



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2019

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THE HONOURABLE **MR. JUSTICE G.K.ILANTHIRAIYAN**

CRL.O.P (MD) No.704 of 2019

and

CrI.M.P.(MD) No.329 of 2019

1. V.Murugan

2. A.Jeeva

... Petitioners

Vs.

1.The State rep. by
The Inspector of Police
Kalaiyarkovil Police Station
Sivagangai District

2.Chinnambalam

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the proceedings in Crime No.590 of 2018 on the file of the first respondent police and quash the same.

For Petitioner : Mr.S.James Raja

For Respondents : Mr.K.Suyambulinga bharathi,
G.A. (CrI. Side) for R1

O R D E R

This petition has been filed to quash the proceedings in Crime No.590 of 2018 on the file of the first respondent police as against the petitioner.

2.The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.590 of 2018 for the offences under Sections 147,148,341,294(b), 324 and 506(i) of IPC as against the petitioner. He would also submit that counter case has also been registered in Crime No. 589 of 2018 for the offences under Sections 147,148,294(b),324 and 506(ii) of IPC and Section 3(1)(r), 3(1)(s) of SC/AT Act,2005. Hence he prayed to quash the same.



3.The learned Government Advocate (criminal side) would submit that the investigation is still pending and this petition is in premature stage and hence, he prayed for dismissal of this petition.

4.Heard both sides and perused the materials available on record.

5.It is seen from the First Information Report that there are specific allegation as against the petitioner which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

6.It is also relevant to rely upon the judgment passed by this Court in **Crl.O.P.(MD)No.13177 of 2016** in the case of **Prasath Vs. the Inspector of Police, Avaniyapuram 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 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."

7. In view of the above, this Court is not inclined to quash the FIR. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, the first respondent is directed to complete the investigation in both the crime number following the police standing order for case and counter case and file a final report within a period of twelve weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Inspector of Police
Kalaiyarkovil Police Station
Sivagangai District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.JAMES RAJA, Advocate SR-88178.

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CS(10.10.2019) 4P 4C