



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.O.P.(MD)No.20814 of 2013

and

M.P.(MD)No.1 of 2013

1.Chellapandi
2.Babu
3.Raja
4.Revathi
5.Sundari
6.Thayammal
7.Kani
8.Durai

... Petitioners/Accused Nos.1 to 8
Vs.

1. The State Rep. by
The Inspector of Police,
Seydunganallur Police Station,
Thoothukudi District.
(Crime No.188 of 2012) ... Respondent/Complainant

2.Moses Nadar ... Respondent/Defacto Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.188 of 2012 on the file of the first respondent police and quash the same as illegal.

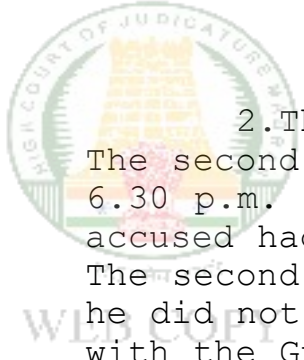
For Petitioners : Mr.T.Leninkumar

For R1 : Mr.A.Robinson
Government Advocate
(Criminal side)

For R2 : Mr.T.A.Ebenezer

ORDER

The petitioners have filed this Criminal Original Petition for quashing the FIR in Crime No.188 of 2012 on the file of the first respondent police, registered for the offences under Sections 48, 294(b), 323, 506(ii), 307 and 120(B) IPC r/w. 25(1)(b) of the Arms Act.



2.The second respondent herein is the de-facto complainant. The second respondent in his FIR has averred that on 16.05.2012 at 6.30 p.m. a dispute arose between him and the accused. The first accused had attempted to cut the de-facto complainant with Aruval. The second respondent fortunately escaped from the said attack and he did not suffer any injury. The second accused came to kill him with the Gun. The third accused came with sword and threatened to kill his family. The fourth accused shouted to cut them. The other accused also threatened them stating that they would bring men from outside to finish of the de-facto complainant. The eighth accused at the instigation of the other accused, hit the de-facto complainant with a stick.

3.Heard both sides.

4.It is is seen that even as per the First Information Report, the occurrence had taken place on 16.05.2012, but the information was lodged only on 05.10.2012. There is a gap of more than five months between the alleged occurrence and the lodging of information before the first respondent police.

5.The learned counsel appearing for the petitioners submitted that the petitioners have obtained a decree against the de-facto complainant in O.S.No.512 of 1993 on the file of the District Munsif Court, Srivaikundam. Since the said decree had been contravened, the first petitioner filed E.P.No.52 of 2010 and the same was dismissed. The dismissal of the E.P. does not in any way strengthen the case of the de-facto complainant. The fact remains that the first petitioner is the decree holder. The specific allegation of the petitioners is that since he filed E.P. to execute the Civil Court's decree, this FIR has been lodged as a counter blast.

6.This Court is of the view that this submission is highly probable. A mere look at the contents of the FIR would show that the allegations made therein are inherently improbable. The de-facto complainant did not go to any hospital. Thus, the claim that he suffered some injury in his leg is only his own *ipse dixit*. Admittedly, he did not go to any hospital to take treatment. In such a case, it is impossible to test the veracity of the FIR. Admittedly, the de-facto complainant did not suffer any noticeable injury. Had really the de-facto complainant been surrounded by heavily armed eight accused, he could not have survived the attack. This Court is of the view that the case deserves to be closed as 'mistake of fact'. Hence, the impugned



FIR in Crime No.188 of 2012 on the file of the first respondent police is quashed. This Criminal Original Petition is allowed accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Seydunganallur Police Station,
Thoothukudi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 2 ccs TO Mr.T.Lenin Kumar , Advocate in SR No. 63691
+ 1 cc TO Mr.T.A.Ebenezer , Advocate in SR No. 63700

smn2
AE/SV MMS/SAR3/15.05.2018/3P/6C

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