

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.07.2018

Coram:

The Honourable Mrs. Justice R. HEMALATHA

Crl.O.P.No.7615 of 2014

and

M.P.No.1 of 2014

1.S.Naveen Krishna
2.S.Andalamma
3.R.Vivekananda
4.R.Sathyanarayana
5.R.Narayana

...Petitioners/Accused

Versus

1.A.Ilango

...1st Respondent/Defacto Complainant

2.Inspector of Police,
Krishnagiri Town Police Station,
Krishnagiri.

...2nd Respondent/Complainant

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to call for the records in C.C.No.19 of 2014 pending on the file of the Judicial Magistrate Court, Krishnagiri and quash the same.

For Petitioners : Mr.SP.Srinivasan

For Respondent -1 : Mr.S.Shankar

Respondent - 2 : Mr.T.Shunmugarajeswaran,
Government Advocate (Crl.Side)

ORDER

1.1. The petitioners are shown as accused in the protest petition filed by the defacto complainant/first respondent. The allegations levelled against the present petitioners are that on 20.07.2013 at about 08:00 p.m, they abused the defacto complainant in filthy language and also threatened that they would kill him. Initially, he lodged a complaint dated 20.07.2013 with the Inspector of Police, Krishnagiri Town Police Station, Krishnagiri and the Inspector of Police registered FIR in Crime No.472 of 2013 of Krishnagiri Town Police Station and after investigation filed a referred charge sheet before the Judicial Magistrate - I, Krishnagiri.

<https://hcservices.ecourts.gov.in/hcservices/>

1.2. Hereafter, the defacto complainant filed a protest petition and the learned Judicial Magistrate No.I, Krishnagiri recorded the statement of the defacto complainant and took

cognizance of the offences punishable under Sections 341, 147, 294(b), 323, 452, 506(i) of I.P.C and issued summons to A1 to A7. Aggrieved by the order passed by the learned Judicial Magistrate No.1, Krishnagiri, the petitioners have filed the present petition to quash C.C.No.19 of 2014 on the file of the learned Judicial Magistrate No.1, Krishnagiri.

2. Mr.SP.Srinivasan, the learned counsel appearing for the petitioners would contend that since the fourth petitioner viz., R.Sathyanarayana was not in India as is evident from the entries found in his passport, the allegation of the defacto complainant that he criminally intimidated him and also abused him in filthy language, cannot be sustained. His another contention is that once the Inspector of Police, after concluding investigation filed a referred charge sheet, the defacto complainant cannot file a protest petition without substantiating his contentions. According to him, the learned Judicial Magistrate No.1, Krishnagiri, did not examine any of the witness to the alleged occurrence before taking cognizance of the offences punishable under Sections 341, 147, 294(b), 323, 452, 506(i) of I.P.C.

3. *Per contra*, Mr.S.Shankar, the learned counsel appearing for the defacto complainant would contend that based on the xerox copy of the Passport produced by the fourth petitioner, it cannot be contended at this stage that the fourth petitioner was not in India at the relevant point of time. He would further contend that merely because the Inspector of Police had filed the referred charge sheet, it would not preclude the Magistrate from taking cognizance of the offences punishable under Sections 341, 147, 294(b), 323, 452, 506(i) of I.P.C on the protest petition filed by the defacto complainant.

4. It is true that the second respondent had filed a referred charge sheet in Crime No.472/2013 before the learned Judicial Magistrate No.1, Krishnagiri and the defacto complainant immediately filed a protest petition before the said Court and it was taken on file in C.C.No.19 of 2014 after recording the evidence of the defacto complainant. The allegations of the defacto complainant is that all the accused abused him in filthy language and criminally intimidated him. It is pertinent to point out that in the FIR in Crime No.472 of 2013, the time of the alleged offence is mentioned as 08:00 a.m on 20.07.2013, whereas in his protest petition, he has taken a different stand that the occurrence took place at 08:00 p.m on the aforesaid date. In the sworn statement before the learned Judicial Magistrate No.1, Krishnagiri on 14.02.2011 also, he has mentioned the time of occurrence as 08:00 p.m on 20.07.2013.

5. The learned counsel appearing for the defacto complainant would contend that it is inadvertently mentioned in the protest petition that the time of occurrence is 08:00 p.m. Even assuming that the time of occurrence mentioned in the protest petition is only a typographical error, the same could not have happened while giving a sworn statement before the concerned Magistrate.

6. At this juncture, it is relevant to mention that the defacto complainant is an Advocate by profession. Furthermore, the Investigating Officer viz., the second respondent has done the investigation and had concluded that it is a mistake of fact and filed a referred charge sheet before the concerned Court. As rightly pointed out by the learned counsel appearing of the petitioners, there is a major discrepancy in the time of occurrence and therefore, the entire proceedings in C.C.No.19 of 2014 is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate Court,
Krishnagiri.
- 2.The Inspector of Police,
Krishnagiri Town Police Station,
Krishnagiri.
3. The Public Prosecutor,
High Court,
Madras.

+2cc to S.P.Srinivasan, Advocate SR.NO.46399

sm:14.8.2018

Cr1.O.P.No.7615 of 2014

सत्यमेव जयते

WEB COPY