



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2018

CORAM:

WEB COPY

THE HONOURABLE **MR. JUSTICE R.PONGIAPPAN**

Cr1.O.P.(MD).No.12422 of 2013
and
M.P.(MD).Nos.1 & 2 of 2013

Beer Mohammed

.. Petitioner / Accused No.1

Vs.

1.The State of Tamilnadu
represented by,
The Inspector of Police,
Vathalagoodu Police Station,
Dindigul District.

.. 1st Respondent/Complainant

2.Mohammed Rafic

.. 2nd Respondent/ Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the Charge Sheet in C.C.No.457 of 2012 pending before the learned Judicial Magistrate, Nilakottai, Dindigul District, in Crime No.301 of 2012 on the file of the 1st respondent police dated 30.09.2012 for the alleged offences punishable under Sections 147, 148, 341, 294(b), 324, 326 and 506(ii) of IPC and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For RR1 : Mr.A.Robinson
Government Advocate (Criminal side)

ORDER

The petitioner herein is arrayed as A1 in C.C.No.457 of 2012 pending on the file of the learned Judicial Magistrate, Nilakottai, Dindigul District. This petition has been filed under the provisions of Section 482 of Cr.P.C. to quash the above said charge sheet in C.C.No.457 of 2012 as illegal.

2. The case of the prosecution is that on 10.07.2012, at about 02.00 p.m., the petitioner herein and one Thamim Ansari, Kozhi Sandur, Myyarakani and Mohammed Ansari unlawfully entered into the Pallivasal and assaulted the defacto complainant by using Crowbar,



thereafter, some of the accused pelted stone on the defacto complainant. Thereby, the defacto complainant sustained injuries and lodged a complaint before the respondent police. Hence, based on the complaint given by the defacto complainant, the case has been registered for the above said crime. Subsequently, after completing the investigation, the respondent police filed charge sheet before the Court concerned and the same was taken on file as C.C.No.457 of 2012 by the learned Judicial Magistrate, Nilakkottai. Now, this petition has been filed to quash the above said charge sheet.

3. The learned counsel appearing for the petitioner submitted that the alleged occurrence took place on 10.07.2012 and on the same day, the first respondent police registered another two cases in Crime No.302 of 2012 and 303 of 2012 for the same issue. He further submitted that the respondent police filed final report in Crime No.301 of 2012 alone. Hence, he prays for quash of the said charge sheet.

4. The learned Government Advocate (Criminal side) appearing for the State on instructions, would submit that the two cases registered in Crime No.302/2012 and 303/2012 are closed as 'mistake of fact'. Hence, the respondent police filed charge sheet in Crime No.301/2012 alone and the same was taken on file in C.C.No.457 of 2012 by the learned Judicial Magistrate, Nilakottai, Dindigul District. Hence, he made objection to allow this application.

5. I have heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal side) appearing for the first respondent and perused the records.

6. The first and foremost contention raised by the learned counsel appearing for the petitioner is on the date of occurrence, other two cases were registered by the first respondent police in Crime No.302/ 2012 and 303/2012 for the very same occurrence. But the first respondent police, without investigating the cases pertaining to Crime No.302/2012 and 303/2012, laid charge sheet in the case registered in Crime No.301 of 2012 alone, which is illegal as against the provisions of Section 588-A of the Police Standing Orders.

7. In the above circumstances, it is relevant to refer the decision of this Court in **Paul Raj Vs. State by Inspector of Police, D-5, Kundrathur Police Station, Chennai** reported in **2011 (3) MWN (Cr.) 474**, wherein it has been held as follows:

'8. This Court is to inform that the respondent has fallen into error in submitting charge sheets informing commission of offences in both, the present case as well as the counter



case. As indicated in Police Standing Order 588-A and as repeatedly held by this Court in a case of 'case and counter', the procedure to be adopted is to register both cases, conduct investigation thereon and file a positive charge-sheet upon one and referred charge-sheet in the other. Further, in an appropriate circumstance, a charge sheet may be filed in one and a charge of exceeding the right of private defence may be made in the other. The reasons therefor is that it is only then, the Court would be in a position to appreciate who or which party was the aggressor in a case of case and counter.''

8. In the above said order, this Court held that if a case of case and counter is filed for the same occurrence, it should be investigated simultaneously and after investigating the same, the Investigation Officer may file a final report. But, in these cases, the Investigation Officer followed the Rule laid down under Section 588-A of the Police Standing Orders. However, it should be verified only at the time of trial, particularly, at the time when the Investigation Officer, who registered the other cases, enters into the witness box, the factum of result for the other cases can be identified. So, without finding out the said result, now, this Court cannot come to the conclusion that the Investigation Officer did not follow Police Standing Orders.

9. In the above circumstances, the learned Government Advocate (Criminal side) also made a submission that after investigation, the cases registered in Crime No.302/2012 and 303/2012 are closed as 'mistake of fact'. But, he has not enclosed the copy of the closure report with the charge sheet filed in Crime No.301 of 2012. However, the reason for not enclosing the said Referred Charge Sheet is a matter for evidence. Thereby, this Court came to the conclusion that the ground raised by the petitioner to quash the charge sheet in C.C.No.457 of 2012 is not sufficient to allow this case. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

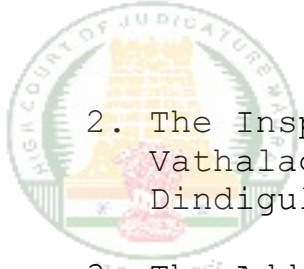
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,



2. The Inspector of Police,
Vathalagoodu Police Station,
Dindigul District.

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

+ 1 cc TO Mr.T.Lajapathi Roy , Advocate in SR No. 51705

PJL

AE/KK/SAR1/26.03.2018/4P/5C

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