

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE B. PUGALENDHI

CRL.O.P.Nos.26293 & 27717 of 2010

and

CRL.M.P.Nos.1 and 1 of 2010

Dr.Muruganantham

.. Petitioner in CRL.O.P.26293/2010

1.Palanisamy

2.Thandapani

3.Mani

4.Muthusamy

.. Petitioners in CRL.O.P.27717/2010

Vs

Shivakumar

.. Respondent in both petitions

Common Prayer: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to C.C.No.83 of 2010 on the file of the Judicial Magistrate, Kangeyam and quash the same.

For Petitioners : Mr.K.Sudhakar
[both petitions]

For Respondent : Mr.M.Guruprasad
[both petitions]

COMMON ORDER

Crl.OP.No.26293 of 2010 has been filed by the second accused in C.C.No.83 of 2010 on the file of the learned Judicial Magistrate, Kangeyam. Crl.OP.No.27717 of 2010 has been filed by accused nos.1, 3 to 5 in C.C.No.83 of 2010 on the file of the learned Judicial Magistrate, Kangeyam. They have filed these criminal original petitions to quash the proceedings pending against them in C.C.No.83 of 2010 on the file of the learned Judicial Magistrate, Kangeyam, which was instituted by the respondent / complainant by way of a private complaint.

2. Since the relief sought for in both the petitions is one and the same, both the petitions are heard together and are disposed of by way of this common order. For the sake of convenience and brevity, the parties are referred to as per their rank before the Court below.

3. According to the respondent / complainant, he is an Agriculturist and also involved in the business of Real Estate. A dispute arose between the parties owing to some real estate business, out of which, it is alleged that the respondent was attacked by the petitioners on 09.12.2008. In this regard, a complaint was lodged before the Kangeyam Police Station in Crime No.1082 of 2008 and alleging that the police, without conducting a proper enquiry, has closed the case as mistake of facts, the respondent / complainant has lodged the present private complaint before the learned Judicial Magistrate, Kangeyam.

4. The learned counsel for the petitioners, on the other hand, submitted that the complaint lodged by the respondent before the Kangeyam Police Station in Crime No.1082 of 2008 was properly enquired into and the same was closed as mistake of facts by the investigation officer on 19.09.2009. While filing the final report, the investigation officer has categorically stated that there is a civil dispute pending between the parties and by self inflicting injuries, the respondent / complainant has lodged the complaint. For the very same set of facts, the respondent has now lodged the private complaint and therefore, the learned counsel for the petitioners sought for allowing the present petitions.

5. The learned counsel for the petitioners has also produced a copy of the Accident Register, issued by Kangeyam Government Hospital, dated 09.12.2008, in which, the Doctor has noted down a stab injury of 4 cm X 2 cm on the left abdomen of the respondent / complainant.

6. Heard the learned counsel appearing for the respective parties and perused the documents placed on record.

7. Perusal of the private complaint in C.C.No.83 of 2009 would show that on 09.12.2008, at about 07.45 pm, the respondent / complainant was brutally attacked by the petitioners herein. On the other hand, a perusal of the Accident Register of the Kangeyam Government Hospital, dated 09.12.2008, being the first document on record, would show that the respondent / complainant himself has stated that he was assaulted by a known person and a stab injury was also noted down in the Accident Register.

8. The respondent / complainant was attacked on 09.12.2008, for which, he took treatment at Kangeyam Government Hospital. However, in the private complaint, he has stated that as if the petitioners / accused 1 to 5 have assaulted him with iron rod, hand and knife. But, there is no corresponding injury in the Accident Register, being the first document. The only injury noted down in the Accident Register is a stab injury of 4 cm X

2 cm on the left abdomen of the respondent / complainant and the overtact for this stab injury is attributed as against the third accused, namely, Thandapani. Other than this, though overtacts have been attributed as against the other accused, no corresponding injuries were noted down in the Accident Register.

9. Under such circumstances and also considering the fact that the complaint lodged before the police in Crime No.1082 of 2008, for the same set of facts, has also been closed as mistake of facts, this Court is of the view that the overtact of stab injury attributed as against the third accused has to be tried and ascertained by the Court below and the proceedings as against the other accused cannot be allowed to proceed further. Accordingly, the proceedings pending against the accused nos.1, 2, 4 & 5 in C.C.No.83 of 2010 on the file of the learned Judicial Magistrate, Kangayam, stands quashed. The learned Judicial Magistrate, Kangayam, is directed to proceed further insofar as the third accused is concerned and conclude the trial in C.C.No.83 of 2010 as expeditiously as possible.

10. In fine, Crl.O.P.No.26293 of 2010 is fully allowed and Crl.O.P.No.27717 of 2010 is allowed in part. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Kangayam.

2.-Do-Thro' The Chief Judicial Magistrate,
Erode District.(for information)

+1 cc to M/s.K.Sudhakar, Advocate Sr.No.81584

+1 cc to Mr.M.Guruprasad, Advocate Sr.No.81859

AKM/20.09.19/3P-5C /

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