

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.23177 of 2014
and Crl.M.P.No.1 of 2014

1.K.Dharmadurai
2.R.Vinoth
3.M.Veerasma
4.P.Manikandan

... Petitioners/Accused 1 to 4

Vs.

1.State represented by
The Station House Officer,
Pennadam Police Station,
Thittakudi Taluk,
Cuddalore District.

..1st Respondent/Complainant

2.S.Govindasamy

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining the charge sheet in C.C.No.36 of 2016, on the file of the District Munsif cum Judicial Magistrate, Thittakudi, Cuddalore District and quash the same. (Prayer amended as per order in Crl.M.P.No.42 of 2019 in Crl.O.P.No.23177 of 2014, dated 03.01.2019)

For Petitioners: Mr.K.Anbuselvan
and Mr.Prabudoss

For Respondents: Mr.G.Raghavan
Government Advocate for R1

O R D E R

This petition has been filed seeking to quash the proceedings in C.C.No.36 of 2016, pending on the file of the District Munsif cum Judicial Magistrate, Thittakudi, Cuddalore District.

2. When this petition was filed, initially the relief was sought for was to quash the FIR. However, during the pendency of this petition, the final report came to be filed and

therefore, the relief has been amended and the petitioners have challenged the proceedings itself.

3. The case of the prosecution is that the accused persons attacked the defacto complainant on 16.01.2014 at about 03.45 p.m. The defacto complainant sustained injuries and took first aid. Later, he was admitted on 17.01.2014 at Government General Hospital, Cuddalore. The respondent police took statement from the defacto complainant and proceeded to register an FIR against the petitioners in Crime No.9 of 2014 for the offence under Sections 294(b), 324, 506(ii) of IPC. On completion of the investigation, a final report came to be filed and the same was taken cognizance by the Court below in C.C.No.36 of 2016 for an offence under Sections 294(b), 324, 506(ii) of IPC.

4. The learned counsel for the petitioner submitted that the entire case of the prosecution is false. The learned counsel submitted that the first petitioner was attacked by the defacto complainant on 16.01.2014 at about 04.00 p.m. The first petitioner sustained injuries and was taking treatment at Government General Hospital, Cuddalore. At about 09.45 p.m., on the same day, statement was recorded from the first petitioner and an FIR came to be registered in Crime No.7 of 2014, on 17.01.2014 at about 10.30 a.m. The learned counsel pointing out this FIR submitted that the subsequent complaint given by the second respondent is only a counter blast and therefore the respondent police went wrong and registered an FIR, based on the statement given by the second respondent.

5. The learned counsel for the petitioner further submitted that the stand taken by the defacto complainant as against the petitioners 2 to 4 (A2 to A4) is completely contrary to the statements given by the eye witnesses, which were recorded by the respondent police under Section 161 of Cr.P.C. For this purpose, the learned counsel for the petitioner drew the attention of this Court to the statement recorded from one Muthuvel and Ramakrishnan. Both these witnesses have categorically stated that it was only the first petitioner who attacked the defacto complainant with a stick and the petitioners 2 to 4 along with the witnesses were attempting to separate both the parties and prevent from further fight. The learned counsel submitted that these statement clearly prove that A2 to A4 have been implicated in this case without any materials.

6. The learned counsel for the petitioner concluded his arguments by submitting that the distance between the Government Hospital Cuddalore and Pennadam Police Station is about 100 kms and therefore, after taking the statement of the defacto

complainant at about 04.00 a.m., in morning, the FIR could not have been registered at 06.15 a.m. Therefore, the learned counsel submitted that the proceedings as against the first petitioner is also an abuse of process of law.

7. Per contra, the learned Government Advocate appearing on behalf of the respondent police submitted that there is a specific overt act attributed against the petitioners. The statement of the witnesses along with the wound certificate that has been filed along with the final report, shows that there are materials to prosecute the case against the petitioners and the defence raised by the petitioners cannot be considered at this stage and it can be raised only before the Court below in the course of trial. The learned Government Advocate further submitted that insofar as, the FIR registered based on the complaint given by the first petitioner is concerned, a final report has been filed and the same has been taken on file by the very same Court, in which the defacto complainant and others are the accused persons. The learned counsel therefore submitted that the actual truth will get revealed only during the course of the trial and therefore, this Court should not interfere with the proceedings before the Court below at the stage.

8. This Court has carefully considered the submissions made on either side and perused the materials available on record.

9. This Court will firstly deal with the materials that are available as against the petitioners 2 to 4 (A2 to A4). Even though, the defacto complainant has come up with the case, as if these petitioners joined the first petitioner and attacked him with stick, the independent witnesses, whose statements have been recorded by the Investigating Officer, clearly reveals the fact that the petitioners 2 to 4 are not involved in the offence and they had come to the scene of occurrence only to prevent the fight between the first petitioner and the defacto complainant. At least, two eye witnesses have categorically given a statement to that effect. Therefore, this Court completely agrees with the submissions made by the learned counsel for the petitioners to the effect that the proceedings as against petitioners 2 to 4 is an abuse of process of law.

10. This Court will now proceed to deal with the case of the first petitioner. Insofar as the first petitioner is concerned, it is true that there was an earlier complaint given by the first petitioner against the defacto complainant, which was registered in Crime No.7 of 2014. According to the learned counsel for the petitioner, the subsequent complaint given by the second respondent was in the nature of a counter blast and

it was given only to wreck vengeance against the first petitioner.

11. This Court has to bear in mind that this Court cannot conduct a roving enquiry and go deep into the materials that have been placed before the Court, while exercising its jurisdiction under Section 482 of Cr.P.C. Apart from the defacto complainant, there are independent witnesses, who specifically talk about the overt act of the first petitioner. That apart, the complaint given by the first petitioner also ended up in a final report and it is also pending before the Sub Court, Thittakudi in S.C.No.114 of 2018. Therefore, necessarily both these cases must be tried together to find out the exact truth regarding the incident.

12. Under such circumstances, this Court is not inclined to interfere with the proceedings insofar as the first petitioner is concerned. It is left open to the first petitioner to raise all the grounds before the Court below and the Court below shall consider the same on its own merits and in accordance with law.

13. In the result, this Criminal Original Petition is partly allowed and the proceedings in C.C.No.36 of 2016, on the file of the District Munsif cum Judicial Magistrate, Thittakudi, Cuddalore District, is quashed, insofar as, the petitioners 2 to 4 are concerned. This petition is dismissed, insofar as, first petitioner is concerned. There shall be a direction to the Court below, to transfer the entire case records in C.C.No.36 of 2016 to the file of Sub Court, Thittakudi, to be tried along with S.C.No.114 of 2018 in accordance with the guidelines given by the Hon'ble Supreme Court in Nathilal and others Vs. State of U.P and another reported in 1990 SCC (Cr1) page 638 and the guidelines given by this Court in 1.Ganesan (A1) (Appellant in Cr1.A.No.263 of 2011) 2.Vijayasanthi (A2) (Appellant as Cr1.A.No.57 of 2004) Vs. State. rep. by the Inspector of Police, R-2, Kodambakkam Police Station, Chennai (Crime No.1915 of 1998) reported in 2011 (5) CTC page 747 and the Sub Court, Thittakudi, is directed to complete the proceedings within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Court, Thittakudi
Cuddalore District.

2. The District Munsif cum Judicial Magistrate,
Thittakudi, Cuddalore District.

3. The Station House Officer,
Pennadam Police Station,
Thittakudi Taluk,
Cuddalore District.

4. The Government Advocate,
High Court, Madras.

+3 CCS to Mr.K.Anbuselvan, Advocate sr 64772 (28/08/2019)

Crl.O.P.No.23177 of 2014

CP(CO)
SP(22/08/2019)