



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.04.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.OP(MD)Nos.20970 of 2013 & 4423 of 2015

and

M.P. (MD)Nos.1 & 2 of 2013

and

M.P. (MD)Nos.1 & 2 of 2015

Crl.OP(MD)No.20970 of 2013:

Lieutenant Colonel. S.Ganesan (Rtd) ... Petitioner

Vs.

1. The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District. ... 1st Respondent / Complainant

2. Kumaravel,
Sub-Inspector of Police,
Pandalkudi Town Police Station,
Virudhunagar District,
Present working at
District Crime Branch, Nagercoil. ... 2nd Respondent /
Defacto Complainant

Prayer : Petition filed under Section 482 of Criminal Procedure Code to call for records pertaining to the charge sheet in C.C.No.430 of 2004 dated 21.10.2004 pending before the Judicial Magistrate, Aruppukottai, in Crime No.398 of 2004 dated 21.10.2004 on the file of the respondent no.1 for the alleged offences u/s.341, 324, 332, 323 of IPC and quash the same.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.A.Robinson,
Government Advocate (Crl. Side) for R.1
Mr.S.Radhakrishnan for R.2

Crl.OP(MD)No.4423 of 2015:

1.G.Ramar
2.V.Kumeravel
3.S.Ilango
4.T.Jayaseelan
5.Gurusamy

... Petitioners



Vs.

1. The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar.

... 1st Respondent

2. S.Ganesan

... 2nd Respondent / Defacto
Complainant

Prayer : Petition filed under Section 482 of Criminal Procedure Code to call for records pertaining to the charge sheet in C.C.No.207 of 2012 on the file of the learned Judicial Magistrate, Aruppukottai, against the petitioners and quash the same.

For Petitioners : Mr.S.Radhakrishnan

For Respondents : Mr.A.Robinson,

Government Advocate (Crl. Side) for R.1

Mr.T.Lajapathi Roy for R.2

COMMON ORDER

The petitioner in Crl.OP(MD)No.20970 of 2013 seeks quashing of C.C.No.430 of 2004 on the file of the learned Judicial Magistrate, Aruppukottai. The petitioners in Crl.OP(MD)No.4423 of 2015 seeks quashing of C.C.No.207 of 2012 on the file of the learned Judicial Magistrate, Aruppukottai.

2. The petitioner in Crl.OP(MD)No.20970 of 2013, Thiru.Ganesan, is a retired Lieutenant Colonel from the Indian Army. He was serving as a Captain in Jammu & Kashmir in the year 2004. He had come to his native place on 07.05.2004 to see his newly born child. At about 11 p.m., on the same date, when he was returning home, he saw his friends standing in front of Hotel Dhanalakshmi in Aruppukottai. He parked his car and came to exchange pleasantries with his friends. It was election time. The police had been conducting inspection. The second respondent in Crl.OP.(MD)No.20970 of 2013 was the then Sub-Inspector of Police. He was coming down from the lodge upstairs and when he coming down, he bumped against Ganesan's friends. Thiru.Ganesan appeared to have asked the police officials as to why he could not see somebody standing. This verbal quarrel soon snow balled into a full scale assault. One, Ramamoorthy, who is a practising Advocate and who happened to be present, rushed and told the police that Thiru.Ganesan was a Captain in the Indian Army. In order to protect himself, Thiru.Ganesan rushed into the kitchen and brought a kitchen utensil to protect himself. But, he was outnumbered by the police, who were more than ten in number.



3. According to Thiru.Ganesan, he was brutally assaulted and severally beaten. He suffered injuries all over and he was dragged on the road and thrown to the jeep and taken to the police station. He was unconscious. By the time the jeep reached the police station, Thiru.Ganesan regained consciousness and he managed to escape. He took treatment in a private hospital and then was admitted in the Military Hospital, Chennai.

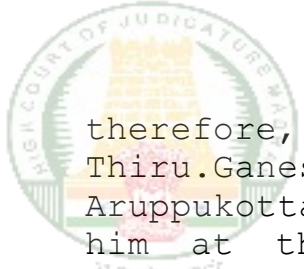
4. The police registered a case against Thiru.Ganesan for the offences punishable under Sections 323, 324, 332 & 341 IPC. The same was taken on file as C.C.No.430 of 2004 on the file of the learned Judicial Magistrate, Aruppukottai. In the meanwhile, complaint by the Revenue Divisional Magistrate, Aruppukottai, was taken on file as C.C.No.207 of 2012 against the police personnel. To quash them, these Original Petitions have been filed by the respective accused.

5. CrI.OP(MD)No.4423 of 2015 can be taken up first and disposed of.

6. A learned Judge of this Court (**Honourable Mr.Justice.S.Nagamuthu**), has, in more than one case (i.e., in CrI.OP.No.20008 of 2013, decided on 19.12.2014; CrI.OP.No.24041 of 2013, decided on 22.12.2014; and CrI.A.(MD)No.123 of 2015, decided on 23.06.2015), held that a private complaint at the instance of the Executive Magistrate is not maintainable. Respectfully following the aforesaid decisions, this Court has to necessarily quash the private complaint lodged by the Revenue Divisional Officer, Aruppukottai, against the police personnel. In this view of the matter, CrI.OP(MD)No.4423 of 2015 stands allowed and the proceedings in C.C.No.207 of 2012 on the file of the learned Judicial Magistrate, Aruppukottai stand quashed.

7. This Court is of the view that the materials on record conclusively establish that Lieutenant Colonel Thiru.Ganesan (then Captain) is a victim at the hands of the accused police personnel. This Court had allowed the quash petition filed by the police only on a technical ground. This Court had earlier held that a private complaint by the Executive Magistrate will not lie. It is, only in that view of the matter, CrI.OP(MD)No.4423 of 2015 filed by the Police personnel has been allowed by this Court.

8. Insofar as CrI.OP(MD)No.20970 of 2013 is concerned, this Court, after going through the entire material on record, forms the inescapable conclusion that the police registered Crime No.366 of 2004 on the file of Aruppukottai Town Police Station only to forestall and deflect the action that maybe initiated by Thiru.Ganesan. It is seen that serious allegations have been made against the police personnel of Panthalkudi Police Station. It is,



therefore, absolutely probable that the case lodged by Thiru.Ganesan against the police personnel was not acted upon by Aruppukottai Town Police. A counter case was registered against him at the instance of the Police personnel only to wreck vengeance on Thiru.Ganesan, since he dared to challenge the police. It is improbable that Thiru.Ganesan could have done the acts attributed to him. He was hopelessly outnumbered by the police party. That is why, the National Human Rights Commission gave a direction that compensation should be awarded to Thiru.Ganesan. The Government has since complied with the said order by issuing G.O.Ms.No.232, Public Law and Order Department, dated 22.02.2008.

9. This Court, exercising its inherent jurisdiction, will have to necessarily take note of the directions issued by the National Human Rights Commission and also the fact that it was implemented by the Government without challenge. The order passed by the National Human Rights Commission has been enclosed in the typedset of papers. In fact, considering the grievous injuries caused to Thiru.Ganesan, the Commission expressed its view that the amount of compensation is inadequate, and therefore, it enhanced the compensation from Rs.50,000/- to Rs.1,00,000/- and that was also implemented by the Government of Tamil Nadu, vide G.O.Ms.No.610, Public Law and Order Department, dated 19.05.2008.

10. The Hon'ble Supreme Court of India, in the case of **State of Haryana v. Bhajan Lal**, reported in **(1992) Supp. (1) SCC 335**, held that when the allegations made in the FIR are so absurd and inherently improbable, on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the prosecution can be quashed. The power of quashing can also be exercised wherein it is seen that the criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. In this case, the police have maliciously instituted the case in question against Thiru.Ganesan only to avoid the consequences of prosecution against them, which may be initiated at the instance of Thiru.Ganesan. Therefore, C.C.No.430 of 2004 on the file of the learned Judicial Magistrate, Aruppukottai, is quashed and Crl.OP(MD)No.20970 of 2013 stands allowed.

12. The order of this Court allowing Crl.OP(MD)No.4423 of 2015 quashing C.C.No.207 of 2012 will not come in the way of Lieutenant Colonel Thiru.Ganesan from taking such steps as are available to him in law for prosecuting the erring police personnel.



13. In result, both the criminal original petitions are allowed in the above terms. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(co)

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/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.
2. The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar.

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.63862

+3cc to Mr.K.Maharajan, Advocate Sr.No.63803

+1cc to Mr.S.Radhakrishnan, Advocate Sr.No.63802

GK

VB/SKN/RSK/SAR2/05.06.2018/5P/8C

Cr1.OP(MD)Nos.20970 of 2013 & 4423 of 2015
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