circumstances of the case. The above said finding of the learned Principal District Judge does not call for any interference by this Court and the same is perfectly correct. In view of the above, the Criminal Original Petition is deserves to be dismissed and accordingly it is dismissed.

11.In the result, the Criminal Original Petition is dismissed by confirming the order of the learned Principal District and Sessions Judge, Perambalur, dated 10.03.2010 made in Criminal Revision No.13 of 2009. Consequently, connected miscellaneous petition is closed.

04.10.2017

vs

Speaking order
Index : Yes

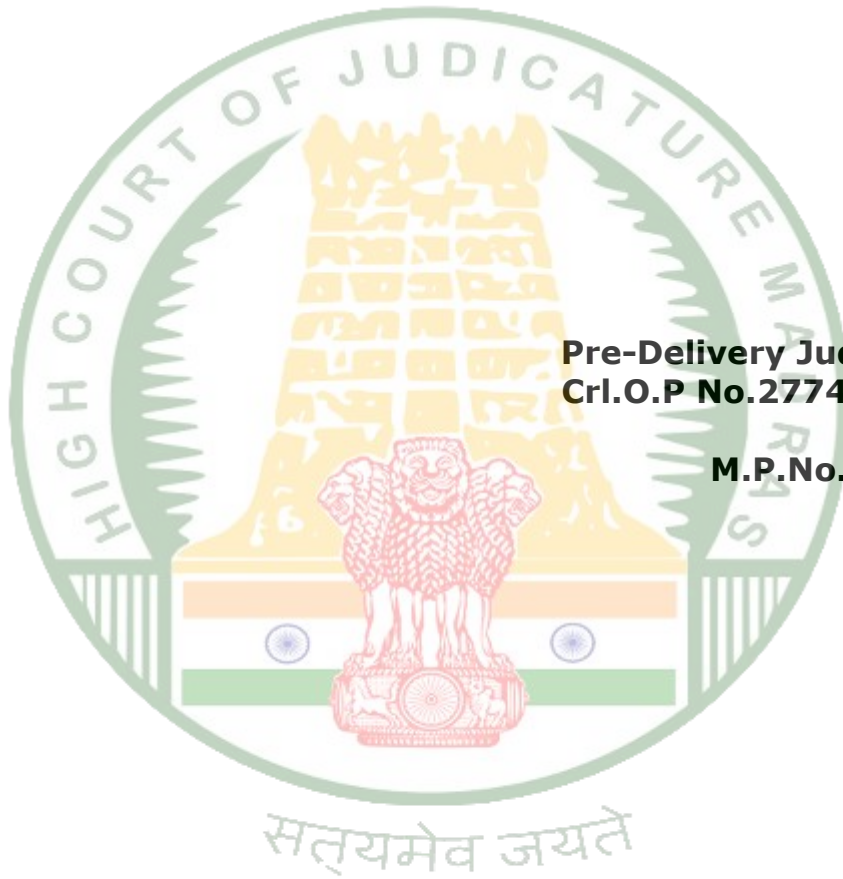
To

The Sub Inspector of Police,
Kunnam Police Station,
Perambalur District.

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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
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and
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