



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD) No.12 of 2017

and

Crl.M.P. (MD) Nos.19 & 20 of 2017

1.Chinnapillai

2.T.Sam Ilango

... Petitioners / Accused Nos.1 and 2

vs.

1.The State rep.by the

Sub-Inspector of Police

Thadikombu Police Station

Thadikombu,Dindigul District... 1st Respondent / Complainant

(Crime No.86 of 2014)

2.P.M.Selvakumar

...2nd Respondent /De facto Complainant

PRAYER: This petition is filed under Section 482 Cr.P.C., to call for the records relating to the charge sheet in C.C.No.425 of 2015, on the file of Judicial Magistrate Court No.II, Dindigul and to quash the same.

For Petitioners : Mr.K.Krishna

For Respondents : Mr.A.P.Balasubramani

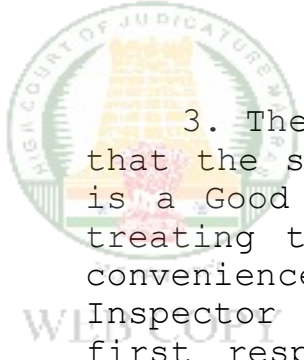
Govt. Advocate for R1

Mr.S.Muthukrishnan for R2

O R D E R

On the complaint lodged by the second respondent / de facto complainant, the first respondent Police registered a case, in Crime No.86 of 2014, on 23.03.2014, against Chinnapillai and Sam Ilango, and after completion of investigation, they filed a final report before the learned Judicial Magistrate Court No.II, Dindigul, for the offence under Sections 109 and 332 I.P.C., and the same has been taken on file in C.C.No.425 of 2015. Challenging the same, the accused 1 and 2 are before this Court.

2. Heard the learned counsel for the petitioner / accused, Mr.A.P.Balasubramani, learned Government Advocate for the first respondent and Mr.S.Muthukrishnan, learned counsel for the second respondent / de facto complainant and perused the materials



3. The learned counsel for the petitioners / accused submitted that the second petitioner / second accused, namely, T.Sam Ilango is a Good Samaritan and he has been serving the local people by treating the poor patients and that he has laid a road for the convenience of Ambulance to ply, which was objected to by the Road Inspector concerned and he lodged a false complaint before the first respondent Police and based on which, the present final report has been filed.

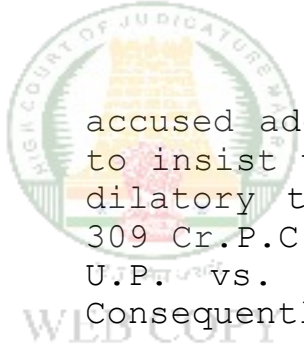
4. The learned counsel for the petitioners / accused has also brought to the notice of this Court the letter, dated 23.03.2014, issued by the Inspector of Police, NIB CID, Dindigul District, wherein it is certified that on 20.03.2014, Dr.Sam Ilango addressed a Seminar at the request of the Deputy Superintendent of Police and on the strength of the said letter, the learned counsel for the petitioners / accused submitted that the accused was not at the place of incident on the date of occurrence.

5. In the considered opinion of this Court, disputed question of facts cannot be gone into in an application filed under Section 482 Cr.P.C. Alibi is a question of fact, which is relevant under Section 11 of the Evidence Act and it requires to be established by adducing evidence. Therefore, the document produced by the petitioners / accused cannot be looked into in an application filed under Section 482 Cr.P.C., to decide the issue of alibi.

6. In the result, the criminal original petition is devoid of merits and it is dismissed. However, the petitioners / accused are at liberty to raise all the points before the Trial Court. The Trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

7. At this juncture, learned counsel appearing for the petitioners / accused submitted that the presence of the petitioners / accused before the Trial Court may be dispensed with.

8. Accepting the submission and also taking into consideration the fact that the petitioners / accused have the fundamental right to fair trial, this Court directs the petitioners / accused to appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., at the time of framing charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the petitioners / accused file an application under Section 317 Cr.P.C., undertaking that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses in their absence on the day they are examined in chief without adopting dilatory tactics, as ~~as~~ ~~in~~ ~~the~~ ~~case~~ ~~of~~ ~~the~~ ~~Honourable~~ ~~Supreme~~ ~~Court~~ ~~in~~ ~~Vinod~~ ~~Kumar~~ ~~vs.~~ ~~State~~ ~~of~~ ~~Punjab~~, reported in 2015 (3) SCC 220, the Trial Court may liberally consider and entertain the same. If the petitioners /



accused adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence. If the petitioners / accused adopt dilatory tactics, they can be remanded to custody under Section 309 Cr.P.C., as laid down by the Hon'ble Supreme Court in State of U.P. vs. Shambhu Nath Singh, reported in 2001 (4) SCC 667. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate Court No.II,
Dindigul.

2.The Sub-Inspector of Police
Thadikombu Police Station
Dindigul District

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

KRK

PSM/BS/21.03.2017/3P/4C

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