



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
05.04.2019	22.04.2019

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CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH**Cr1.O.P. (MD) No.6690 of 2014
and M.P.No.1 of 2014**

Murugan

... Petitioner/Accused

Vs.

Moorthy

... Respondent/Complainant

Prayer: Criminal Original Petition filed under 482 Cr.P.C. to call for the records in C.C.No.413 of 2013 on the file of the learned Judicial Magistrate, No.2, Dindigul and quash the same as illegal.

For Petitioner : Mr.J.Lawrence

For Respondent : Mr.S.C.Herold Singh

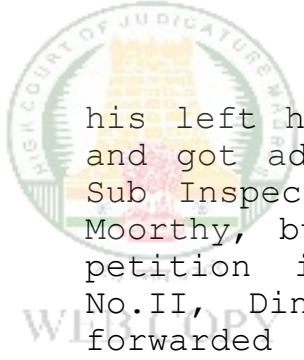
ORDER

For the sake of convenience, the parties are referred to by their name.

2. Moorthy has filed a private complaint in C.C.No.413/2013 before the Judicial Magistrate No.II, Dindigul against Murugan, Sub Inspector of Police, Thadikombu Police Station for offences under Sections 166 and 217 IPC, for quashing which, Murugan is before this Court.

3. Heard the learned counsel for Murugan and the learned counsel for Moorthy.

4. It is the case of Moorthy that his grandfather Kalimuthu had taken a land on three year lease from 26.07.2011 by paying Rs.5 lakhs to Raju, the owner of the land. After taking the land on lease, his grandfather was cultivating the land and was living with his grandmother nearby the land. The sons of Raju, namely, Durairaj and his family members wanted to cancel the lease and forcibly evict Kalimuthu. On 26.12.2011, Moorthy went to his grandparents' house and stayed there. On 28.12.2011, at 4.30 a.m., he heard someone knocking the door and on opening, he found Raju, his sons Durajraj, Nagaraju, Saravanan, son-in-law Krishnamoorthy and others standing out. They abused Kalimuthu and asked him to vacate the land immediately and started throwing his belongings out. When Moorthy intervened, he was attacked with a knife and he suffered injuries on



his left hand. After the group left, Moorthy went to the hospital and got admitted. On intimation from the hospital, Raman, Special Sub Inspector of Police came there and recorded the statement of Moorthy, but, no FIR was registered. Thereafter, Moorthy filed a petition in CrI.M.P.No.168/2012 before the Judicial Magistrate No.II, Dindigul under Section 156(3) Cr.P.C. and the same was forwarded on 21.01.2012 to the Inspector of Police, Thadikombu Police Station, even after which, no FIR was registered. Hence, the present private complaint by Moorthy.

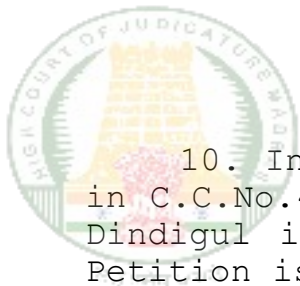
5. The learned counsel for Murugan contended that Murugan had not gone to the hospital and recorded the statement of Moorthy and admittedly, it was one Raman, Special Sub Inspector of Police, who had gone to the hospital and recorded the statement of Moorthy, after which, Raman gave a CSR receipt evidencing registration of a petition enquiry. Thereafter, Moorthy's grandmother Pappathi gave a complaint, based on which, a case in Thadikombu Police Station Crime No.32/2012 was registered on 12.01.2012 under Sections 147, 148, 447, 342, 363 and 506(II) IPC against Durajraj and six others.

6. Responding to this contention, Mr.S.C.Herold Singh, learned counsel for Moorthy, contended that the complaint in Crime No.32/2012 was in relation to the abduction of Kalimuthu by the accused subsequently and therefore, the registration of that FIR will not absolve Murugan from criminal liability for not registering an FIR on Moorthy's complaint.

7. This Court gave its anxious consideration to the rival submissions.

8. Admittedly, it is not Murugan, who recorded the statement of Moorthy and it was Raman, Special Sub Inspector of Police, Thadikombu Police Station. For the failure of Raman to register a regular FIR, and instead, registering the complaint as petition enquiry, Murugan cannot be held criminally liable. It is true that the learned Magistrate had issued directions in CrI.M.P.No.168/2012 to the Inspector of Police, Thadikombu Police Station for registering an FIR. The Inspector of Police should have registered the FIR in compliance with the said directions and for his failure to register the FIR, Murugan, the Sub Inspector of Police cannot be held responsible. That apart, the complaint given by Pappathi, based on which, the case in Crime No.32/2012 was registered includes the allegations made by Moorthy that he was knifed. Hence, there cannot be two FIRs for the same incident.

9. This Court has its own doubt as to whether a police officer can be prosecuted under Sections 166 and 217 IPC for failure to register an FIR. This aspect is left open. On the facts obtaining in this case, this Court finds that Murugan cannot be prosecuted for the said offences, assuming for a moment that a prosecution for the offences under Sections 166 and 217 IPC are maintainable for not registering an FIR.



10. In the result, this petition is allowed and the proceedings in C.C.No.413 of 2013 on the file of the Judicial Magistrate No.II, Dindigul is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(AE)

// True Copy //

Sub Assistant Registrar(CS)

To

The Judicial Magistrate, No.2,
Dindigul.

+1 CC to M/s.J.LAWRANCE, Advocate in SR-61911

+1 CC to M/s.S.C.HEROLD SINGH, Advocate in SR-62213

Cr1.O.P.(MD) No.6690 of 2014
and M.P.No.1 of 2014
22.04.2019

RR

PK/02.05.2019 : 3P/4C