



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P(MD)No.6148 of 2017 and
CrI.MP(MD)Nos.4108 and 4109 of 2017

1.Muniyandi
2.Malaiselvam

... Petitioners/Accused 5&6

vs.

1. The State Rep. by,
The Inspector of Police,
Ramanathapuram,
Ramanathapuram District.
(Crime No.452 of 2013)

2. Gopal

... Respondents/Complainants

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records pertaining to the P.R.C.No.12 of 2017, on the file of the learned Judicial Magistrate Court No.II, Ramanathapuram and quash the proceedings as against the Petitioners/ Accused Nos.5 and 6 herein.

For Petitioners : Mr.K.Sudalaiyandi
For Respondents : Mr.K.Anbarasan (for R1)
Government Advocate

JUDGMENT

This Criminal Original Petition has been to call for records pertaining to the charge sheet filed in PRC.No.12 of 2017, on the file of the learned Judicial Magistrate No.II, Ramanathapuram, in respect of the petitioners, who are the accused Nos.5 and 6.

2.The case of the petitioners is that on 08.10.2013 at about 6.00 a.m., the 2nd respondent / de-facto complainant Gopal S/o Pathinettanpadi Konar, has lodged a complaint before the 1st respondent Police alleging that he is residing at No.9/127, Thillainayagapuram, Melakottai Post, Ramanathapuram, Ramanathapuram District. The deceased Sundarrajan is his younger brother.

3.It is the further case of the petitioner is that the deceased Sundarrajan was running Vinayaga Radios in his village and there was a civil and criminal dispute between the 2nd respondent / de-facto



complainant family and the accused Nos.5 and 6 family from the year 2003 onwards. He further states that in fact the civil suit filed by the 2nd respondent / de-facto complainant family and the decree was granted in favour of the complainant. While being so, there was an election dispute pending between the 2nd respondent's family and one Kottaisamy, who is the President of the Panchayat. It is further case of the de-facto complainant that the 2nd respondent alleging that one Kannan S/o Kuppu was attempting to make a house construction in the place of Krishnan Kovil, which was opposed by the 2nd respondent / de-facto complainant and his deceased brother Sundarrajan, in respect of the same, the de-facto complainant also lodged a complaint before the 1st respondent Police, since one Tamilarasan S/o Gurusamy was supported to the said Kannan in the said land. Therefore, in respect of the said civil dispute, the 2nd respondent / de-facto complainant family was excommunicated by the villagers.

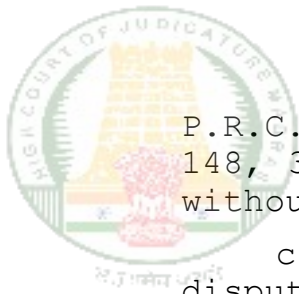
4.The 2nd respondent / de-facto complainant further alleged that on 08.10.2013 at about 03.30 a.m. in the early morning when the deceased Sundarrajan was get milk in his cow shed and at that time, the 1st accused Seenivasan and the 2nd petitioner Malaiselvam were attacked the deceased Sundarrajan with a knife and escaped from the spot. Due to the above attack, the deceased Sundarrajan was subsequently died and therefore, the case was registered in Cr.No.452 of 2017 for the offences under Sections 147, 148, 302, 120 (b) read with Section 34 of IPC against seven accused. These petitioners should have been shown as accused Nos.5 and 6 in this case.

5.It is the further case of the petitioner that after registering the FIR, the 1st respondent Inspector of Police after made enquiry and investigation has filed a charge sheet before the learned Judicial Magistrate No.II, Ramanathapuram for the offences under Sections 147, 148, 302, 120(b) read with Section 34 of IPC. These petitioners were shown in the charge sheet as A5 and A6.

6.The said charge sheet was taken on file by the learned Judicial Magistrate No.II, Ramanathapuram, which was numbered in PRC.No.12 of 2017, to quash the said charge sheet in PRC.No.12 of 2017 in respect of these petitioners, who are accused Nos.5 and 6, this Criminal Original Petition has been filed for the following grounds:

a)The Final Report filed by the 1st Respondent in P.R.C.No.12 of 2017 on the file of Judicial Magistrate Court No.II, Ramanthapuram is highly illegal and liable to be quashed against these Petitioners.

<https://hcservices.ecourts.gov.in/HCServicesFIR> registered by the 1st Respondent against these Petitioners in Crime No.452 of 2017 for the offence under Section 302 of IPC and the Final Report in



P.R.C.No.12 of 2017 for the offences under Section 147, 148, 302, 120(b), read with Section 34 IPC is illegal and without any material evidence.

c)The 1st Respondent failed to note that only a civil dispute in between the Petitioners and the deceased family was held in the year 2003 alone in respect of the house property. Thereafter no any previous enmity for the Petitioners against the deceased Sundarrajan.

d)The statement of the 2nd Respondent/de-facto complainant alleged in the FIR version is unbelievable and not worthy and the same is contradictory with his 161 Statement given before the Investigation Officer.

e)The 1st Respondent failed to have a fair investigation and laid the Impugned Charge Sheet against the Petitioners with ulterior motive.

f)The 1st Respondent failed to note in his investigation that there was a recent enmity in between the deceased family and one Kannan son of Kuppu in respect of a house construction and thereafter only the occurrence was happened and there is no any connection to the Petitioners in the said occurrence.

g)The Petitioners are falsely and worthy implicated by the 1st Respondent.

h)The 1st Respondent failed to note that in the 161 statement of PW.2 Lakshmi who is the elder sister of the deceased deposed that the entire villagers are having previous enmity with her deceased brother. It clearly reveals that the Petitioners are falsely implicated in the present case.

i)It is submitted that the Final report filed by the 1st Respondent in P.R.C.No.12/2017 is unsustainable and liable to be quashed against the Petitioners.

7.It is further case of the petitioners that they filed this Criminal Original Petition for quashing the Charge Sheet, which was filed for the major offences under Sections 147, 148, 302, 120(b) read with Section 34 of IPC. Admittedly, this Court and the Hon'ble Apex Court very categorically held in various cases that no Court should interfere in the quash proceedings for the offence under Section 302 of IPC, since a case has been registered under Section 302 of IPC, it must be tried before the trial Court and thereafter, the criminal case should be decided either for acquittal and conviction.

8.Admittedly, the petitioners were raising several grounds particularly one of the ground that due to the civil dispute between the de-facto complainant family and these petitioners, who are the accused Nos.5 and 6, they were falsely implicated in this case, particularly, the death of the deceased Sundarrajan, who is the

brother of the 2nd respondent/de-facto complainant.

9. Time and again, this Court and the Hon'ble Apex Court very categorically held in respect of Section 302 IPC cases whether the accused are falsely implicated or on the evidence are implicated in the case, that should be only proved based on the evidence before the trial Court. Therefore, the grounds raised by the petitioners before this Court are all to be raised before the trial Court which should be examined and cross examined the witnesses in detail and hence, this Court is not inclined to entertaining this case in respect of quashing the charge sheet in PRC.No.12 of 2017.

10. In the result:

(a) this Criminal Original Petition is dismissed;

(b) the learned Judicial Magistrate No.II, Ramanathapuram, is directed to pass appropriate orders for committing the case to the Sessions Court within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II, Ramanathapuram.
2. The Inspector of Police, Ramanathapuram, Ramanathapuram District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

VSA

TE/SV-MMS/SAR-I : 06/10/2017 : 4P/4C

Judgment in
CrI.O.P(MD)No.6148 of 2017 and
CrI.MP(MD)Nos.4108 and 4109 of 2017
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