

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 26741 of 2018  
and  
Crl.MP.Nos. 15409 & 15411 of 2018

1. Chandrasekar
2. Jaya @ Jayalakshmi
3. G.Rajasekar
4. Rajalakshmi ...Petitioners/Accused 1 to 4

Vs.

1. The Sub Inspector of Police  
Ambagaruthur Out-post Police Station,  
Thirunallar, Thirunallar Taluk,  
Karaikal District,  
Puducherry State. ...1<sup>st</sup> Respondent/Complainant  
(Crime No.0172/2017)
2. Thilagavathy ...2<sup>nd</sup> Respondent/De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of charge sheet in C.C.No.204 of 2018 on the file of the learned Judicial magistrate-II, Karaikal and quash the same.

For Petitioner : Mr.R.Sreedhar

For Respondents

For R1 : Mr.V.Balamurugane  
Additional Public Prosecutor  
(Pondy)

For R2 : Mr.T.Sivagnansambadam

O R D E R

This petition has been filed to quash the proceedings in C.C.No.204 of 2018 on the file of the learned Judicial Magistrate-II, Karaikal.

2. The learned counsel appearing for the petitioner submitted that there are four accused in which, the petitioners are arraigned as A1 to A4. On the complaint lodged by the second respondent, the first respondent registered a case in Crime No.172 of 2017 for the offences under Sections 294(b), 506(ii) and 34 of IPC. The first respondent without even conducting proper enquiry mechanically filed final report for the same offence. Even according to the case of the prosecution, there is no specific overtact as against the petitioners. Each of the petitioners to implicate themselves for having committed offence as alleged by the prosecution. Further submitted that the ingredients to attract the offence under Section 294(b) are not at all made out as against the petitioners, since the occurrence took place in the house premises and in no public was there. Therefore the offence under Section 294(b) is not at all attract as against the petitioners.

2.1. He further submitted that it is a case and counter. A crime has been registered on the complaint lodged by the fourth petitioner as against the second respondent party and the same has been registered in Crime No.171 of 2017 for the offences under Sections 294(b), 323, 554(b), 506(ii) of IPC r/w 34 of IPC. The first respondent did not follow the Police Standing Order (PSO) 566 and filed final report in respect of Crime No.172 of 2017 only. As far as the petitioners' complaint registered in Crime No. 171 of 2017, the first respondent did not even conduct enquiry and simply keep it pending. He further submitted that in respect of the disputed property there is a civil suit in O.S.No.469 of 2017 pending on the file of the learned Principal District Munisiff, Karaikal. Therefore he prayed to quash the proceedings.

3. Per contra, the learned counsel appearing for the second respondent submitted that the petitioners have committed offences under Sections 294(b), 506(ii) and 34 of IPC and to attract the said offences there are materials to connect the petitioners. He further submitted that though civil suit is pending between the parties, it is not an impediment to proceed a criminal case as against the petitioners. Therefore he prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent police submitted that the petitioners are arraigned as A1 to A4 and the charge sheeted for the offences under Sections 294(b), 506(ii) and 34 of IPC. Insofar as the counter complaint registered in Crime No.171 of 2017 is concerned the investigation is still pending.

5. Heard Mr.R.Sreedhar, learned counsel appearing for the petitioners, Mr.V.Balamurugane, learned Additional Public

Prosecutor(Pondy) appearing for the first respondent and Mr.T.Sivaganasambandam, learned counsel appearing for the second respondent.

6. On perusal of the documents, it is seen that there is a counter case lodged by the fourth petitioner and the same was registered in Crime No.171 of 2017 for the offences under Sections 294(b), 323, 554(b), 506(ii) of IPC r/w 34 of IPC. Thereafter, the second respondent lodged complaint in Crime No. 172 of 2017 for the offence under Sections 294(b), 506(ii) and 34 of IPC. Insofar as the Crime No. 172 of 2017 is concerned, the first respondent conducted enquiry and filed charge sheet in C.C.No.204 of 2018 on the file of the learned Judicial Magistrate-II, Kariakal. Insofar as the Crime No.171 of 2017 is concerned, it is pending for investigation. It is clear violation of PSO 566.

7. In this aspect, the learned counsel appearing for the petitioners relied upon the judgment passed by this Court dated 29.08.2016 in Crl.O.P.(MD)No.13177 of 2016 in the case of Prasath Vs. the Inspector of Police, Avaniayapuram Police Station and anr, which reads thus:-

"14. What is the procedure contemplated, when there are two complaints in respect of the same incident, each complaining against the other.

15. It is relevant to focus attention on Rule 588-A of the Madras Police Standing Order, which stipulates as under: "In a complaint and counter complaint arising out of a same transaction, the investigation Officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor 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-complainant, as the case may be, should be advised about the disposal by a notice in Form-96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the police."

16. It is the settled law that both the cases in counter have to be tried together so as to find out the real aggressor.

17. The investigating Officer should have taken up the investigation in both the cases together and the investigation is to be held side by side so as to find out the truth attached to both the complaints by rival parties, particularly in view of the fact that the parties are one and the same and the causes of action alleged are also either same or similar.

18. The Hon'ble Supreme Court has held that the provisions of P.S.O. 145 is administrative in nature and therefore, it has no force of Law. However, it would be relevant to point out that so far as P.S.O. 588A is concerned, it was an outcome of the Judgment rendered in the case of Thota Ramakrishnayya v. State reported in (1954 MWN Cr 9), wherein P. N. Ramaswami, J. thought it fit to make certain observations as to how a complaint made and a counter complaint made, have to be dealt with by the Investigating Agency. At that time, P.S.O. 588A was not available.

18.1. Mr. V. Sairam, learned counsel for petitioners in Cri M.P.No.3861/1989, represents that P.S.O. 588A was the outcome of the decision in Ramakrishnayya's case. The learned Judge observed, that it is improper for the police to prosecute at the same time two counter cases in regard to the same occurrence, one of which must be false. The Police cannot charge both cross-cases and must either find out the truth and charge that version which is true, or if they are unable to do so to throw out both the cases or charge one version leaving it open to the aggrieved party to resort to his own remedies. If he finds out that the choice of either course is difficult, he should seek the opinion of the Public Prosecutor of the District and act accordingly. A Magistrate before whom such a case is charged by the police and a private complaint from the party whose case had been referred should hear both the

cases together and commit both of them to the Sessions, even if only one of them is exclusively triable by a Court of Sessions. The procedure suggested is salutary and may help the Investigating Agency when they are confronted with two complaints in respect of the same occurrence."

This Court and the Hon'ble Supreme Court of India repeatedly held that the investigation in the both cases should have been go together to find out the truth attached to both the complaints by rival parties, particularly in view of the fact that the parties are one and the same and the causes of action alleged are also either same or similar.

8. Admittedly, the first respondent did not follow the procedure laid down under the PSO 566. Police cannot file charge both cross-cases and must either find out the truth and charge that version which is true, or if they are unable to do so to throw out both the case or charge one version leaving it open to the aggrieved party to resort to his own remedies. Therefore, in the case on hand, the proceeding in C.C.No.204 of 2018 is vitiated and it cannot be sustained as against the petitioners, when the investigation is still pending in Cr.No.171 of 2017.

9. In view of the above discussions, this Criminal Original Petition stands allowed and the proceedings in C.C.No.204 of 2018 on the file of the learned Judicial magistrate-II, Karaikal is hereby quashed. Consequently, connected miscellaneous petitions are closed.

rts

Sd/-  
Assistant Registrar (CS IV)

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सत्यमेव जयते  
Sub Assistant Registrar

To

1. The Judicial magistrate-II,  
Karaikal
2. The Sub Inspector of Police  
Ambagaruthur Out-post Police Station,  
Thirunallar, Thirunallar Taluk,  
Karaikal District,  
Puducherry State.

3. The Public Prosecutor,  
High Court of Madras,  
Chennai.

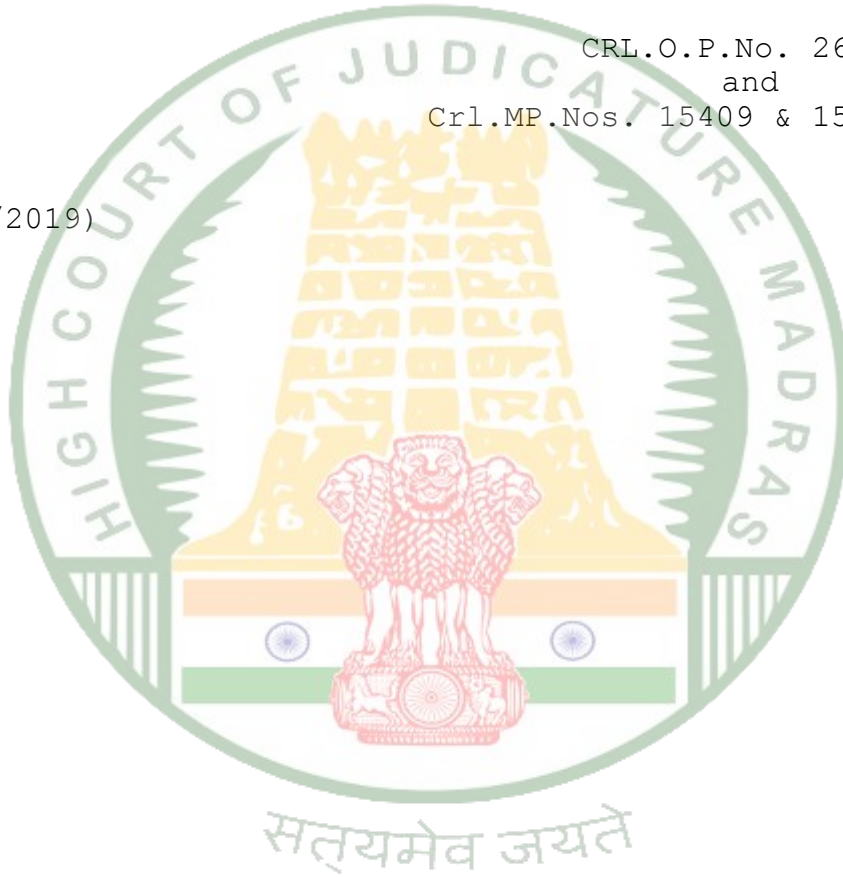
+1cc to Mr.R.Sreedhar, Advocate, SR.No.21407

+1cc to Mr.T.Sivagnansambadam, Advocate, SR.No.20881

+1cc to the Public Prosecutor, High Court, Madras, SR.NO.21683

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Kak(08/05/2019)



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