

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.10.2018
Pronounced on : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.20332 of 2009

and

M.P.Nos.1 & 2 of 2009

- 1.Nachimuthu,
S/o.Muthusamy.
- 2.Mani,
S/o.Subbu Gounder.
- 3.Ramayee,
S/o.Subbu Gounder. ... Petitioners/Accused Nos.1 to 3

Vs.

- 1.State rep. by its,
the Sub Inspector of Police,
Puduchathiram Police Station,
Namakkal District,
Crime No.203 of 2007. ... 1st Respondent/Complainant

[As per the order of this Court dated 23.07.2010 in M.P.No.1 of 2010 amended the name of the Police Station of the first respondent as "Puduchathiram Police Station" instead of "Pudupalayam Police Station" in the cause title of Crl.O.P.No.20332 of 2009]

- 2.Subramani,
S/o.Natesan. ... 2nd Respondent/Defacto-Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in respect of C.C.No.33 of 2009 pending on the file of the Judicial Magistrate Court No.II, Namakkal and quash the C.C.No.33 of 2009 and quash the same as far as the petitioners are concerned.

For Petitioners : Mr.P.R.Balasubramanian
For 1st Respondent : Ms.V.Saratha Devi,
Government Advocate (Crl. Side)

For 2nd Respondent : Not ready in notice

* * * * *

O R D E R

The petitioners who are the accused in C.C.No.33 of 2009 has filed the above said quash petition, which is pending trial on the file of the Judicial Magistrate Court No.II, Namakkal District for the offences under Sections 323 and 324 of the Indian Penal Code.

2.The second respondent is the defacto-complainant, who had given a complaint to the first respondent on 31.03.2007, while he was in-patient in the Government Hospital, Rasipuram. The complaint is that on 30.03.2007 at 07.00 p.m., the second respondent had gone to the petty shop of A1 and had asked for a soda, which was refused by the first petitioner, since, second respondent was already having dues to him, the first petitioner asked the second respondent to pay back dues. When the second respondent insisted for soda, the first petitioner picked up a quarrel and assaulted the second respondent with an iron rod on his neck. The second petitioner, the brother-in-law of the first petitioner had caused scratch injury on the right cheek. When the second respondent's brother namely Lakshmanan tried to intervene the first petitioner using a stick had hit him on his forehead and the brother-in-law of the second respondent namely Madheswaran was hit by the third petitioner with a burning stick and the second petitioner sister's brother-in-law namely Muthusamy was also attacked by the third petitioner with the burning stick. Thereafter, the second respondent, Lakshmanan, Madheswaran and Muthusamy had gone to the Government Hospital, Rasipuram and got them admitted as inpatient and got treatment for the injuries sustained. Thereafter, on receipt of the information from the hospital, the first respondent had gone to the hospital on 31.03.2007 at 01.30 p.m. and obtained the statement from the second respondent and registered a case in Cr.No.203 of 2007 at about 03.00 p.m., the petitioners herein was arrayed as A1 to A3, on completion of investigation, charge sheet has been filed against them in C.C.No.33 of 2009.

3.The petitioners submit that it is the second respondent and his relatives, who had attacked the petitioners on 30.03.2007 and had caused injuries to them due to this they had got themselves admitted in the Government Hospital, Namakkal District on 30.03.2007, wherein the petitioners were admitted as in-patient. Thereafter, the first respondent on receiving information from the hospital had gone to the hospital and registered a case in Crime No.204 of 2007 for the offences under Sections 323 and 324 of the Indian Penal Code on 31.03.2007 at 04.00p.m. against the second respondent, LW2 Lakshmanan, LW3 Madheswaran and LW4 Muthusamy in the above case, who had been arrayed as accused Nos.1 to 4 in the said Crime No.204 of 2007. On completion of investigation charge sheet has been filed in C.C.No.34 of 2009.

4.The contention of the petitioners is that the first respondent ought to have followed the 560 of the Police Standing Order and ought to have investigated the real offenders and to file only one charge sheet and without following the Police Standing Order, though, admittedly both the Cr.Nos.203 and 204 of 2007 are arisen out of the same occurrence.

5.Further, the second respondent and LWs 1 to 4 to escape from the Cr.No.204 of 2007 had given a false complaint against them. The first respondent without proper investigation and without finding out the real facts had filed two charge sheet. The complaint given by the petitioners has been registered as Cr.No.204 of 2007 and the charge sheet has been filed in C.C.No.34 of 2007 and the complaint given by the second respondent has been registered as Cr.No.203 of 2007 and the charge sheet has been filed in C.C.No.33 of 2007. The first petitioner passed away and nothing survives against him in the above case.

6.The contention of the petitioners is that the nature of the injuries alleged to have been sustained by LW1 to LW4 in this case are all abrasions and simple in nature. LW1 to LW4, who are the aggressors came to the first petitioner's petty shop and picked up the quarrel and assaulted the petitioners. The injuries sustained by the petitioners are lacerated injuries over the perinatal region and the weapon used is crowbar and stick. Hence, the injuries have been caused on the petitioners are severe in nature.

7.Further, it is contended that C.C.No.34 of 2009, wherein the petitioners are the witnesses and the second respondent i.e. LW1 to LW4 are the accused. After full

fledged trial, the Judicial Magistrate No.II, Namakkal District had rendered a Judgment of conviction on 18.01.2017. Ex.P3 to P5 are the wound certificate for the injuries sustained by the petitioners, who have been examined as PW1 to PW3 in that case. PW7 is the Doctor, who had treated the petitioner and issued the wound certificate. This witness had clearly stated about the injuries and the manner in which the injuries sustained by the petitioners. The Judicial Magistrate No.II, Namakkal on analysing the evidence of the petitioners, who are the witnesses had found that the occurrence had taken place in the manner spoken by them and the second respondent i.e. LW1 to LW4 in this case are the aggressors who had caused injuries to the petitioners and on coming to the conclusion, the Judicial Magistrate No.II, Namakkal had rendered a Judgment of conviction against them. The second respondent and others have not even suggested about this case.

8.It is further contended by the petitioner from the Accident Register of LW1 to LW4, it is seen that LW1 to LW4 though got admitted for treatment in the Government Hospital, Rasipuram all the four witnesses have without informing the doctors had absconded themselves due to their guilt and fearing prosecution. Further, it was contended that on completion of investigation in Cr.No.203 of 2007, when the first respondent had filed the final report, the same was returned by the Judicial Magistrate No.II, Namakkal to obtain opinion since, the Judicial Magistrate No.II, Namakkal was not satisfied. Without obtaining the opinion, the final report was some how came to be filed and it was taken on file.

9.The learned Government Advocate [Crl.Side] submits that the first respondent on getting information from the hospital had immediately gone to the hospital and received the complaint, recorded the statements of witnesses, visited the scene of occurrence and on completion of investigation had filed the charge sheet in the above case. Further, LW1 to LW4 are the injured witnesses for which the wound certificates are filed and supported the charge sheet.

10.Considering the rival submissions and on perusal of the wound certificates of the petitioners and the evidence by the Doctor of Government Hospital, Rasipuram, Namakkal District and on the specific finding given by the Judicial Magistrate No.II, Namakkal District in C.C.No.34 of 2009 convicting LW1 to LW4 therein for the same occurrence, proceeding against the petitioners would amount to an abuse of process of law. Hence, this Court feels that the continuation of the trial of the above

case for the same occurrence would be an abuse of process of law and there cannot be a contra finding in such situation and to avoid conflict of finding for the same occurrence.

11. In view of the above, the continuation of the trial against the petitioners would only be an abuse of process of law and hence, the Criminal Original Petition stands allowed against the second and third petitioners and the proceedings in C.C.No.33 of 2009 is quashed as against them. As regards the first petitioner, who is reported dead and the charges against him is abated. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS vi)

//True Copy//

Sub Assistant Registrar

ah
To

1. The Judicial Magistrate Court No.II,
Namakkal.
2. The Sub Inspector of Police,
Puduchathiram Police Station,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.R.Balasubramanian , Advocate SR.No. 70045

Cr1.O.P.No.20332 of 2009

ASK(13/11/2018)

WEB COPY