



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)Nos.19325 & 20166 of 2014
and

MP(MD)No.1 of 2014 in Crl OP(MD) No.20166 of 2014

M.S.Perumal ... Petitioner/Defacto Complainant in Crl OP(MD)
No.19325 of 2014

Dr.D.Premnath ... Petitioner/Accused No.1 in Crl OP(MD)
No.20166 of 2014

Vs.

- 1.The State rep.by
The Director General of Police,
Chennai.
- 2.The Deputy Inspector General of Police,
South Zone, Tirunelveli.
- 3.The Commissioner of Police,
Tirunelveli. ... Respondents 1 to 3 in Crl OP(MD)No.19325 of 2014
- 4.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli.
(Crime No.735 of 2014). ...4th Respondent in Crl OP(MD)No.19325
of 2014
1st Respondent in Crl OP(MD)No.20166
of 2014
- 5.The Deputy Superintendent of Police,
CBCID Wing, Tirunelveli Zone,
Tirunelveli.
- 6.Dr.D.Premnath ...5th and 6th Respondents
in Crl OP(MD)No.19325 of 2014

(R6 impleaded as per the order
of this court dated 05.08.2015
in MP(MD)No.1 of 2014
in Crl OP(MD)No.19325/2014)



7.M.S.Perumal

...2nd Respondent/Defacto Complainant
in
in Cr1 OP(MD)No.20166/2014

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Prayer in Cr1 OP(MD)No.19325 of 2014 : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to transfer the investigation in Crime No.735 of 2014 from the file of the fourth respondent to the file of the fifth respondent and consequently direct the fifth respondent to conduct proper investigation in an expeditious manner and to file the final report within the stipulated period.

Prayer in Cr1 OP(MD)No.20166 of 2014 : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the FIR in Cr.No.735 of 2014 pending on the file of the Inspector of Police, Palayamkottai Police Station, Tirunelveli City and quash the same.

In Cr1 OP(MD)No.19325 of 2014 :

For Petitioner : Mr.P.Samuel Gunasingh

For Respondents : Mr.A.Robinson,
Govt.Advocate for R1 to R5

Mr.R.Anand for R6

In Cr1 OP(MD) No.20166 of 2014 :

For Petitioner : Mr.R.Anand

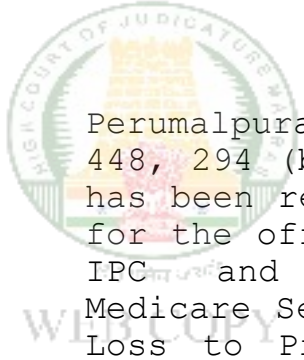
For Respondents : Mr.A.Robinson,
Govt.Advocate for R1

Mr.P.Samuel Gunasingh for R2

COMMON ORDER

Heard the learned counsel on either side.

2.A hospital by name Kartheek Nursing Home, Tirunelveli is being run by a partnership firm namely, M/s.Sapthagiri Associates. Dispute broke out among the partners. The majority of the partners claim that Dr.Premnath had been expelled from the firm. Partnership deed dated 04.02.2010 has an arbitration clause. It appears that the said arbitration clause has since been invoked. Complaints had been lodged at the instance of either parties. Dr.Premnath has lodged a complaint against Mr.S.Perumal and others and the same has been registered as Crime No.147 of 2013 on the file of the



Perumalpuram Police Station for the offences under Sections 147, 448, 294 (b), 342, 406, 506(i) IPC. Likewise, Crime No.735 of 2014 has been registered on the file of the Palayamkottai police station for the offenses under Sections 341, 447, 379, 406, 427 r/w. 120(b) IPC and Section 3 of Tamil Nadu Medicare Service Persons and Medicare Service Institution (Prevention of Violence and Damage or Loss to Property) Act 2008 and Section 3 of Tamilnadu Property (Prevention of Damage and Loss) Act, 1992 against the said Dr.Premnath and certain police officials. To quash Crime No.735 of 2014, Dr.Premnath filed CrI.OP(MD)No.20166 of 2014. Alleging that in view of the implication of police personal as accused, investigation is not being properly conducted, Mr.M.S.Perumal has filed CrI OP(MD)No.19325 of 2014 seeking transfer of investigation.

3.As already pointed out, the defacto complainant in Crime No.735 of 2014 is an accused in Crime No.147 of 2013 on the file of the Perumalpuram Police Station. The said M.S.Perumal had filed CrI OP(MD)No.18460 of 2013 for quashing the said F.I.R registered against him. Taking note of the fact that this is essentially a partnership dispute, this Court had allowed the said quash petition and quashed the F.I.R in Crime No.147 of 2013 on the file of the Perumalpuram Police Station.

4.The fact remains that a dispute has arisen among the partners. Dr.Premnath is on the one side while Mr.M.S.Perumal and others are ranged on the other side. Both sides have been leveling accusations against each other. It is seen that apart from registration of two F.I.Rs, proceedings under Section 107 of Cr.PC have also been taken against both. It is also seen that the police had to step in in response to a petition given by Dr.Premnath. He had stated that substandard medicines are being used and stored in the nursing home. After the said seizure, medicines were sent for testing. It was found out that the medicines are not substandard. Therefore, the medicines were returned to the hospital. But, unfortunately for the police, there is proof for return only in respect of 29 items and there is no proof forthcoming for the remaining 8 items.

5.In these circumstances, this Court had directed the police to make good the value of the remaining items. WP(MD)No.19148 of 2013 filed by Mr.M.S.Perumal has been allowed and the police had been directed by this Court to remit a sum of Rs.30,000/- to the account of the said hospital. Thus, a major grievance of Mr.M.S.Perumal has already been redressed. The F.I.R filed against him has already been quashed by this Court. It cannot be in dispute that Dr.Premnath lodged a complaint against Mr.M.S.Perumal and others and that necessitated the intervention of the police.

6.Therefore, on this ground, the police cannot be made accused. The Police cannot become casualty in the cross fire between Dr.Premnath and Mr.M.S.Perumal. It is seen that nothing major has happened and an exaggerated version has been projected before this Court. This Court, therefore, deems it fit to invoke Section 95 of IPC which reads as under :



"95. Act causing slight harm :

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

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7.The issue on hand is essentially a partnership dispute. There is also arbitration clause in the partnership deed. The said clause has since been invoked. A pure partnership dispute has acquired a criminal profile on account of the aggressive stand taken by both the parties. In this view of the matter, this Court is of the view that permitting the impugned prosecution would only amount to an abuse of process of law. The F.I.R in Crime No.735 of 2014 on the file of the Palayamkottai Police Station is quashed as a whole. Crl OP(MD)No.20166 of 2014 is allowed. Since the F.I.R itself has been quashed as a whole, nothing survives for adjudication in Crl OP(MD)No.19325 of 2014.

8.The Inspector of Police, Perumalpuram Police Station is directed to clearly keep away and restrained from interfering with the partnership dispute between the parties. Of course, if any act amounting to commission of cognizable is made out, the police cannot keep quiet and necessarily have to step in. Otherwise the police should allow the parties to workout their remedies before the appropriate fora.

9.With this direction, Crl OP(MD) No.20166 of 2014 is allowed while Crl OP(MD)No.19325 of 2014 stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The Director General of Police, Chennai.
- 2.The Deputy Inspector General of Police,
South Zone, Tirunelveli.
- 3.The Commissioner of Police, Tirunelveli.
- 4.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli. (Crime No.735 of 2014).
- 5.The Deputy Superintendent of Police,
CBCID Wing, Tirunelveli Zone,
Tirunelveli.



6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

7.The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli.

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+2cc to Mr.P.SAMUEL GUNASINGH, Advocate, SR.No.71334,71333

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and
MP (MD)No.1 of 2014
03.07.2018

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KK/SKN/SAR-4/13.11.2018/5P-10C