

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2018
DELIVERED ON: 06.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.20193 of 2012 &17902 of 2013
and
Crl.M.P.Nos.1, 2 of 2012

In Crl.O.P.No.20193 of 2012

Ameer John ... Petitioner

Vs.

State: rep. by
The Inspector of Police,
E.I.Mylapore Police Station,
Chennai.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to direct the respondent/police to transfer the case in Crime No.171 of 2012 to the CBCID for proper investigation and report.

In Crl.O.P.No.17902 of 2013

1. Ameer John

2. Akbar @ Shan

... Petitioners/Accused

Vs.

1. State: Rep. by
The Inspector of Police,
E1, Mylapore Police Station,
Chennai

...1st respondent/complainant

2. S.Praveen Kumar

.. 2nd respondent

(The 2nd respondent is impleaded as per the order in M.P.No.2713 of 2017 dated 17.03.2016)

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.534 of 2013 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner/s : Dr.G.Krishnamurthy
(Crl.O.P.No.20193/2012)
A.K.Samsunihar
(Crl.O.P.No.17902/2012)

For 1st Respondent: Mr.T.Shunmugarajeswaran
Government Advocate (Crl.Side)

For 2nd respondent : Mr.R.Thirumurthy
(Crl.OP.17902 of 2013)

COMMON ORDER

The petition in Crl.O.P.No.20193 of 2012 has been filed by the petitioner/2nd accused to direct the respondent/police to transfer the case in Crime No.171 of 2012 to the CBCID for proper investigation and report.

The petition in Crl.O.P.No.17902 of 2013 has been filed by the petitioners/accused No.1 & 2 to call for the records in C.C.No.534 of 2013 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. The first petitioner as per his versions was witness to the de-facto complainant in C.C.No.534 of 2013 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, abusing and assaulting a lady in front of the "Natural Bakery" shop on Santhome High Road on 25.11.2011 at about 6.00 p.m. According to him, the de-facto complainant claimed that the lady was his wife and he had every right to fight with her and that the first petitioner cannot question him. More over, the latter had also claimed himself to be a police constable by name Praveenkumar and started physically assaulting him. Unable to bear the intensity of the assault, the first petitioner had to flee the place of occurrence leaving behind the Lancer Car bearing registration No. TN 01 U 3969. When the 1st petitioner returned to the bakery to fetch his car, he was prevented from doing so and making things worse a criminal complaint was filed against him and his brother, the 2nd petitioner in Crime No.2130 of 2011 of El Mylapore Police Station. While the 1st petitioner obtained an anticipatory bail, the 2nd petitioner was arrested. The complaint of the first petitioner against the de-facto complainant Praveenkumar was not registered by the police, for which he was constrained to approach this court by filing Crl.O.P. No.29869 of 2011 and obtained direction to register the First Information Report and accordingly, the First Information

Report in Crime No.171 of 2012 of E1 Mylapore Police Station was registered on 06.02.2012.

3. Both the present petitions have been filed under Section 482 of the Code of Criminal Procedure for the directions 1] to transfer the case in Crime No.171 of 2012 of E1 Police Station to the file of CBCID for proper investigation, 2] to quash the proceedings in C.C.No.534 of 2013 on the file of the Metropolitan Magistrate, Saidapet, Chennai.

4. On the side of the prosecution, as the respondent in these petitions, it has been stated that on the evening of 25.11.2011, when the police constable Praveenkumar was dining with his relative one Mrs Vimala in "Natural Bakery" on the Santhome Road, the said Ameerjohn, the first petitioner objected to them talking to each other and created a ruckus by using abusive language and manhandling the Praveenkumar, the police constable. The first petitioner, Ameer John also called over phone his brother Akbar(2nd petitioner) to the bakery and both of them started beating the police constable and also threatened to kill him and fled the scene immediately after assaulting the police constable. Based on Praveenkumar's complaint, First Information Report was registered in Crime No.530 of 2014 on the file of E1, Mylapore Police Station.

5. The main grounds on which the petitioners plea rest are

[1] the complaint of the police constable Praveenkumar does not mention about the car bearing Registration No. TN 01 U 3969, which was left by the first petitioner in front of the bakery

[2] In the statement recorded under Section 163(1) of the Code of Criminal procedure, there is a mention about the petitioner leaving his car in front of the bakery.

[3] The statements, recorded under Section 163(1) of the Code of Criminal Procedure, were dated 25.11.2011 i.e. the date of incident and mentions about the vehicle left by the first petitioner in front of the bakery, while the Form 95 which is also dated 25.11.2011 is filed only on 20.02.2012.

[4] The said Praveenkumar being a police constable, the likelihood of a biased approach in the matter is apprehended by the petitioners.

6. The narration of the incident and the sequence of events by both the parties are diagonally opposite. The version of the police constable Praveenkumar that he was questioned by the first petitioner, when he was having food with one of his relatives in the bakery, appears to be unlikely. The version of the first petitioner seems to be more likely and convincing because it is not possible for him to "pick up quarrel" with the police, without any provocation or reason. Merely because of holding a position in the police force, does not entitle any privilege upon the constable Praveenkumar. It is also pertinent to mention that the police had registered the first petitioner's complaint, only after the intervention of this court. The police is only a custodian of law and cannot don the role of being law unto themselves. Had the police registered the complaint from the first petitioner on the same day, without any directions from this court, it could have shown fairness and unbiased act on the part of the police. But, it did not happen.

7. Similarly, when Form-95 was prepared on 25.11.2011 itself for the vehicle left behind by the 1st petitioner, the police have produced the said vehicle before the court only on 20.02.2012 and it is clearly shows the high handedness of the police. Apart from this, the police had registered the complaint only in February 2012, after a direction from this court. Only thereafter, the vehicle of the petitioner was handed over to the XVIII Metropolitan Magistrate, Saidapet, Chennai. After the vehicle was found abundant, as early as on 25.11.2011 itself, why was there a delay of three months in filing the Form-95 before the concerned court. The police definitely strive to be people friendly in letter and spirit. The complaint in Crime No.2130 of 2011 appears to be unlikely and therefore, the entire proceedings in C.C.No.534 of 2013 on the file of the XVIII Metropolitan Magistrate is liable to be quashed. As regards the prayer of handing over the case in Crime No.171 of 2012 on the file of the E1, Mylapore Police Station to CBCID, this court is of the opinion that the Inspector of police, E1 Mylapore Police Station should investigate the case properly in an unbiased manner, under the direct supervision of the Assistant Commissioner of Police, Mylapore Range.

8. In the result, CrI.O.P.No.17902 of 2013 is allowed and the entire proceedings in C.C.No.534 of 2013 on the file of the XVII Metropolitan Magistrate is quashed. As regards the CrI.O.P.No.20193 of 2012 is concerned, the Inspector of police, E1 Mylapore Police Station should investigate the case properly in an unbiased manner, under the direct supervision of the Assistant Commissioner of Police, Mylapore Range.

9. With the above observations, the Criminal Original Petition in CrI.O.P.No.20193 of 2012 is disposed off and the Criminal Original Petition in CrI.O.P.No.17902 of 2013 is allowed. Consequently, connected criminal miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Commissioner of Police
Mylapore Range
 2. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.
 3. The Inspector of Police,
E1, Mylapore Police Station,
Chennai.
 4. The Public Prosecutor,
Madras High Court.
- +1 CC to Mr.A.K.M. Samsunithar, Advocate sr 44695.

सत्यमेव जयते

CrI.O.P.No.20193 of 2012 &
CrI.O.P.No.17902 of 2013

SP(20/07/2018)

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