

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.18051 of 2018
and Crl.M.P.Nos.9410 & 9411 of 2018

1. P.Srinivasan
2. P.Sivasankar

.. Petitioners

Vs

1. The Inspector of Police,
Denkanikottai Police Station,
Denkanikottai, Krishnagiri District.

2. N.Magesh

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and quash the proceedings in C.C.No.104 of 2017 on the file of the learned District Munsif Cum Judicial Magistrate Court, Denkanikottai, as against the petitioners.

For Petitioners : Mr.K.Sudalai Kannu
For Respondents : Mr.C.Raghavan (for R1)
Govt. Advocate

ORDER

On the complaint lodged by Srinivasan, the respondent Police have registered a case in Crime No.80 of 2017 on 15.02.2017 and after completing the investigation, has filed a charge sheet in C.C.No.99 of 2017 before the District Munsif-cum-Judicial Magistrate, Denkanikottai against one Magesh [A1] and Manjunath [A2]. It is the case of Srinivasan that he is a practicing Advocate; on 14.02.2017 around 07.45 p.m., Magesh parked his Santro car in front of Srinivasan's house and obstructed free passage; when Srinivasan questioned, Magesh is said to have assaulted him resulting in injuries. Hence, the FIR and the charge sheet.

2.On the complaint given by Magesh, the respondent Police registered a case in Crime No.81 of 2017 and after completing the investigation, has filed a charge sheet in C.C.No.104 of

2017 before the District Munsif-cum-Judicial Magistrate, Denkanikottai against Srinivasan [A1] and Sivashankar [A2], for quashing which, the accused are before this Court.

3. Heard the learned counsel for the accused and the learned Government Advocate.

4. Learned counsel for the accused submitted that the Police have foisted a false case against the accused in C.C.No.104 of 2017, inasmuch as, the Police have recorded the statement of one Abbas and Nawaz, who have given contradictory versions.

5. It is the case of Magesh [de facto complainant in C.C.No.104 of 2017] that on 14.02.2017 around 07.45 p.m., while he was proceeding in his Santro car from Hosur to Denkanikottai market, he put the indicator light and turned towards market and at that time, Srinivasan came by his motorcycle dashed behind the car; when Magesh questioned Srinivasan as to why he did not notice the indicator light, a quarrel arose, in which, Srinivasan is said to have attacked Magesh with an iron rod; thereafter, Mahesh was admitted to the Government Hospital. Hence, the FIR in Crime No.81 of 2017 and the consequent charge sheet in C.C.No.104 of 2017.

6. Learned counsel for the petitioner/accused submitted that the prosecution in C.C.No.104 of 2017 is an abuse of process of law, inasmuch as, a distorted version has been given by Mahesh. He also submitted that a witness by name Nawaz has been examined by the Police in both Crime Nos.80 and 81 of 2017, in which, he has given contradictory versions.

7. Per contra, learned Government Advocate refuted the contentions.

8. This Court gave its anxious consideration to the rival submissions. There are two versions with regard to the same incident, namely, one version by Mahesh that he was attacked by Srinivasan, after Srinivasan dashed against Mahesh's car in the turning and the other version is by Srinivasan that Mahesh had parked his car in front of Srinivasan's house and when questioned, Mahesh had attacked Srinivasan. Both of them have sustained injuries and were admitted to the hospital.

9. In a case of this nature, this Court cannot quash the prosecution in respect of one case alone. It is for the trial Court to conduct a simultaneous trial and not joint trial and render judgment on the same day. Hence, the prosecution in C.C.No.104 of 2017 cannot be quashed and this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

10.However, learned counsel for the accused submitted that Srinivasan is a practicing Advocate and therefore, his presence before the trial Court may be dispensed with.

11.Accepting the submission, Srinivasan shall appear before the trial Court for receiving copies under Section 207 Cr.P.C., for answering charges, for questioning under Section 313 Cr.P.C. and on the date of judgment. For other hearings, if he files an application under Section 317 Cr.P.C., on undertaking that he will not dispute his identity and that, his counsel will cross-examine the witnesses when they examined in-chief, as held by the Supreme Court in Vinodh Kumar Vs State of Punjab reported in 2015[1] MLJ [Cr1] 288, the same shall be liberally construed. If he adopts any dilatory tactics, the trial Court shall insist upon his presence. If he absconds, a fresh FIR can be registered against him under Section 229-A of IPC.

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Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1.District Munsif-cum-Judicial Magistrate,
Denkanikottai.

2.The Inspector of Police,
Denkanikottai Police Station,
Denkanikottai, Krishnagiri District.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.Sudalai Kannu Advocate SR.NO.47807

KS(CO)
ASK(06/08/2018)

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