



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.03.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P. (MD) No.1025 of 2016
and Crl.M.P. (MD) .Nos.516 and 517 of 2016

1.Radhakrishnan
2.Rengammal
3.Dinakaran

.. Petitioners/Accused No.1 to 3

Vs.

1.State represented by
The Inspector of Police,
Kurivikulam Police Station,
Tirunelveli District.
(Crime No.88 of 2015)

.. Respondent/Complainant

2.Seeniraj

.. Respondent/Defacto Complainant

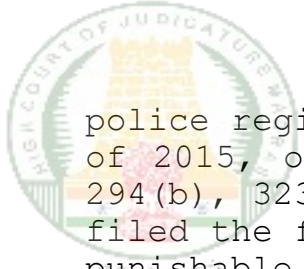
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in C.C.No.190 of 2015 on the file of the Judicial Magistrate, Sankarankovil and quash the same.

For Petitioners : Mr.S.Ramasamy
For Respondents : Mr.R.Anandaraj,
Additional Public Prosecutor
for R.1

ORDER

The petitioners / accused in C.C.No.190 of 2015 pending on the file of the Judicial Magistrate, Sankarankoil, Tirunelveli District, have filed this application to quash the proceedings pending against them in C.C.No.190 of 2015.

2. The case of the prosecution is that on 30.03.2015 at about 8.30 p.m., the accused have dug the road for the purpose of laying water pipeline and the pits were left open. When the defacto complainant asked one Thangavel / witness No.3 to close the pits, the petitioners / accused are said to have abused the defacto complainant with filthy words and the petitioners 1 and 2 have assaulted him with hands on his back and have also pushed him down and all the petitioners have intimidated the defacto complainant. Based on the complaint of the defacto complainant, the respondent



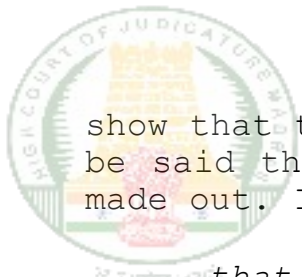
police registered a case as against these petitioners in Crime No.88 of 2015, on 31.03.2015, for the offences punishable under sections 294(b), 323 and 506(i) of IPC and after examining all the witnesses, filed the final report as against these petitioners for the offences punishable under Sections 294(b), 323 and 506(i) IPC. Aggrieved over the same, the petitioners have filed this application to quash the proceedings pending against them in C.C.No.190 of 2015 on the file of the learned Judicial Magistrate, Sankarankoil, Tirunelveli District.

3. Heard Mr.S.Ramasamy, learned counsel appearing for the petitioner and Mr.R.Anandaraj, learned Additional Public Prosecutor appearing for the State / first respondent.

4. Mr.S.Ramasamy, learned counsel for the petitioner has submitted that there is a civil dispute pending between the defacto complainant and the petitioners and this is a case in counter. In fact, the defacto complainant has assaulted the petitioners on the date of occurrence, for which, the first petitioner has lodged a complaint as against the defacto complainant before the respondent police, on 31.03.2015 and the same has been registered in Crime No.89 of 2015, for the offences punishable under Sections 294(b), 323 and 506(i) IPC. While so, the respondent police has conducted the investigation, without following the guidelines in dealing with the case and counter and mechanically filed the final report on the complaint lodged by the defacto complainant. He would further submit that the petitioners have not used any filthy words against the defacto complainant and have not caused any injury and even the accident report referred to by the investigating agency shows the injury as a simple in nature and the said injury was sustained by him while the petitioners fell down during the course of incident and prays for allowing this petition.

5. Per contra, the learned Additional Public Prosecutor has objected for quashing the final report that the defacto complainant in this case has sustained injuries and the case itself have come to be registered by recording the statement from the defacto complainant while he was admitted as inpatient in the Government Hospital, Sankarankoil and the Doctor who treated the defacto complainant has also given a certificate to the effect that the defacto complainant has sustained injury during the course of incident. The learned Additional Public Prosecutor has also relied upon the final report and would submit that nearly 7 witnesses have been examined in support of the prosecution case and the examination of the witnesses established the offence as against these petitioners.

6. The learned counsel for the petitioners in support of his case has relied upon the decision of this Court in **R.Ramesh Vs. State by Inspector of Police, Kachirapalayam Police Station, Villipuram District** reported in (2010) 2 MLJ (Cr1.) 12, wherein, this Court has held that in the absence of any legal evidence to



show that the words uttered by the accused annoyed others, it cannot be said that the ingredients of offences under Sections 294 IPC is made out. In para 11 of the judgment this court has held as follows:

"11. A perusal of the complaint/FIR does not show that on hearing the obscene words which were uttered by the accused, the witnesses felt annoyed and in the statements of witnesses Ganesan and Ravi, they have not stated that on hearing the obscene words they felt annoyed and in the absence of legal evidence to show that the words uttered by the accused annoyed others, it cannot be said that the ingredients of the offence under Section 294 B IPC are made out. Therefore, the contentions put forth by the learned counsel for the petitioner merits acceptance."

7. The learned counsel for the petitioners also relied upon the decision of this Court in **Nobel Mohandass Vs. State** reported in **(1988) 2 AICLR 248**, wherein this Court, on dealing with the offence under Section 506(ii) IPC, has held as follows:

"... .. for being an offence u/s 506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually. In fact P.W.1 when she filed the complaint to the police officer, did not express any fear for her life nor asked for any protection. Therefore, the offence under Section 506(2) is not made out."

8. This Court has paid it's anxious consideration to the rival submissions and also perused the documents placed on record.

9. Police Standing Order - 566 speaks about the instructions to be followed by the Investigation Officer, while dealing with cases and counter cases and it is relevant to extract the same as under:

"PSO 566. Investigation to be impartial

(1) Investigating officers are warned against prematurely committing themselves to any view of the facts for, or against a person. The aim of an investigating officer should be to find out the truth, and to achieve this purpose, it is necessary to preserve an open mind throughout the inquiry.

(2) 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. He should place before the court a definite case which he asks it to accept. The investigating officer in such cases should not accept into one complaint and examine only witnesses who support it and gave no explanation at all for the injuries caused to the other side. 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. 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.

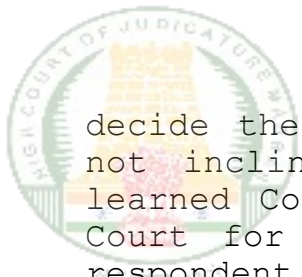
(3) If the Investigating Officer finds that the choice of either course is difficult, viz., to charge one of the two cases or to throw out both, he should seek the opinion of the Public Prosecutor of the district and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter complainant as the case may be, should be advised about the disposal by a notice in Form No.90 and to seek remedy before the specified Magistrate, if he is aggrieved by the disposal of the case by the Police."

10. Apart from the above, there are catena of decisions giving guidance as to the procedure to be adopted by the Courts in trying such cases and the fundamental principle applies to the investigation agency also.

11. Admittedly, this is a case in counter. The occurrence was taken place on 30.03.2015 at about 08.30 p.m. Both the first petitioner as well as the defacto complainant has sustained injury in the occurrence and they have lodged separate complaints before the respondent police and the same have been registered in Crime No.88 of 2015 and Crime No.89 of 2015 for the same offences. It is the case of the petitioners that the respondent Police has mechanically conducted the investigation and filed the final report on the complaint lodged by the defacto complainant, without following the guidelines laid down in respect of case and counter case.

12. It is the specific stand of the petitioners that the complaint lodged by them has not been acted upon. But, it was brought to the knowledge of this Court by the learned Additional Public Prosecutor that both the complaints were investigated by the same Investigation Officer and final reports were filed in both the cases, ie., C.C.No.190 of 2015 in respect of Crime No.88 of 2015 and C.C.No.191 of 2015 in respect of Crime No.89 of 2015, as such, this Court does not find fault with the manner in which the investigation agency has acted upon.

13. Since final reports have been filed in respect of both case and counter case, this Court is of the view that it is for the trial Court to appreciate the evidence adduced on either side and



decide the same, in accordance with law. Therefore, this Court is not inclined to entertain this petition. At this juncture, the learned Counsel for the petitioners sought the indulgence of this Court for dispensing with the personal appearance of the second respondent, before the trial Court.

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14. In view of the above submission and considering the age of the second respondent, the personal appearance of the second respondent before the trial Court is dispensed with, provided the second respondent files an affidavit of undertaking before the trial Court that she will appear before the Court as and when her personal appearance is specifically required. The learned Judicial Magistrate, Sankarankovil, is directed to try both the cases, ie., C.C.Nos.190 & 191 of 2015, together, on merits and in accordance with law, so as to find out the real aggressor and conclude the same as expeditiously as possible.

15. With the above directions, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate,
Sankarankovil.
2. The Inspector of Police, Kurivikulam Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.RAMASAMY, Advocate SR-51675.

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