



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 27.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.O.P.No.20785 of 2018 and
CrI.M.P.Nos.11229 & 11230 of 2018

Tamilmalar Nambi ... Petitioner/Accused No.2

Vs

1. The State rep. By
The Inspector of Police,
Kunnam Police Station,
Perambalur District. .. 1st respondent/Complainant

2. Ramalingam ..2nd Respondent/Defacto complainant

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records pertaining to C.C.No.269 of 2014 on the
file of the Judicial Magistrate, Perambalur and quash the same.

For Petitioner : Mr.V.Illanchezian

For R1 : Mrs.M.Prabhavathi
Addl. Public Prosecutor

O R D E R

This petition has been filed to call for the records
pertaining to C.C.No.269 of 2014 on the file of the Judicial
Magistrate, Perambalur and quash the same.

2. On the complaint lodged by the 2nd respondent, the 1st
respondent police have registered a case in Crime No.15 of 2014
under Sections 294(b), 324 and 506(ii) IPC against Tamilmalar
Nambi (A1), the petitioner herein, and Selvam (A2) and after
completing the investigation have filed a charge sheet in
C.C.No.269 of 2014 before the Judicial Magistrate, Perambalur,
against the said two persons, for quashing which, Tamilmalar
Nambi is before this Court.

3. Heard the learned counsel for the petitioner and the
learned Additional Public Prosecutor appearing for the 1st
respondent police.



4. The learned counsel for the petitioner submitted that except in the FIR and in the statement of Dr.Asin Madhuran, the involvement of only one person in the offence, has been made out. Therefore, he submitted that the prosecution against the petitioner is purely an abuse of law.

5. Per contra, the learned Additional Public Prosecutor refuted the contentions.

6. This Court gave its anxious consideration to the rival submissions.

7. On a reading of the complaint given by the 2nd respondent/de facto complainant, which formed the basis of registration of the FIR in Crime No.15 of 2014, it is seen that, he has clearly stated that, on account of election dispute on 25.04.2014 at about 09.15 a.m., he was attacked by Tamilmalar Nambi and Selvam. In fact, he has stated that Tamilmalar Nambi took out an iron pipe and hit him on his shoulders and when the de facto complainant's mother Nallammal intervened, Selvam brandished a knife and threatened her.

8. When the de facto complainant was produced before Dr.Asin Madhuran for treatment, he has stated that he was attacked by two known persons. That is why, in the FIR, Tamilmalar Nambi has been shown as A1 and Selvam has been shown as A2. However, strangely, in the charge sheet, Selvam has been shown as A1 and Tamilmalar Nambi has been shown as A2. The police have recorded Section 161(3) Cr.P.C. statement of some witnesses, who speak about the involvement of only one accused in the attack.

9. This Court cannot place much reliance upon the statement recorded by the police under Section 161(3) Cr.P.C. and overlook the signed complaint that was given by the de facto complainant, in which he has made specific allegations as against Tamilmalar Nambi and Selvam.

10. It is a trite law that, the FIR can be used for corroboration or contradiction, but, a statement under Section 161(3) Cr.P.C. can be used only for contradiction. In such view of the matter, the prosecution as against Tamilmalar Nambi cannot be quashed.

11. Hence, this petition is dismissed with liberty to Tamilmalar Nambi, the petitioner herein, to raise all the points before the trial Court after the charges are framed, since there are prima facie materials to frame charges. Consequently, connected Miscellaneous Petitions are closed.

12. The learned counsel for the petitioner submitted that



the presence of the petitioner herein, before the trial Court can be dispensed with. Accepting the submission, the presence of the petitioner before the trial Court shall be dispensed with on condition that, he shall be present for receiving the complaint, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioner shall file a petition before the trial Court under Section 317 Cr.P.C., giving an undertaking that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such application being filed, the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused absconds, the trial Court shall direct registration of an FIR against him under Section 229-A IPC.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mkkn/jer

To

1. The Inspector of Police,
Kunnam Police Station,
Perambalur District.
2. The Judicial Magistrate,
Perambalur.
3. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.20785 of 2018

PVS(CO)

rrs 17/09/2018