



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH**Crl.O.P. (MD) No.8135 of 2017**
and Crl.M.P.Nos.5512 and 5513 of 2017

1.Nehru
2.Balu
3.Suresh

... Petitioners/Accused No.22 to 24

-vs-

State through by

1. The Inspector of Police,
Thiruppuvanam Police Station,
In Crime No.34/2012
Sivagangai District

...1st Respondent/Complainant

2. Sekar

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the chargesheet in S.C.No.155 of 2016 on the file of the learned District and Sessions Court, Sivagangai, quash the same insofar as petitioner's concern.

For Petitioner : Mr.M.Subash Babu

For Respondents : Mr.K.Anbarasan

Govt. Advocate (Crl.Side) for R1

O R D E R

This petition has been filed to quash the case in SC No.155 of 2016 on the file of the learned District and Sessions Court, Sivagangai.

2. On the complaint lodged by Sekar, the respondent police registered a case in Crime No.34/2012 and after completing the investigation filed a chargesheet against 32 accused and the same is now pending in SC No.155/2016 before the learned District and Sessions Court, Sivagangai, for offences under Sections 147, 148, 294(b), 323, 326 and 307 IPC and Section 3 of TNPPDL Act.

3.It is the case of the prosecution that all the accused armed with weapons and had attacked the de-facto complainant, when he wanted to hoist the flag of his party resulting in injuries to the defacto complainant.

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4.Mr.M.subash Babu, learned counsel for the petitioners,



submitted that there was no overt act as against the petitioners herein and therefore, the prosecution against them is misconceived.

5. Per contra, the learned Government Advocate refuted the submissions.

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6. It is seen that the petitioners had formed an unlawful assembly and armed with weapons and in pursuance of the common object of the assembly, they had attacked the defacto complainant. Therefore, by virtue of Sections 147 and 148 IPC, the petitioners will be vicariously liable, even though they may not have any individual overt act.

7. Under such circumstances, the criminal original petition is devoid of merits and the same is dismissed. However, the presence of the petitioners before the trial Court is dispensed with and the petitioners shall appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., for framing the charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the petitioners 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 without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the petitioners adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence. Whatever as stated above is only for the limited extent of deciding this quash application and the trial Court shall proceed with the trial uninfluenced by what is stated herein. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Crl. Side)

/True Copy/

Sub Assistant Registrar

To:

1. The District and Sessions Court, Sivagangai.

2. The Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District.

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

+1cc to Mr.M.Subash Babu Advocate in SR. No.63064

RR

JS/KP/SAR.2/18.7.2017/2P-5C

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