



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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CRL.O.P.(MD)No.23150 of 2013 andM.P.(MD)Nos.1 & 2 of 2013

1. Suruliyandavar
2. Megala @ Manimegalai
3. Packiyalakshmi
4. Vinoth Kumar
5. Selvam
6. Jeya
7. Chinna Samy
8. Muthumani
9. Chinna Thai

... Petitioners/

Respondent Nos.1,2,4,5,7 &10 to 13

Vs.

Veerappan

... Respondent/Petitioner

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records in P.R.C.No.52 of 2013 pending on the file of the learned Judicial Magistrate, Uthamapalayam, Theni District and quash the same.

For Petitioners

: Mr.R.Shankar Ganesh

For Respondent

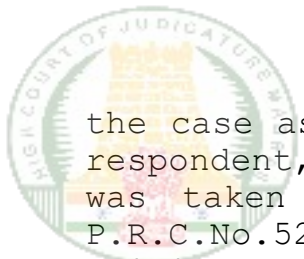
: No appearance.

ORDER

The petitioners in this Criminal Original petition and the respondent herein are relatives. On 09.04.2010, they have quarreled in connection with the village temple festival.

2. The case of the petitioners is that they were attacked by a group to which the respondent belongs. Hence, Crime No.59 of 2010 came to be registered on the file of the Odaipatti police station for various offences. The offence under Section 307 of I.P.C., was also incorporated. Final report came to be filed and the same was taken on file and it is presently pending in S.C.No.30 of 2011 on the file of the learned Assistant Sessions Judge, Uthamapalayam.

3. The respondent Veerapan is figuring as fifth accused in the said case. The trial commenced in the said sessions case. Witnesses 1 to 5 were examined in chief. At this stage, the respondent herein filed a petition under Section 156(3) of Cr.P.C., before the learned Judicial Magistrate, Uthamapalayam. Pursuant to the direction given therein, Crime No.39 of 2012 was registered on 16.05.2012. The police conducted investigation and filed a closure report closing



the case as "Mistake of Fact". A protest petition was filed by the respondent, when notice was served on him. The said protest petition was taken on file as private complaint and it was numbered as P.R.C.No.52 of 2013. The same is sought to be quashed in this Criminal Original petition.

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4. Though the complainant was served and he entered appearance through counsel, there is no appearance on his side. In fact when the matter was taken up on the earlier occasions also, there was no appearance on the side of the respondent.

5. This Court is of the view that if really offence had been committed as projected by the respondent herein, he would have certainly lodged a complaint immediately after the occurrence. Even according to the complainant, the occurrence in question took place on 09.04.2010. Though in paragraph No.5 of the impugned complaint, the respondent claims that he lodged complaint before the local police on 09.04.2010 as well as on 15.04.2010, there is no proof annexed to the private complaint. When the private complaint is filed, a list of documents is also to be annexed. In this case, from a look at the certified copy of the private complaint filed by the respondent, it is seen that it does not contain such a list of documents. In any event the respondent had moved the jurisdictional Magistrate only after the commencement of trial in the sessions case in S.C.No.30 of 2011. Crime No.39 of 2012 was registered only on 16.05.2012. The same was closed as "Mistake of Fact". Only the protest petition filed by the respondent herein was taken on file as private complaint and P.R.C. Number was assigned.

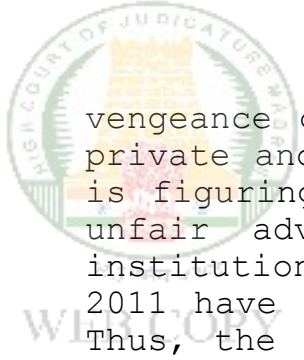
6. This Court finds considerable force in the contention of the petitioners' counsel that the impugned prosecution was only a counter blast to the sessions case filed against them. It is not in dispute that the respondent herein is figuring as fifth accused in the said case.

7. The Hon'ble Supreme Court in the decision reported in 1992 Supp (1) SCC 335 (State of Haryana V. Bhajan Lal) has held the set of parameters for quashing the criminal complaint. In paragraph No.102 of the said Judgment, the Hon'ble Supreme Court has held as follows:-

"102. ...

(7) Where a criminal proceeding is manifestly attended with mala fide 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."

8. This Court comes to the conclusion that the impugned proceeding is manifestly attended with mala fide and that it has been maliciously instituted with an ulterior motive for wreaking



vengeance on the petitioners and with a view to spite them due to private and personal grudge. As already pointed out, the respondent is figuring as fifth accused in S.C.No.30 of 2011. Only to gain an unfair advantage, this case has been instituted. After the institution of the private complaint, the accused in S.C.No.30 of 2011 have filed an application for trying both the cases together. Thus, the sessions case has been put on hold till now. Therefore, this Court has no hesitation to quash the impugned proceedings.

9. Therefore, the proceedings in P.R.C.No.52 of 2013 pending on the file of the learned Judicial Magistrate, Uthamapalayam, stand quashed. The Criminal Original petition stands allowed, accordingly. The benefit of this order will also enure in favour of the non petitioning accused. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Uthamapalayam, Theni.
2. The Assistant Sessions Judge,
Uthamapalayam.

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11.07.2018

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