



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.02.2018

Delivered on : 22.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.7209 of 2013

and

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

1.Manickam
2.Saravanan
3.Ramaiah

... Petitioners/A1 to 3
Vs.

1. The Inspector of Police,
Valanadu Police Station,
Thuvaranguruchi Taluk,
Trichy District.
(Crime No.188 of 2011)

... Respondent/Complainant

2. Nallayee

...Respondents/Defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in P.R.C.No.11 of 2013 on the file of the Judicial Magistrate, Manapparai, Trichy District and quash the same.

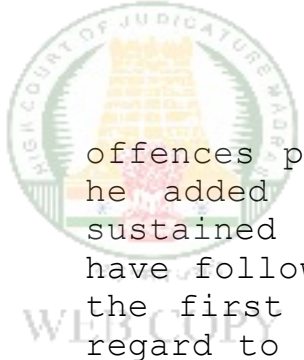
For Petitioners	: Mr.S.Vinayak for Mr.A.Joel Paul Antony
For R1	: Mr.A.Robinson Government Advocate (Crl. side)
For R2	: Mr.A.Prasanna Rajadurai for Mr.S.Muthalraj

ORDER

The petitioners herein are arrayed as Accused Nos.1 to 3 in P.R.C.No.11 of 2013, pending on the file of the Judicial Magistrate Court, Manapparai, Trichy District.

2.In the abovesaid case, the first respondent police laid a final report against the petitioners for the offences punishable under Sections 294(b) and 307 r/w. 114 IPC. Now, this Criminal Original Petition has been filed by the petitioners under Section 482 Cr.P.C., seeking to quash the proceedings in P.R.C.No.11 of 2013, pending on the file of the Judicial Magistrate Court, Manapparai, Trichy District, as illegal.

3.In order to substantiate the claim made by the petitioners, the counsel who representing the petitioners made a contention that for the alleged occurrence another one FIR was registered by the same respondent police in Crime No.189 of 2011 for the



offences punishable under Sections 294(b) and 324 IPC. Further, he added that in the alleged occurrence, the petitioners also sustained injury, due to that, the Investigating Agency ought to have followed the Police Standing Order 588-A. But, in this case, the first respondent police has not filed any final report with regard to Crime No.189 of 2011 and therefore, the case pertaining to the petitioners are liable to be quashed.

4. On the other hand, the learned Government Advocate (Criminal side) representing for the State argued that the case in Crime No.189 of 2011 was registered only after registration of Crime No.188 of 2011. So, the prayer sought by the petitioners is not at all maintainable.

5. Now, on going through the copy of the FIR enclosed along with the application discloses that Crime No.188 of 2011 was registered by the first respondent for the alleged offences mentioned in this petition on 21.11.2011 at about 8.00 hours, but the case with regard to Crime No.189 of 2011 was registered on the same day at 8.30 hours. Even though the abovesaid cases were registered in different times, on going through the averments made in the FIR, it could be seen that only for the single offence, the petitioners herein lodged one complaint and one Nallayee, who was cited as L.W.1 in the charge sheet relating to P.R.C.No.11 of 2013 lodged one another complaint. So, both the cases are nothing, but a case of case in counter.

6. In the above circumstances, it is relevant to refer the decision of this Court in **Paul Raj Vs. State by Inspector of Police, D-5, Kundrathur Police Station, Chennai** reported in **2011 (3) MWN (Cr.) 474**, wherein it has been held as follows:

'8. This Court is to inform that the respondent has fallen into error in submitting charge-sheets informing commission of offences in both, the present case as well as the counter case. As indicated in Police Standing Order 588-A and as repeatedly held by this Court in a case of 'case and counter', the procedure to be adopted is to register both cases, conduct investigation thereon and file a positive charge-sheet upon one and referred charge-sheet in the other. Further, in an appropriate circumstance, a charge sheet may be filed in one and a charge of exceeding the right of private defence may be made in the other. The reasons therefor is that it is only then, the Court would be in a position to appreciate who or which party was the aggressor in a case of case and counter.'



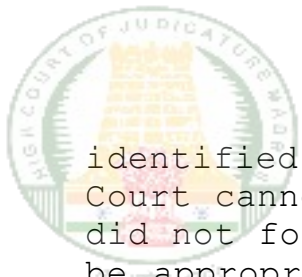
7. Further, in the judgment of **Mokkayya Thevar Vs. Amsarajan and others** reported in **1986 LW (Cr1.) 286**, this Court has held as follows:-

''3. This Court acting on revision against acquittal cannot convert a finding of acquittal into one of conviction on account of the embargo found in S.401(3) of the Code of Criminal Procedure. This Court cannot also order retrial just for the purpose of such conversion. It can interfere only when there is a gross miscarriage of justice. This point has been made clear by the Supreme Court in their decisions reported in *Chinnaswamy Vs. State of Andhra Pradesh* [AIR 1962 SC 1788] and *Akalu Ahir Vs. Ram Deo Ram* [1974 MLJ (Cr1) 168 (SC) : 1975 LW (Cr1) 235].

5. In this case, though a complaint was filed by the accused and another one at the same time by the complainant regarding the same transaction, and though both of them have been sent by the investigating officer to the medical examination, the investigation officer has not proceeded with the cases according to the instructions given in the Madras Police Standing Orders, noted above. He has simply suppressed one case and it is only at the time of his examination that he cursorily referred to the other case, without explaining why he has chosen the version of P.W.1 rather than that of the accused. This has made the case of the prosecution extremely weak. Further in the present case, apart from P.W.1, the victim, there is only one eye witness, P.W.2 having turned hostile. Neither P.W.1 nor P.W.3 has accounted for the injuries found on the accused in the course of the same transaction. Therefore, the appellate court came to the conclusion that their evidence cannot be accepted as it was one sided and deliberately suppressive of one part of the truth.''

8. Now, on going through the entire verdicts of this Court, it is to be noted that those orders have been passed by this Court only in the Criminal Revision Case, which were filed against the order of conviction. But now, the case in our hand was posted for committal proceedings.

9. In the above circumstances, only at the time when the Investigation Officer, who registered the case, enters into the witness box, the factum of result for the another case can be



identified. So, without finding out the said result, now, this Court cannot come to the conclusion that the Investigation Officer did not follow Police Standing Order 588-A and therefore, it would be appropriate to give some direction to the concerned Magistrate as follows:-

The learned Judicial Magistrate, Manapparai, Trichy District, is directed to commit the case to the Court of Sessions within two weeks from the date of receiving a copy of this order and the concerned learned Sessions Judge is directed to complete the trial proceedings as early as possible, preferably within a period of three months thereafter.

Accordingly, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Manapparai,
Trichy.
2. The Principal District and Sessions Judge,
Trichy.
3. The Inspector of Police,
Valanadu Police Station,
Thuvaranguruchi Taluk,
Trichy District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Na.Palaniyandi, Advocate Sr.No.50533

+1cc to Mr.A.Joel Paul Antony, Advocate Sr.No.50289

SMN2

VB/SV/MMS/SAR3/08/03/2018/4P/7C

order made in
Crl.O.P. (MD) No.7209 of 2013
22.02.2018