

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.2150 of 2017
and
Crl.M.P.No.1537 of 2017

1.Dhinakaran
2.Ganesan
3.Karunakaran

.. Petitioners/Accused

Vs.

1.The State rep by
The Sub-Inspector of Police,
Madurantakam Police Station,
Kancheepuram District.
Crime No.382 of 2008.

2.K.Musaberkani

.. Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to the impugned charge sheet in C.C.No.286 of 2008 on the file of the learned Judicial Magistrate, Madurantakam and quash the same.

For Petitioners : Mr.C.Arunkumar

For R1 : Mr.C.Raghavan
Government Advocate (Crl.Side)

R2 : No appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.286 of 2008 pending on the file of the learned Judicial Magistrate, Madurantakam.

2.The case of the prosecution is that on 18.04.2008 at about 1 p.m., the accused persons entered into the house of the defacto complainant and abused and attacked the wife of the defacto complainant. On a complaint given by the defacto complainant, a First Information Report came to be registered in

Crime No.382 of 2008 for an offence under Section 448, 323, 354,506(i) of IPC. On completion of the investigation, a final report came to be filed before the Court below and the same was taken on file for the offences under Sections 323 and 354 of IPC as against the first petitioner and under Sections 294(b) and 354 of IPC as against the second petitioner and under Section 323 as against the third petitioner. The second petitioner is the son of the first petitioner and the third petitioner is the elder brother of the first petitioner.

3.The learned counsel for the petitioners submitted that there was a land dispute between the parties. A suit came to be filed by the wife of the first petitioner against the wife of the defacto complainant in O.S.No.144 of 2008 on the file of the learned District Munsif Court, Madurantakam, seeking for a relief of permanent injunction. The suit was filed on 17.04.2008 and an interim injunction was also granted in favour of the wife of the first petitioner on the same day. The learned counsel submitted that immediately on coming to know about the same, as a counter blast, the respondent has resorted to giving a false complaint against the petitioners as if they abused and attacked the wife of the defacto complainant.

4.The learned counsel for the petitioners further submitted that the allegations made in the complaint are patently false. However to substantiate this submission, the learned counsel brought to the notice of this Court the allegations made in the complaint wherein it is stated that three persons entered into the house and attacked the wife of the defacto complainant. However, when the wife of the defacto complainant is said to have taken treatment before the Doctor, she had stated that four persons had entered the house and attacked her. The learned counsel further brought to the notice of this Court, the wound certificate that was filed along with the final report. By pointing out to the wound certificate and the statement of the Doctor, the learned counsel submitted that there was no external injury found in the body of the wife of the defacto complainant and she had only complained of pain in her lower abdomen and her back. If the allegations made in the complaint are true, the wife of the defacto complainant would have definitely sustained external injuries and the fact that no injuries were found would clearly show that the entire incident as projected in the complaint is false.

5.The learned counsel concluded his arguments by submitting that the entire criminal proceedings is an abuse of process of law and has been given only to wreck vengeance against the petitioners and as a counter blast to the civil suit instituted by the wife of the first petitioner.

6.The learned Government Advocate appearing on behalf of the respondent police submitted that the Court cannot assess material that have been collected during the course of investigation and it is the job of the Trial Court to undertake that exercise. The learned counsel submitted that there are prima facie materials to frame charges against the petitioners and therefore the proceedings should not be interfered at that stage.

7.The second respondent has been served with the notice and his name is also printed in the cause list and there is no appearance on his behalf.

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

9.In this case, admittedly, the defacto complainant has not seen the incident and the complaint has been given based on what was informed to him by his wife. The wife of the defacto complainant has specifically stated before the Doctor that four persons entered into the house and abused and attacked the wife of the defacto complainant. The wife of the defacto complainant is said to have been attacked with wooden logs, stones and with legs. However, the wound certificate and the statement of the Doctor shows that there are absolutely no extraneous injuries suffered by the wife of the defacto complainant. This itself throws a lot of doubt about the allegations made in the complaint.

10.Yet another aspect that can be taken into consideration is the fact that the wife of the defacto complaint, in the statement recorded under Section 161 Cr.P.C., specifically stated that one Shankar had rushed to the spot and after seeing him, all the accused persons ran away from the scene of occurrence. Curiously, the said Shankar has not been examined as a witness in this case. If he had been examined, there would have been some authenticity in the complaint given by the defacto complainant.

11.This Court was forced to go into all these aspects, since a specific plea was taken before this Court that the complaint itself is as a result of a counter blast for a suit filed by the wife of the first petitioner and the interim injunction granted in her favour by an order dated 17.04.2008. The incident is said to have taken place on 18.04.2008. Therefore, the sequence of events and the apparent falsity found in the allegations made in the complaint, throws a lot of doubt as to the authenticity of the very complaint itself.

12.In the considered view of this Court, the defacto

complainant has lodged this complaint only with a view to wreck vengeance against the petitioners and to give a criminal colour to the civil dispute which is already pending between the parties. The proceedings itself is an abuse of process of Court and the same requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

13.In the result, the proceedings in C.C.No.286 of 2008 on the file of the learned Judicial Magistrate, Madurantakam is hereby quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sub-Inspector of Police,
Madurantakam Police Station,
Kancheepuram District.
- 2.The Public Prosecutor,
Madras High Court.

+lcc to Mr.C.Arun Kumar, Advocate, S.R.No. 71471

Cr1.O.P.No.2150 of 2017
and
Cr1.M.P.No.1537 of 2017

SSD(CO)
GN(15/10/2019)