

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.23615 of 2018

and

Crl.M.P.Nos. 13264 & 13266 of 2018

Shak Dawood

... Petitioner

Vs.

1. The Inspector of Police,  
S-7, Madipakkam Police Station,  
Chennai.

2. Mohamed Dasdagir

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C.,  
to call for the records and quash the charge sheet in  
C.C.No.1124 of 2016, pending trial before the Judicial  
Magistrate at Alandur, Chennai.

For Petitioner : Mr.Sundararajan

For R1 : Mrs.M.Prabhavathi  
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for  
the records and quash the charge sheet in C.C.No.1124 of 2016,  
pending trial before the Judicial Magistrate Court at Alandur,  
Chennai.

2.On the complaint lodged by Mohamed Dasdagir, the 2<sup>nd</sup>  
respondent herein, the 1<sup>st</sup> respondent police have registered a  
case in Crime No.1835 of 2016 on 09.08.2016, for the offences  
under Sections 448, 427, 323 and 506(1) IPC against Shak Dawood  
(A1) and Syed Mohammed (A2) and after completing the  
investigation, have filed a charge sheet in C.C.No.1124 of 2016  
before the Judicial Magistrate Court at Alandur, Chennai, for  
the offences under Sections 448, 352, 427, 294(b) and 506(i) IPC

against A1 and A2, for quashing which, the petitioner/A1 is before this Court.

3.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor, appearing for the 1<sup>st</sup> respondent police.

4.The learned counsel for the petitioner/accused submitted that the petitioner/accused had a land dealing with the de facto complainant, in which the de facto complainant had to pay Rs.3,00,000/- to the petitioner/accused. The petitioner/accused went to the house of the de facto complainant, only to demand the amount, whereas, the de facto complainant has lodged a false complaint alleging that he was assaulted by the petitioner/accused. He further submitted that there was no other witness other than the de facto complainant for that assertion made by the de facto complainant and therefore, the prosecution should be quashed. He also submitted that in the preamble portion of the complaint given by the de facto complainant, the de facto complainant has stated about the land transaction in a distorted manner and that has not been reflected in charge sheet.

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

6.The allegations against the petitioner/accused, in brief, are that, on 09.06.2016 at 12:30 hours, the petitioner/accused trespassed into the house of the de facto complainant, assaulted him and damaged his watch valued at Rs.210/-. It is true that in the complaint given by the de facto complainant, he has stated about certain dealings that he has had with the petitioner/accused. Those averments would only go to show the motive for the offence. Just because those averments are not reflected in the final report, the same cannot be quashed. As regards the contention that there was only one witness, the learned Additional Public Prosecutor submitted that, apart from the de facto complainant, the de facto complainant's son Abib Ali (L.W.2), was also in the house, who has been cited as witness.

7.The learned counsel for the petitioner submitted that Abib Ali (L.W.2) is an interested witness and therefore, his testimony cannot be accepted.

8.In the opinion of this Court, in a petition under Section 482 Cr.P.C. for quashing the prosecution, this Court cannot give a finding that the trial Court should not accept the testimony of the de facto complainant or his son. Thus, when there are prima facie materials to show that the de facto complainant was assaulted on 09.06.2016, the prosecution cannot be quashed at

the threshold. This Court cannot go into disputed questions of fact, in a petition under Section 482 Cr.P.C.

Hence, this petition is closed with the liberty to the petitioner/accused to raise all the points before the trial Court, after the charges are framed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mkn/ssr

To

1. The Inspector of Police,  
S-7, Madipakkam Police Station,  
Chennai.
  2. The Judicial Magistrate,  
Alandur, Chennai
  3. The Public Prosecutor,  
High Court, Madras.
- +1 cc Mr.Sundarajan, Advocate, SR.No. 68816

CrI.O.P.No.23615 of 2018

CSL/23.10.2018

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