



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P. (MD) No.2407 Of 2016 and

CRL.M.P. (MD) Nos.1204 & 1205 of 2016

WEB COPY

1. Prabhakaran
2. Kanthasamy
3. Liakath Alli
4. Annadurai
5. Ganesha Moorthy
6. Rajkumar
7. Selvaraj
8. Anthonisamy
9. Karubaiah
10. Rajagopal
11. Selvam

... Petitioners/Accused

Vs.

Bandurangan

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to admit this quash petition on file, to call for the records in S.T.C.No.1416 of 2012 on the file of the Judicial Magistrate No.VI, Tiruchirappalli, Trichy District and quash the same.

For Petitioners : Mr.J.Senthil Kumar

For Respondent : Mr.T.Lajapathi Roy

ORDER

The petitioners are shown as accused in S.T.C.No.1416 of 2012 on the file of the Judicial Magistrate No.VI, Thiruchirappalli.

2. It is a private complaint instituted by the respondent herein. The respondent filed the said complaint on 09.02.2011 against the petitioners herein. The petitioners herein were the police personnel attached to Palakarai police station, Trichy. The specific allegation made by the respondent is that on 04.08.2010, the police party headed by the first petitioner herein came to their house and dragged away the respondent's son Kesavan and took him to the station where he was subjected to custodial torture. The respondent would further allege that his son suffered epileptic fits. The respondent is said to have sent a complaint to the Legal Services Authority on the same day. It is further claimed that an Advocate Commissioner, by name, Thiru.P.Kamaraj was appointed and he examined the complainant's son Kesavan and also submitted a report and it alleged that there has been violation of human rights of the said Kesavan.

3. The respondent would further claim that since a complaint was lodged by them before the Human Rights Body, the first petitioner herein falsely implicated not only the complainant but



also his son in another case in Crime No.132 of 2011 for the offences under Sections 387 and 506(ii) of I.P.C. Once again the said Kesavan was arrested and remanded to custody. With these allegations, the complaint was lodged.

4. The learned trial Magistrate took cognizance of the offences under Sections 120(b), 167, 194, 294(b), 307, 323, 326, 342, 347, 387, 457 and 506(ii) of I.P.C. and issued summons to the petitioners herein. To quash the impugned proceedings, this criminal original petition has been filed.

5. Heard the learned counsel on either side.

6. The petitioners' counsel would contend that even if all the averments set out in the complaint are taken to be true at their face value, still the offences in question are not made out. He would also submit that the petitioners have only discharged their official duty and that all the police personnel of Palakarai police station have been implicated.

7. Per contra the learned counsel appearing for the complainant submitted that the complainant's son Kesavan died a few months later on 20th May 2011 and that a mere look at the Postmortem Certificate would show that the following anti-mortem wounds were present.

"1. Dark brown colour abrasions:- On the right frontal and temporal regions of the scalp, front of neck, back of right arm, front of left leg, front of left knee, back of left elbow, back of left shoulder of varying dimensions.

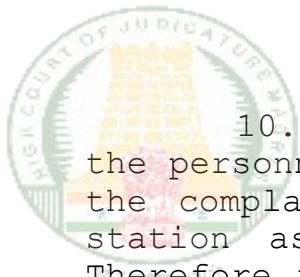
2. Contusion on the left frontal, right temporal and right parietal regions of the scalp.

3. Bruising of frontal, right temporal, right parietal and right side of occipital regions of scalp. Brain is changed into red colour pulpy mass."

Of course the complaint in question is not based on this subsequent development.

8. I am of the view that there are *prima facie* allegations against the first petitioner Prabhakaran who happened to be the Inspector of Police, Palakarai police station. However, the specific case of the complainant is that the first petitioner took the complainant's son by forcibly dragging him to the police vehicle and subjected him to torture in the police station. He would further quote the report of the Advocate Commissioner appointed by the Legal Services Authority as a confirmation of his allegation that there was a human rights violation. He would also point out that the complainant's son was again implicated in Crime No.132 of 2011 and subjected to torture.

9. It is not in a dispute that the complainant's son subsequently passed away after a few months and in the Postmortem Certificate indicates the presence of anti-mortem wounds.



10. But then, there is no justification in implicating all the personnel of the Palakarai police station. I am of the view that the complainant had chosen to array everyone in Palakarai police station as accused, whether they had played any role or not. Therefore the impugned proceedings deserve to be quashed as regards petitioners 2 to 11 are concerned. But the first petitioner will have to necessarily face the trial.

11. In this view of the matter, the impugned prosecution stands quashed as far as petitioners 2 to 11 are concerned. It will continue against the first petitioner herein. The criminal original petition stands partly allowed.

12. The petitioners' counsel states that the first petitioner in view of his official duties will not be in a position to attend all the hearings. Considering the said submission, the personal appearance of the first petitioner before the Court below is dispensed with.

13. The learned trial Magistrate shall insist on the personal appearance of the first petitioner only when it is absolutely necessary and imperative. The first petitioner shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the first petitioner can be represented through his counsel.

14. It is reiterated that the Court below will have to conduct the proceedings entirely uninfluenced by any of the observation made in this order. No observation made in this order will be taken as casting any reflection on the first petitioner's defence. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

pmu

To:

1. The Judicial Magistrate No.VI, Tiruchirappalli,
Trichy District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.LAJAPATHIROY, Advocate (SR-104825[F])

CrI.O.P.(MD)No.2407 of 2016

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