



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P(MD)No.7447 of 2017 and
Crl.M.P(MD)Nos.5078, 5079 & 7335 of 2017
AND

Crl.R.C(MD)No.653 of 2018 and Crl.M.P(MD)No.10337 of 2018

Crl.O.P(MD)No.7447 of 2017:

1.Sekar
2.Ramesh
3.Velankanni @ David
4.Velumani
5.Manibabu
6.Suresh
7.Prabhakaran

... Petitioners/A.1 to A.7

Vs.

K.N.Veeraiah

... Respondent/Complainant

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the case in C.C.No.64 of 2017 pending before the learned Judicial Magistrate, Manapparai, Trichy District and quash the same.

For Petitioners : Mr.S.Vinayak
for Mr.A.Joel Paul Antony

For Respondent : Mr.C.Jeganathan forever
M/s.Veera Associates

Crl.R.C(MD)No.653 of 2018:

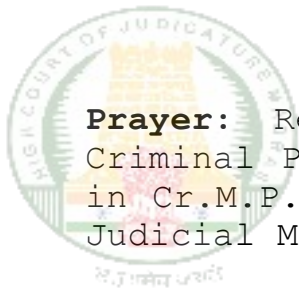
1.Sekar
2.Ramesh
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5.Manibabu
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7.Prabhakaran

... Petitioners/A.1 to A.7

Vs.

K.N.Veeraiah

... Respondent/Complainant



Prayer: Revision filed Sections 397 and 401 of the Code of Criminal Procedure to set aside the order dated 30.11.2018 passed in Cr.M.P.No.2663 of 2017 in C.C.No.64 of 2017 on the file of the Judicial Magistrate, Manapparai, Trichy District.

For Petitioners

: Mr.S.Vinayak

for Mr.A.Joel Paul Antony

For Respondent

: Mr.A.N.Ramanathan

COMMON ORDER

The Crl.O.P(MD)No.7447 of 2017 has been filed by the accused in C.C.No.64 of 2017 pending before the learned Judicial Magistrate, Manapparai, Trichy District, to quash the proceedings pending against them in C.C.No.64 of 2017.

2. The Crl.R.C(MD)No.653 of 2018 has been filed to set aside the order dated 30.11.2018 passed in Cr.M.P.No.2663 of 2017 in C.C.No.64 of 2017 on the file of the Judicial Magistrate, Manapparai, Trichy District.

3. Since both the petitions are arising out of the case in C.C.No.64 of 2017, the petitions are taken up together and disposed by this common order. For the sake of convenience and clarity the parties are referred as per their rank before the trial Court.

4. Brief facts leading to the filing of both the petitions are as follows:

4.1. The respondent/complainant filed a private complaint against the petitioners/A.1 to A.7 under Section 200 Cr.P.C., among other things, that the first petitioner/A.1 is running a CD shop in the Town Panchayat Commercial Complex at Thuvarankurichi Bus Stand, for more than 10 years. The second petitioner/A.2 is the elder brother of the first petitioner/A.1 and the petitioners 3 to 7/A.3 to A.7 are the friends of the first petitioner/A.1. During the month of February 2016, when the said shops are due to public auction, the first petitioner/A.1 stated that the auction shall be finalised to the existing shopkeepers by increasing 10% rent, for which, the respondent/complainant and others raised objection and thereafter, a resolution came to be passed to auction the shops.

4.2. On 01.03.2016 at about 05.00 p.m., the first petitioner/A.1 picked up a quarrel with the respondent/complainant and threatened him that the auction is going to be held because of him and he will not leave him forever. On that day, at about 10.30 p.m., the petitioners/A.1 to A.7 gathered before the house of the respondent/complainant and pelted stones, liquor bottles and soda bottles on the doors of his house and the respondent/complainant also sustained injuries on his body and they abused him in filthy



language and threatened him with dire consequences and the brother of the respondent/complainant and others gathered and thereafter, they fled away. However, the police received a complaint from the first accused and registered a false case against the complainant and his relatives in Cr.No.132 of 2016. Therefore, the complainant filed a private complaint as against the petitioners / accused for the offences punishable under Sections 147, 294(b), 324, 323 and 506(1) I.P.C., before the learned Judicial Magistrate, Manapparai and the same has been taken on file in C.C.No.64 of 2017. In the meantime, the police filed the final report in Crime No.132 of 2016 and the same was committed to the Sessions Court in S.C.No.170 of 2016.

4.3. The respondent/complainant had filed Cr.M.P.No.2663 of 2017 in C.C.No.64 of 2017 to try the said Calender Case along with the Sessions Case in S.C.No.170 of 2016 pending on the file of the II Additional Assistant Sessions Court, Trichy.

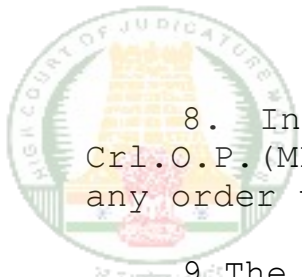
4.4. The learned Judicial Magistrate, Manapparai, by order dated 30.11.2017 allowed the said Cr.M.P.No.2663 of 2017 in C.C.No.64 of 2017. Challenging the same, the petitioners/A.1 to A.7 have filed the present revision petition in Crl.R.C.(MD)No.653 of 2018.

4.5. Seeking to quash the proceedings in C.C.No.64 of 2017 pending on the file of the Judicial Magistrate, Manapparai, Crl.O.P(MD)No.7447 of 2017 has been filed.

5. The Criminal Original Petition was admitted on 19.06.2017 and an interim order of stay was also granted. However, this Court passed an order that pendency of this petition shall not be a bar for the committal proceedings in P.R.C.No.11 of 2016 in Thuvarankurichi Police Station in Crime No.132 of 2016 on the file of the learned Judicial Magistrate, Manapparai, Trichy District.

6. The case in Crime No.132 of 2016 was registered by Thuvarankurichi Police Station on 02.03.2016 at the instance of the first petitioner in Crl.O.P.(MD)No.7447 of 2017, wherein a final report was filed as against the respondent in Crl.O.P.(MD)No.7447 of 2017 and three others. That case was also committed to the Court of Sessions and is now pending in S.C.No.170 of 2016, on the file of the II Additional Assistant Sessions Court, Trichy.

7. Even before that, the respondent/complainant, namely, Veeraiah had filed an application under Section 323 of Cr.P.C. before the learned Judicial Magistrate, Manapparai in C.C.No.64 of 2017, to commit the case in C.C.No.64 of 2017 to the file of the Court of Sessions and to be tried along with S.C.No.170 of 2016.



8. In view of the interim order passed by this Court in Crl.O.P.(MD)No.7447 of 2017, the learned Magistrate has not passed any order under Section 323 Cr.P.C.

9. The respondent/Veeraiah had also filed an application under Section 408 Cr.P.C. before the Principal District and Sessions Court, Tiruchirappalli, on 03.04.2017 for transferring the case and a notice was ordered in that petition fixing the hearing date as 07.06.2017. In the meantime, the petitioners in Crl.O.P.(MD) No.7447 of 2017 approached this Court on 17.06.2017 and obtained an order of interim stay of the proceedings in C.C.No.64 of 2017.

10. In view of the order passed by the Hon'ble Supreme Court in **(2018) CDJ SC 328 [Asian Resurfacing of Road Agency Pvt Ltd & Another Vs. Central Bureau of Investigation]**, the trial Courts were permitted to proceed with the trial, if the interim orders, if any, granted by the High Court have not been extended specifically after six months. Accordingly, the learned Magistrate has taken up the matter in the application filed under Section 323 Cr.P.C. and passed an order committing the case in C.C.No.64 of 2017 to the file of the Principal District and Sessions Court, Tiruchirappalli to be tried along with the S.C.No.170 of 2016. As against that order dated 30.11.2018 passed by the learned Judicial Magistrate, Manapparai, in Crl.M.P.No.2663 of 2017, the petitioners in Crl.O.P.(MD)No.7447 of 2017 have filed the Criminal Revision Case before this Court in Crl.R.C.(MD)No.653 of 2018.

11. When the Criminal Revision Case was taken up for hearing, it is represented that Crl.O.P.(MD)No.7447 of 2017 is also pending before this Court between the same parties and therefore, by an order of the Administrative Judge of this Court, dated 07.02.2019, the Criminal Revision Case is also posted along with Crl.O.P.(MD) No.7447 of 2017.

12. Heard the learned Counsel on either side and perused the materials available on record.

13. The learned Counsel for the petitioners has attacked the order passed by the learned Judicial Magistrate on the following grounds:

(i) The order has been passed in a mechanical manner, when the interim order of stay is in existence, as the interim order of stay has been granted by this Court on 19.06.2017 as against the complaint in C.C.No.64 of 2017;

(ii) The learned Judicial Magistrate has already taken into consideration the application filed under Section 408 Cr.P.C. Suppressing this material fact and



the interim order of stay granted by this Court, the order has been passed and therefore, it has to be set aside;

(iii) It is also contented that the incident referred to in C.C.No.64 of 2017 and Crime No.132 of 2016 are different and the complaint in C.C.No.64 of 2017 was filed belatedly after nine months and therefore, it cannot be acted upon and it cannot be tagged along with the Sessions Case for trial. In fact this is an attempt to stall the proceedings in S.C.No.170 of 2016.

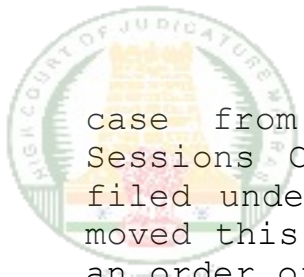
Therefore, he prays for allowing the present petitions.

14. Per contra, the learned Counsel for the respondent in both the petitions would submit that the incidents in both Crime No.132 of 2016 and C.C.No.64 of 2017 took place at the same time and on the same date and also in the same place of occurrence. By referring the sketch in S.C.No.170 of 2016, he further contended that the place of occurrence in S.C.No.170 of 2016 is shown as in front of one Veeraiah's house, who is none other than the respondent herein.

15. The learned Counsel for the respondent had also referred to the Accident Register pertaining to the respondent, in which, it is stated that the respondent had sustained an injury on the date of occurrence and was also taken treatment in the Government Hospital at Manapparai. According to the learned Counsel for the respondent, since the police has not acted upon his complaint, they have lodged a private complaint in C.C.No.64 of 2017 and the learned Magistrate, being satisfied with the materials placed before the Court, had taken the complaint on file and the complaint is now pending.

16. On perusal of the records, it appears that the incident in Crime No.132 of 2016 and C.C.No.64 of 2017 took place in the same transaction on the same date and therefore, both these complaints ought to have been treated as "case and counter" and therefore, this Court is not finding any fault with the order passed by the learned Magistrate in Crl.M.P.No.2663 of 2017.

17. With regard to the other grounds raised by the learned Counsel for the petitioner that the order was obtained by the respondent by suppressing the application filed under Section 408 Cr.P.C. is concerned, the learned Counsel for the respondent would submit that he had filed the application under Section 323 Cr.P.C. as early as in February-2017 and it was lying before the Court for considerable time. In the meantime, the Sessions Case in S.C.No.170 of 2016 was also listed for hearing for quite some time and therefore, he moved the Sessions Court to transfer the



case from the learned Judicial Magistrate, Manaparai to the Sessions Court under Section 408 Cr.P.C. When the application filed under Section 408 Cr.P.C was pending, the petitioners have moved this Court by filing Crl.O.P(MD)No.7447 of 2017 and obtained an order of stay on 19.06.2017.

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18. In view of the interim order passed in Crl.O.P.(MD)No.7447 of 2017, the Sessions Court had not proceeded with the application filed under Section 408 Cr.P.C. But, in the meantime, in view of the orders passed by the Hon'ble Supreme Court in **(2018) CDJ SC 328 [Asian Resurfacing of Road Agency Pvt Ltd & Another Vs. Central Bureau of Investigation]**, the trial Court has proceeded with the application filed under Section 323 Cr.P.C. and has passed the order impugned in the Criminal Revision Case. The learned Counsel for the respondent would also submit that the incident in both the cases is one and the same, wherein the respondent has also sustained injury and therefore, it has necessarily to be treated as "case and counter" and has to be tried together only.

19. It is quite natural that when the accused had also sustained injury on the very same transaction, he would take all necessary steps to try this case along with the counter complaint, which is pending against him.

20. As rightly pointed out by the learned Counsel for the respondent, the application under Section 323 Cr.P.C. was filed in the month of February itself and the application under Section 408 Cr.P.C. was also filed even before the interim order was granted by this Court and the trial Court as well as the Sessions Court did not proceed with the application pending before them in view of the interim order passed by this Court on 19.06.2017. However, on the clarification made by the Hon'ble Supreme Court in **(2018) CDJ SC 328**, the trial Court has proceeded with the application pending before the Court under Section 323 Cr.P.C. and has also rightly passed the order, by committing the case in C.C.No.64 of 2017 to be tried along with S.C.No.170 of 2016. In view of the discussions made above, I do not find any infirmity in the order passed by the learned Judicial Magistrate, Manapparai.

21. As far as Crl.O.P.(MD)No.7447 of 2017 is concerned, according to the petitioners, this complaint has been lodged after nine months from the date of occurrence and purposely foisted in order to prevent the proceedings in S.C.No.170 of 2016. However, the learned Counsel for the respondent would submit that the incident was taken place in front of his house.

22. Though the petitioner has objected that the complaint has been lodged belatedly after nine months, the complaint is



supported with a Medical Certificate as if the respondent has sustained injury on the date of occurrence and has also taken treatment at the Government Hospital, Manaparai. The learned Magistrate, being satisfied with the documents and evidence placed before the Court, has taken the complaint on file and the said complaint was also committed to the Sessions Court.

23. In view of the discussions above this Court is not inclined to quash the complaint in C.C.No.64 of 2017.

24. At this juncture, the learned Counsel for the petitioners intervened and submitted that the complaint in C.C.No.64 of 2017 has been foisted in order to drag on the proceedings in S.C.No.170 of 2016 and therefore, requested for a direction for an early disposal. In view of the submission made by the learned Counsel for the petitioners, this Court is inclined to issue a direction to the learned II Additional Assistant Sessions Judge, Tiruchirappalli, to give priority to S.C.No.170 of 2016 and to try the same along with C.C.No.64 of 2017, which was renumbered as C.C.No.1 of 2019, as expeditiously as possible and to conclude the trial, without being influenced by any of the observations made in this order, on its own merit and in accordance with law, in any event not later than six months from the date of receipt of a copy of this order.

25. Further, the learned Counsel for the petitioners has also requested for dispensing with the personal appearance of the fifth petitioner stating that he is a Cancer patient and he finds it very difficult for appearing in each and every hearing. But, no document has been placed before this Court to support the said contention. In the event of the fifth petitioner producing the relevant medical records that he is suffering from Cancer, the learned trial Judge may consider the same and dispense with his personal appearance.

26. With these observations, both the Criminal Original Petition and the Criminal Revision Case are disposed of. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CRL.SIDE)

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/ /2020

Sub Assistant Registrar(CS)



Ls

To

1.The Judicial Magistrate,
Manapparai,
Trichy District.

2.The II Additional Assistant Sessions Judge,
Tiruchirappalli.

3.The Principal District and Sessions Judge,
Tiruchirappalli

4.The Section Officer-2 copies
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/s.Veera Associates , Advocate SR.No.48182

+1 cc to Mr.Joel paul antony , Advocate SR.No.48216

+1 cc to Mr.AN.Ramanathan , Advocate SR.No.48065

Crl.O.P(MD)No.7447 of 2017 and
Crl.M.P(MD)Nos.5078, 5079 & 7335 of 2017

AND

Crl.R.C(MD)No.653 of 2018
and Crl.M.P(MD)No.10337 of 2018

18.02.2019

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