



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2018

Delivered on : 13.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) No.5405 of 2013

and

M.P. (MD) Nos.1 and 2 of 2014

1.K.Shanmugaraja

2.K.Prem Anand

... Petitioners

Vs.

S.Anbu

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the private complaint in C.C.No.152 of 2012 on the file of the Judicial Magistrate Court No.V, Tirunelveli, filed by the respondent for the offences under Sections 147, 148, 294(b), 324 and 506 (ii) IPC and quash the same as illegal.

For Petitioners : Mr.T.Lajapathi Roy

For Respondent : No Appearance

ORDER

The petitioners herein are Accused Nos.1 and 2 in C.C.No.152 of 2012 pending on the file of the Judicial Magistrate Court No.V, Tirunelveli. Now, this Criminal Original Petition has been filed by the petitioners seeking to quash the abovesaid case as illegal.

2.The case of the respondent is that now he is residing at Padapakurichi, Palayamkottai, Tirunelveli District. After getting power from one Samayanasintha, he cleaned a land in S.No.507/2, measuring to an extent of 2-1/2 acres, for which, the first respondent herein after creating bogus documents, lodged a complaint against the respondent. Pursuant to the said complaint, the police officers enquired and instructed both the parties to maintain status quo and directed them to approach the Civil Court for getting their remedy. While so, on 12.05.2008, at 8.15 a.m., the respondent, one Vellaipandi, Manohar, Kumar and Perumal while standing in the said land, the petitioners herein and other accused in this case came there with stick and iron rod and abused the respondent in filthy language. Further, the first petitioner in this petition assaulted the respondent by using the iron rod and also made a life threat. Immediately, after intimation to his family members, the respondent



lodge a complaint before the Sub-Inspector of Police, Melapalayam. Thereafter, the police officers issued a Medical Memo and instructed the respondent to go to the Medical College Hospital, Tirunelveli, for getting necessary treatment. Further, during the time of occurrence, the relative of the respondent assaulted the petitioners and others, for which, one another case has been registered. After completing investigation, the Investigation Officer closed the FIR as mistake of fact. After filing the protest petition before the learned Judicial Magistrate No.V, the said Magistrate directed the Assistant Commissioner of Police, Palayamkottai, for further investigation. But, without conducting any further investigation, the Assistant Commissioner of Police Thiru.Murugesan abused the respondent and made a life threat to him, for which, one another case was registered against the said Assistant Commissioner of Police, Palayamkottai. Finally, the said Assistant Commissioner of Police closed the said case as Mistake of Fact and therefore, without any alternative remedy, the respondent filed an application before the learned Judicial Magistrate No.V, Tirunelveli, by way of private complaint, which was taken on file as C.C.No.152 of 2012.

3. Admittedly, the petitioners herein are arrayed as A1 and A2 in C.C.No.152 of 2012. Now, the learned counsel appearing for the petitioners made a submission as initially, on 27.05.2008, the Inspector of Police, Melapalayam, filed a final report, in which, he stated that the contents of the FIR are having mistake of fact. Thereafter, the respondent herein filed a protest petition on 31.10.2008, in which, the learned Judicial Magistrate No.V, Tirunelveli, passed an order on 24.12.2008, for further investigation by the Assistant Commissioner of Police, Palayamkottai. Subsequently, on 26.01.2009, the Assistant Commissioner of Police, Palayamkottai, filed a final report, in which, he has also stated that the conclusion arrived at by the Inspector of Police, Melapalayam, is found correct. Now, after three years from the date of closing of the FIR, the respondent has filed this petition, which is nothing but abuse of process of law.

4. Considering the submissions made by the learned counsel appearing for the petitioners, it is true that everything [lodging of complaint and closing of FIR by the Investigation Officers and the Assistant Commissioner of Police] were admitted by the respondent in the complaint filed before the learned Judicial Magistrate No.V, Tirunelveli. In the instant case, the only question, which arises for consideration is whether the respondent is entitled to file a private complaint for the same occurrence after the period of three years from the date of closing the FIR. For which, the answer is available in A.Krishna Rao Vs. L.S.Kumar reported in 1998 (I) CTC 329, wherein at Paragraph No.4, this Court has held as follows:-



''4. In such circumstances, when the Magistrate has accepted the R.C.S. the second complaint should be filed only after setting aside the order passed by the learned Magistrate in the referred chargesheet. However, the respondent herein has not taken any such action and instead had filed a second complaint which the learned Magistrate has taken cognizance. It has been held in the above decisions that taking cognizance in the second complaint, makes the same not maintainable.''

5. So, applying the aforesaid principle laid down by this Court to the case on hand, in the present case also, the respondent filed another one complaint for the same set of facts beyond the period of three years from the date on which the FIR was closed. The reason for filing a petition to set aside the order passed by the learned Magistrate is not explained in the complaint filed by the respondent.

6. For the foregoing reasons stated above, this Court comes to the conclusion that taking cognizance in the second complaint is nothing but abuse of process of law and therefore, I have no hesitation in quashing the said case in respect of the present petitioners alone. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.152 of 2012, on the file of the Judicial Magistrate Court No.V, Tirunelveli, pending against the present petitioners alone shall stand quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.V,
Tirunelveli.

+1cc to Mr.T.Lajapathi Roy, Advocate, SR.No.54960

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