

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.23949 of 2010

and

M.P.No.1 of 2010

1.Sambandam
2.Jayashankar
3,Ponniammal
4.Shankar
5.Brinda
6.Mageswari

... Petitioners

vs

1.The Inspector of Police,
Vanoor Police Station,
Vanoor,
Villupuram District.

2.Panneerselvam

.. Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.173 of 2010 on the file of the learned Judicial Magistrate, Vanoor and quash the entire proceedings against the petitioners.

For Petitioners :Mr.G.Anabayachozhan

For Respondents :Mr.B.Ramesh Babu (for R1)

Government Advocate (Crl. Side)

Mr.S.Sathia Chandran (for R2)

ORDER

The petitioners are the accused in C.C.No.173 of 2010 on the file of the learned Judicial Magistrate, Vanoor, involving offences punishable under Sections 147, 294(b), 447, 352, 354 of IPC. The second respondent is the de-facto complainant in the

case.

2. The case of the petitioners is that on 24.12.2000 at about 06.00 a.m., the second respondent along with two others entered into the petitioners land and stored the casurina wooden log. When the second petitioner questioned the same, the second respondent and five others jointly attacked the petitioners 2 and 3 and sustained injuries. Immediately, the second petitioner lodged a complaint before the first respondent and was admitted in Jipmer Hospital, Pondicherry for treatment and had undergone two days treatment.

3. Since the first respondent had not taken any action on the complaint made by the second petitioner, the third petitioner sent a representation to the Superintendent of Police, Villupuram seeking for action. Thereafter also since the first respondent has not taken any action on the complaint, the second petitioner filed a private complaint and the same was taken on file as S.T.C.No.391 of 2009, wherein summon was served to the accused and were appeared before the Court.

4. The further case of the petitioners is that during pendency of S.T.C.No.391 of 2009, the second respondent had filed a private complaint against the petitioners stating that on 24.12.2008, the petitioners jointly attacked the second respondent and his mother and sustained injuries. For the occurrence on 24.12.2008, a private complaint was lodged on 25.09.2009. Though, initially, the said complaint was returned, later the same was accepted by the Judicial Magistrate and he had recorded the sworn statements of P.Ws.1 to 3 and the private complaint was taken on file as C.C.No.173 of 2010.

5. I heard Mr.G.Anabayachozhan, learned counsel appearing for the petitioner, Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the first respondent and Mr.S.Sathia Chandran, learned counsel appearing for the second respondent and also perused the materials available on record.

6. The learned counsel for the petitioner submitted that this is a case in counter and the second respondent had lodged a complaint 10 months after the alleged occurrence and while taking the complaint on file, the Judicial Magistrate has not taken into account the delay. He submitted that the sixth petitioner got married to the second petitioner only on 27.11.2009 and the sixth petitioner has been falsely implicated in this case. According to the learned counsel for the petitioners, the Judicial Magistrate while entertaining the private complaint in C.C.No.173 of 2010 failed to follow the settled principles of law.

7. It appears that the alleged occurrence was took place on 24.12.2008, whereas the complaint of the second respondent is dated 25.09.2009, which shows that nearly after 10 months of the date of alleged occurrence, the second respondent had lodged the private complaint before the Judicial Magistrate, Vanoor. The complaint lodged by the second respondent was returned by the Judicial Magistrate on 01.10.2009 with a direction to produce the copy of CSR, wound certificate. But the second respondent had represented the complaint on 15.10.2009 without enclosing the documents. However, the Judicial Magistrate had accepted the same and recorded the sworn statement of P.Ws.1 to 3 and had taken the complaint on file.

8. It also appears that in the absence of prima facie materials, the Judicial Magistrate after recording the sworn statement and other statements, has to forward the same to the concerned jurisdiction police for investigating the case. But the Judicial Magistrate, without any prima facie material has taken the private complaint on file.

9. The private complaint lodged by the second petitioner was taken on file and the same is pending. While so pending, the second respondent had lodged a private complaint, which shows that there is a case and counter case between the parties. Since the complaint of the second petitioner was earlier one, it apparently appears that with ill-motive only the second respondent had lodged a private complaint after 10 months of the alleged occurrence.

10. Moreover, the sixth petitioner was no way connected with the alleged occurrence dated 24.12.2008, as she got married to the second petitioner only on 27.11.2009. To show that the marriage between the second petitioner and the sixth petitioner was solemnised only on 27.11.2009, the petitioners have produced a xerox copy of the marriage reception invitation card. The petitioners have also produced a copy of marriage registration certificate issued by Arulmighu Devanatha Swamy Temple, Thiruvanthipuram, Cuddalore District, wherein the date of marriage has been stated as 27.11.2009. Thus, the petitioners have established that the sixth petitioner has been falsely implicated in the case.

11. It appears from the records that the petitioners had applied before the trial Court copy of CSR, Accident Register copy, wound certificate, case sheet, discharge summary and other medical records pertaining to C.C.No.173 of 2000. The copy application of the petitioners was returned as not available, which prima facie proves that there is no material or conclusive proof was not filed in C.C.No.173 of 2010. Therefore, in the absence of prima facie materials, the Judicial Magistrate ought

not to have entertained the private complaint of the second respondent. There were procedural violations in taking the private complaint of the second respondent on file.

12.For the foregoing reasons, the Criminal Original Petition is allowed and the proceedings in C.C.No.173 of 2010 on the file of the learned Judicial Magistrate, Vanoor is quashed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

vs

To

1. The Inspector of Police,
Vanoor Police Station,
Vanoor,
Villupuram District.
2. The Judicial Magistrate
Vanoor.

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M.P.No.1 of 2010

SP(27/07/2018)

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