

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE **N. ANAND VENKATESH**

Crl.O.P.No.12203 of 2017

and

Crl.MP.Nos.7964 & 7965 of 2017

1.Kumar
2.Vasudevan
3.Perumayee
4.Chandra
5.Mahdammal

... Petitioners

Vs.

1.State by Inspector of Police,
Rasipuram Police Station,
Namakkal District,
Crime No.943 of 2012

2.Periyasamy

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records with respect of the charge sheet in C.C.No.2 of 2017, on the file of Principal Sessions Judge, Namakkal and quash the same.

For Petitioners : Mr.R.Nalliyappan

For R 1 : Mr.M.Mohamed Riyaz, APP

For R 2 : Mr.S.Senthil

Mr.N.Bharath Kumar

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.2 of 2017, pending on the file of the Sessions Court, Namakkal.

2.The 2nd respondent filed a complaint before the 1st respondent Police and an FIR came to be registered in Cr.No.943 of 2012 as against the petitioners. On the completion of the investigation, a Final Report has been filed before the Court below and the same has been taken on file for an offence under Section 147, 294(b), 323, 341 r/w 149 and 506(ii) IPC.

3.The learned counsel for the petitioners submitted that A-1 and A-5 are husband and wife and they are advocates by profession. A-2 and A-4 are the parents of A-1 and A-3 is the grand mother of A-1. The learned counsel submitted that there was a previous enmity between the parties with regard to digging a lane in between the house of the petitioners and the de facto complainant.

4.The learned counsel further submitted that the 2nd petitioner is aged about 69 years, the 3rd petitioner is aged about 95 years and the 4th petitioner is aged about 57 years and they have all been dragged into the case intentionally only with a view to harass them. The learned counsel submitted that the 1st and 5th petitioners are advocates and the case has been registered against them only to cause harassment to them and prevent them from carrying on with their profession.

5.The learned counsel for the petitioners concluded the arguments by submitting that based on the complaint given by the petitioners, a Final Report has already been filed by the respondent Police in SC.No.104 of 2014, against the 2nd respondent and his wife for an offence under Section 294(b), 324 and 506(ii) IPC r/w Section 3(1)(x) of the SC/ST Act. As a counter blast, the present complaint has been given by the respondent.

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6.The learned counsel appearing for the 2nd respondent submitted that the allegations made in the Final Report read along with the statements recorded from the witnesses, clearly shows that a *prima facie* case has been made out against the petitioners, and therefore the

petitioners must face trial before the Court below.

7.The learned counsel appearing on behalf of the respondent Police submitted that there are materials available to frame charges against the petitioners, and therefore this Court should not interfere with the proceedings at this stage.

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

9.It is seen that for the very same occurrence, the 1st petitioner had given a complaint and the same as resulted in the filing of a Final Report in SC.No.104 of 2014, for the offences under IPC and SC/ST Act. The investigation was conducted by the very same Investigating Officer in both the cases. The purpose for conducting a joint investigation is only to find out the aggressor and to file the Final Report against him. In a case of this nature, the Police cannot file two Final Reports for the same incident alleging the same offence against the parties.

10. Useful reference can be made to the judgment of this Court in ***Vellapandy Thevar and Others .Vs. State rep.by the Inspector of Police, Alangulam Police Station, Tirunelveli Dt.,*** reported in [**1984 LW (Crl.) 257**]. The relevant portions of the judgment is extracted hereunder:

4. This is a case of complaint and counter complaint. On the complaint given by Tmt. Ramasundaram in Cr. No. 64 of 1982, the Inspector of Police has filed a charge sheet in S.C. 132 of 1983 for offences under Sections 147, 148, 427, 324 and 302, Indian Penal Code against the Petitioners in Crl. M.P. 5503 of 1984. In respect of the same incident, Tmt. Thangathai has given a complaint in Crime No. 65 of 1983 and the Inspector of Police has filed a charge -sheet in respect thereof against the Petitioners in Crl. M.P. 4437 of 1983, under Sections 147, 148, 427, 337 and 307, Indian Penal Code now pending in S.C. 151 of 1983 on the file of the Assistant Sessions Judge. Tenkasi. In cases of complaints and counter complaints, the procedure to be followed by the Investigating Officer is laid down in Order 588 -A of the Madras Police Standing Orders, which is as follows:

"588 -A. Charge sheets in cases and counter cases: In a complaint and counter complaint obviously arising out of the same transaction the investigating officer should enquire into both of

them and adopt one or the other of the two courses, viz, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he should find them untrue. When the investigating officer proceeds on the basis of the complaint it is his duty to exhibit the counter complaint in the court and also to prove medical certificates of persons wounded on the opposite side. He should place before court a definite case which he makes it to accept. The investigating officer in such cases should not accept in to do one complaint and examine only witnesses who support it and give no explanation at all for the injuries caused to the other side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite "necessary that all the facts are placed before the court to enable it to arrive at the truth and a just decision.

If the investigating officer finds that the choice of either course is difficult, viz, to charge one of the two cases or to throw out both, he should seek the opinion of the Public Prosecutor of the District and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter complaint, as the case may be should be advised about the disposal by a notice in P. 96 and to seek remedy before the specified magistrate, if he is aggrieved by the disposal of the same by the police".

The investigating officer has to enquire into both the complaints, find out who were the

aggressors and file a charge sheet against them or refer both the cases if he finds them untrue. Where the investigating officer finds it difficult to choose either of the above courses, he should seek the opinion of the Public Prosecutor and act accordingly. In the instant case, the Inspector of Police has referred the matter to the Public Prosecutor and the Public Prosecutor has advised the filing of the charge sheet only against the Petitioners in Crl. M.P. 5503 of 1984, and not against the Petitioners in Crl. M.P. 4057 of 1983. But the Inspector of Police has not acted according to the opinion of the Public Prosecutor and filed a charge sheet against both the groups. This is certainly not in accord with Order 538 -A of the Madras Police Standing Orders. The investigating officer ought to have filed the charge sheet Only in Crl. No. 64 of 1982 against the Petitioners in Crl. M.P. 5503 of 1684, which is now pending in the court of the II Additional Sessions Judge, Tirunelveli in S.C. 132 of 1983 for offences under Sections 147, 148, 427, 324 and 302 Indian Penal Code and must have referred the complaint given by Thangathai registered in Cr. No. 69 of 1982, instead of filing another charge sheet in the said crime number against the Petitioners in Cr. M.P. 4437 of 1983, which is now pending in the court of the Assistant Sessions Judge, Tenkasi in S.C. 151 of 1983, for offences under Sections 147, 148, 427, 337, and 307, Indian Penal Code The investigating officer has evidently contravened the express provision of the Order 588 -A which lays

down that in the case of doubt he ought to refer the matter to the opinion of the Public Prosecutor and act accordingly. The investigating officer has referred the matter to the opinion of the Public Prosecutor, but has failed to act accordingly. The result is there are now two Prosecutions in respect of the same matter against the opposite parties.;

5.As pointed out by this Court in Thota Ramakrishna and others .Vs. State.

"It is improper for the police to prosecute the same time two counter cases in regard to the same occurrence one of which must be false. It is improper also and disrespectful to the court for the Public Prosecutor to conduct both cases in the sessions court knowing that one must be false. Such counter cases cannot both the prosecuted honestly either by the police or the public prosecutor".

11.It is clear from the above judgment that the respondent Police can file only one Final Report in a case of this nature and there cannot be two Final Reports for the same incident more particularly since the 2nd respondent and his wife have been found to be the aggressor and a Final Report as already been filed and pending in SC.No.104 of 2014.

12.In view of the above, the proceedings against the petitioners is an abuse of process of Court and the same requires interference of this Court under Section 482 of Cr.P.C.

13.In the result, the proceedings in SC.No.104 of 2014, before the Court below is hereby quashed, and accordingly this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

16.08.2019

Index :Yes
Internet:Yes
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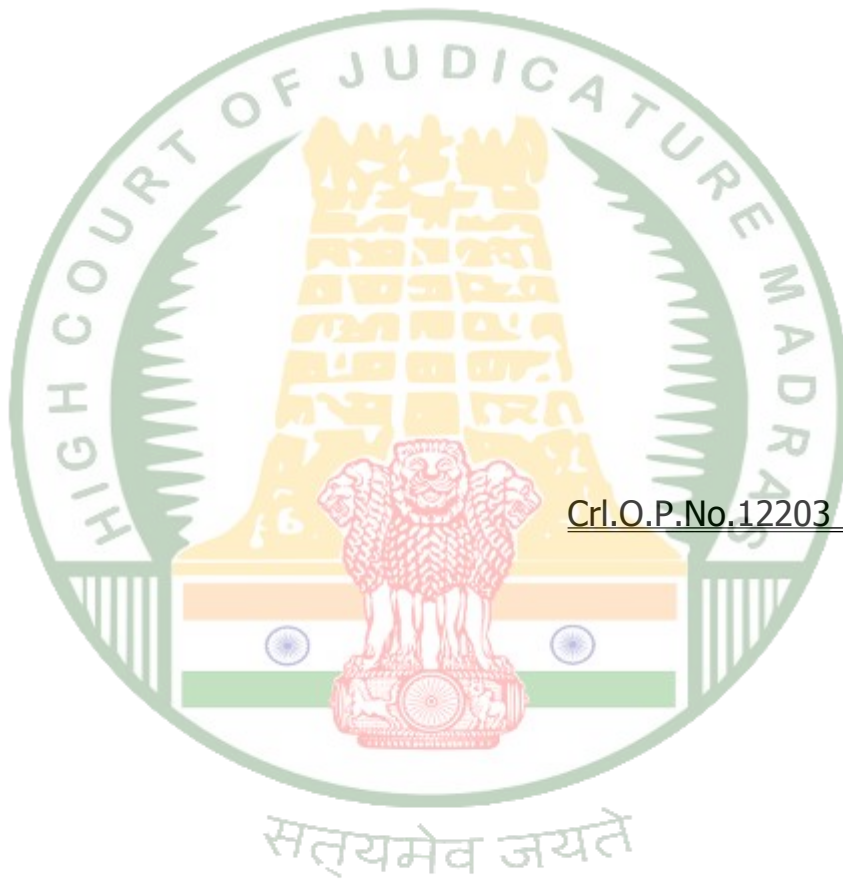
1.Inspector of Police,
Rasipuram Police Station,
Namakkal District,
Crime No.943 of 2012.

2. Principal Sessions Court,
Namakkal.

3.The Public Prosecutor,
High Court, Madras.

N. ANAND VENKATESH, J.

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Crl.O.P No.12203 of 2017

N.ANAND VENKATESH.J

The learned counsel for the petitioner has brought to the notice of this Court that in the order in Crl.O.P.No.12203 of 2017 dated 16.08.2019, it has been inadvertently mentioned in para 13 as **S.C No.104 of 2014** instead of **C.C No.2 of 2017**. Hence, the case is posted today under the caption “for being mentioned”.

2. Accepting the submissions of the learned counsel for the petitioner, para 13 of the order dated 16.08.2019, in Crl.O.P.No.12203 of 2017 shall be read as follows:

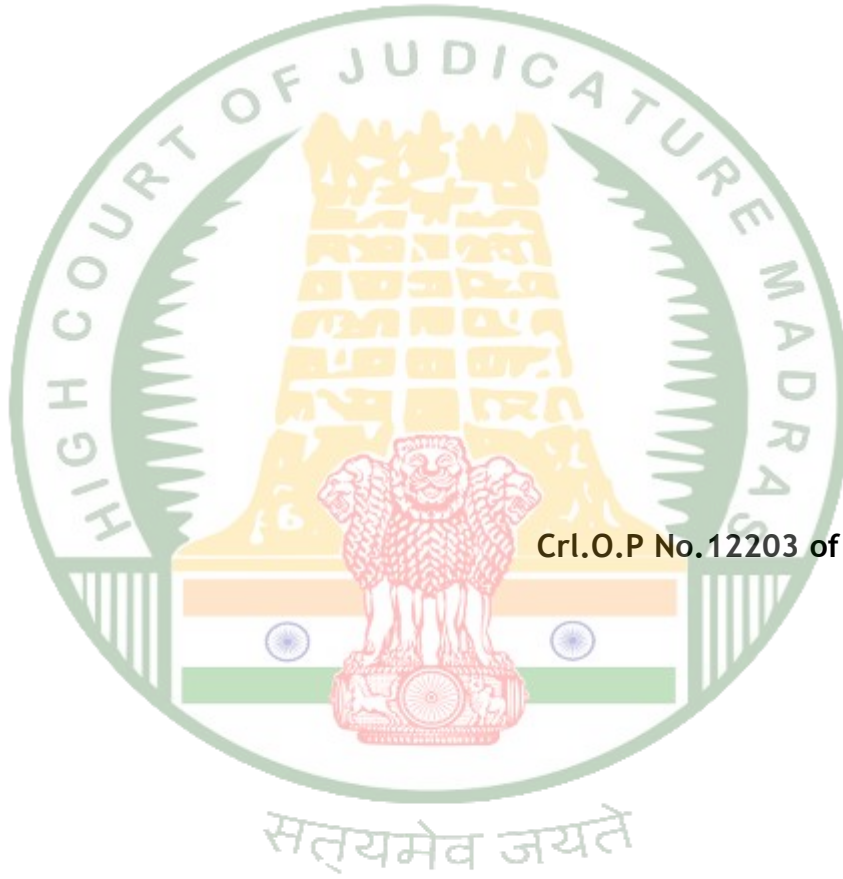
13. In the result, the proceedings in C.C No.2 of 2017, before the Court below is hereby quashed, and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

29.08.2019

Note: Registry is directed to issue a fresh order copy after making necessary corrections on **03.09.2019**.

N.ANAND VENKATESH, J.

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29.08.2019