



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl. OP (MD)No.19522 of 2013

and

MP(MD)Nos.1 and 2 of 2013

R.S.Marlin Noble

... Petitioner

**Vs.**

1. The Inspector of Police,  
Nithiravilai Police Station,  
Kanyakumari District.

2. M.Jerophline

... Respondents

(R2 is impleaded as per the order of  
this Court dt.18.06.2014 made in  
MP(MD)No.3 of 2014)

**Prayer :** This Criminal Original Petition is filed Under Section 482 of Criminal Procedure Code to call for the records in C.C No.115 of 2012 on the file of the Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District and quash the same.

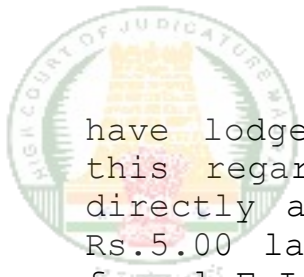
For Petitioners : Mr.C.Muthu Saravanan  
For Respondent : Mr.A.Robinson,  
Govt Advocate (Crl.Side) for R1

Mr.M.Ramesh for R2

**ORDER**

The petitioner seeks quashing of CC No.115 of 2012 on the file of the learned Judicial Magistrate No.II, Kuzhithurai. He has been arrayed as Accused No.2. The petitioner has been charged with the offence punishable under Section 414 of IPC.

2.The case of the prosecution is that the defacto complainant took the assistance of the first accused to withdraw and carry a sum of Rs.30.00 lakhs from the bank to the house of the defacto complainant. But, according to the defacto complainant, A1 managed to secrete away a sum of Rs.5.00 lakhs out of the total amount of Rs.30.00 lakhs. Therefore, the defacto complainant is said to



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have lodged an information with the first respondent police in this regard on 28.12.2011. Since the defacto complainant had directly accused the first accused of having committed theft of Rs.5.00 lakhs, the first respondent police without registering a formal F.I.R had detained the first accused namely, Kanagaraj.

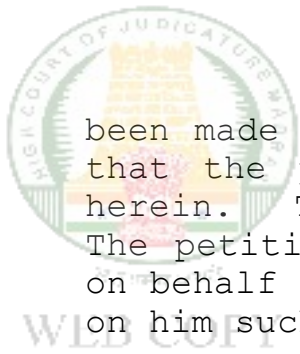
3.The petitioner is a practising lawyer. He filed an application under Section 97 of Cr.PC for issuance of search warrant . According to the petitioner herein, the said Kanagaraj was illegally detained in the premises of the first respondent police station. Search warrant was issued on 31.12.2011. Since the search warrant came to be issued immediately, the first accused was formally shown as arrested the remanded. Pursuant to the registration of Crime No.494 of 2011 for the offences punishable under Sections 379 (NP), 294(b), 506(i) IPC, the first accused was produced for remand before the Jurisdictional Magistrate. The first accused lodged a complaint before the magistrate that he was ill-treated by the police and that as a result he had suffered injuries in his shoulders. Therefore, a private complaint was lodged before the Human Rights Court.

4.At that stage the petitioner herein was also implicated as if he had committed the offence under Section 414 IPC. This implication of the petitioner herein as A2 in this case was based on the confession said to have been given by the first accused. Final report was filed to this effect and the same was taken on file by the Judicial Magistrate and summons were also issued to the petitioner. The same is sought to be quashed herein.

5.The learned counsel appearing for the petitioner pointed out that the petitioner had acted as an Advocate for the first accused. He had obtain search warrant under Section 97 of Cr.PC. He facilitated lodging of complaints before various authorities alleging that there was human rights abuse by the police on person of the first accused. In view of the steps taken by the petitioner herein, he was falsely accused.

6.The learned counsel for the petitioner would strongly press the point that the entire prosecution as far as he is concerned is malafide in nature and was intended to wreak vengeance on him. He also pointed out that no money was recovered from the petitioner herein. In fact, it was shown to have been recovered only from the first accused. A1 is already accused under Section 379 of IPC.

7.There is nothing on record to show that the petitioner was the recipient of the money or he facilitated its disposal. A portion of the amount was recovered only from the first accused. The remaining amount has not been recovered. Since there was no material to show that the petitioner had played any role in the disposal of the stolen amount, this Court is of the view that the case under Section 414 of IPC has not at all



been made out. That apart, this Court is clearly of the opinion that the prosecution had deliberately implicated the petitioner herein. The implication of the petitioner is clearly malafide. The petitioner is a practising lawyer. He acted as an Advocate on behalf of the first accused. He is entitled to do. Law confers on him such a right.

8. Therefore, merely because the petitioner filed a case against the police authorities, he has been arrayed as A2 in this case. This Court comes to the categorical finding that the very implication of the petitioner herein is without any basis. At this stage, the learned counsel appearing for the defacto complainant submits that the defacto complainant never gave a complaint as alleged by the police.

9. As rightly pointed out by the learned Government Advocate (Crl. Side), merely because the defacto complainant does not support prosecution later, that would not be a ground to quash the prosecution. In this regard, he placed reliance on the decision of the Hon'ble Supreme Court in the decision reported in **(2010) 9 SCC 701 (State of Maharashtra v. Arun Gulab Gawali)**. The said decision is squarely applicable in this case. This Court, thus, sustains the contention of the learned Government Advocate that the case cannot be quashed at behest of complainant himself on ground that complainant himself was not supporting prosecution case. But this Court however quashes the case on the other grounds mentioned earlier as far as the petitioner is concerned.

10. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl side)

/True Copy/

*Sub Assistant Registrar*

To

1. The Inspector of Police,  
Nithiravilai Police Station,  
Kanyakumari District.

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

+ 1 cc TO Mr. C. Muthu Saravanan, Advocate in SR No. 62608

skm

AE/KKR/SAR3/14.05.2018/3P/4C

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and  
MP (MD) Nos. 1 and 2 of 2013  
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