



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 03.05.2017
DELIVERED ON: 08.06.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH
CrI.O.P. (MD) No.19829 of 2015

WEB COPY

1. Balachandran
2. A. Balasubramanian ... Petitioners/Accused Nos.8 & 9
vs.
1. State represented by its
Sub Inspector of Police
Arimalam Police Station
Pudukkottai District
(Cr. No.8 of 2015)
2. Muthuraman ... Respondents/Complainant &
Defacto Complainant

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records in S.T.C. No.283 of 2015 on the file of the District Munsif-cum-Judicial Magistrate Court, Thirumayam and quash the same.

For petitioners	Mr. S. Arulandu
For R1	Mr. K. Anbarasan
	Government Advocate (CrI. Side)
For R2	Mr. D. Ramesh Kumar

ORDER

This Criminal Original Petition has been preferred seeking to call for the records in S.T.C. No.283 of 2015 on the file of the District Munsif-cum-Judicial Magistrate Court, Thirumayam and quash the same.

2. On the complaint lodged by Muthuraman (de facto complainant/second respondent herein), the first respondent police registered a case in Cr. No.8 of 2015 on 18.01.2015 and after completing the investigation, filed a charge sheet in S.T.C. No.283 of 2015 before the District Munsif-cum-Judicial Magistrate Court, Thirumayam, for offences under Section 147, 294(b), 323 and 506(i) IPC against 17 accused, seeking quashment of which, Balachandran (A8) and Balasubramanian (A9) are before this Court.

3. Heard the learned counsel for the petitioners, learned Government Advocate (CrI. Side) appearing for the first respondent and the learned counsel for the second respondent.

4. On a reading of the charge sheet, it is seen that the second respondent has alleged that on 17.01.2015, around 7.30 p.m., accused 1 to 17, had formed into an unlawful assembly and assaulted him and



one Rajiv Gandhi (L.W.2). He has further alleged that the accused had used sticks to attack him and Rajiv Gandhi. Hence, the FIR and the consequential charge sheet.

5. The learned counsel for the petitioners submitted that the petitioners are siblings and on the date of the incident, both of them were in Chennai. In support of this contention, the learned counsel produced medical certificate dated 17.01.2015 given by one Dr. Y. Padmavathy to show that the second petitioner, viz., Balasubramanian (A9) had taken treatment in Chennai on 17.01.2015, i.e., the date of incident and therefore, he was not at all there in the scene of occurrence. The learned counsel further brought to the notice of this Court, the invoice of Rau & Company, Pharmaceutical Distributors, in order to show that on the date of incident, the first petitioner, viz., Balachandran (A8) was in Chennai in connection with his pharmacy business. Thus, relying upon the medical certificate given by Dr. Y. Padmavathy and the invoice of Rau & Company, the learned counsel contended that the prosecution against the petitioners is an abuse of process of law and hence, the same should be quashed.

6. In the considered opinion of this Court, the defence of alibi is relevant under Section 11 of the Evidence Act and the same can be pressed into service only during trial and not in a petition under Section 482, Cr.P.C., where, disputed questions of fact cannot be looked into by this Court.

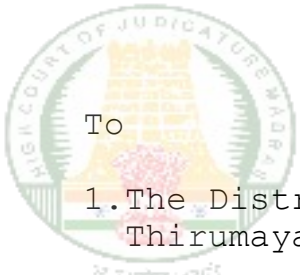
In view of the above, this Criminal Original Petition is dismissed as being devoid of merits with liberty to the petitioners to raise all the points before the Trial Court. However, their presence before the trial Court can be dispensed with on condition that, they shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment and they shall file an affidavit of undertaking before the trial Court that they will not dispute their identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in **Vinod Kumar vs. State of Punjab, [(2015) 3 SCC 220]**. If the petitioners adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence and remand them to custody, as laid down by the Supreme Court in **State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]**. If, thereafter, the petitioners abscond, the trial Court shall direct registration of an FIR against them u/s 229-A, IPC.

Sd/-

Assistant Registrar(P & A)

/True Copy/

Sub Assistant Registrar



To

1.The District Munsif-cum-Judicial Magistrate,
Thirumayam.

2.The Sub Inspector of Police,
Arimalam Police Station,
Pudukkottai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s. ARULANDU Advocate in SR. No.59118

+1cc to M/s. D.RAMESH KUMAR Advocate in SR.No.59177

CAD

JS/RSK/SAR.2/15.6.2017/2P-6C

order in
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