



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.10.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P(MD)Nos.11152 & 13597 of 2017

and

CRL.M.P(MD)Nos.7662, 7663, 9136 and 9137 of 2017

CRL.O.P(MD)No.11152 of 2017

1.Madhan
2.V.Gomathi .. Petitioners/Accused Nos.1 & 3

Vs.

1.State rep. by
The Inspector of Police,
Gudalore North Police Station,
Theni District.
(Crime No.265 of 2015) .. Respondent/Complainant

2.K.Singadurai .. Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in S.T.C.No.190 of 2016 on the file of the learned Judicial Magistrate Court, Uthamapalayam, Theni District and quash the same as illegal as against these petitioners.

For Petitioner : Mr.K.P.S.Palanivel Rajan
For Respondents : Mr.K.Suyumbulinga Bharathi for R1
Government Advocate (Crl. Side)
Mr.R.R.Kannan for R2

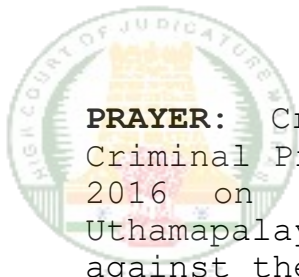
CRL.O.P(MD)No.13597 of 2017

K.Singadurai .. Petitioner/Sole Accused

Vs.

1. State rep. by
The Sub Inspector of Police,
Gudalore North Police Station,
Theni District.
(Crime No.264 of 2015) .. 1st Respondent/Complainant

2.Madhan .. 2nd Respondent/Defacto Complainant



PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in S.T.C.No.2253 of 2016 on the file of the learned Judicial Magistrate Court, Uthamapalayam, Theni District and quash the same as illegal as against these petitioners.

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For Petitioner : Mr.R.R.Kannan
For Respondents : Mr.K.Suyumbulinga Bharathi for R1
Government Advocate (Crl. Side)
Mr.K.P.S.Palanivelrajan for
Mr.K.Prabakaran for R2

COMMON ORDER

The present Criminal Original Petitions have been filed to quash the proceedings, wherein, both in the case as well as in the counter case, final report has been filed by the respondent police.

2.The learned counsel appearing on either side submitted that a case and counter was filed in Crime No.264 and 265 of 2015. Therefore, the respondent police ought to have investigated both the First Information Reports in accordance with P.S.O.588A and he should have found out who the aggressor was and he should have filed one final report and closed the other case. Instead, the final report has been filed in both the cases and therefore, there is a serious illegality that was committed by the Investigating Officer and the same requires interference of this Court.

3.The learned counsel placed reliance upon the judgment of this Court passed in the case of ***Kumar and 4 others Vs. State by Inspector of Police, Rasipuram Police Station, Namakkal District*** in Crl.O.P.No.12203 of 2017, dated 16.08.2019.

4.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent police submitted that the investigation reveals that both the parties have committed offences and that is the reason for filing separate final reports in both the First Information Reports. The learned Government Advocate (Crl. Side) further submitted that there is no ground to interfere with the proceedings and the Court below must be directed to conduct a simultaneous trial and render separate judgments in both the cases.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.It is seen from the record that there is a civil dispute between the parties regarding the property. Both the parties have made allegations against each other. The Investigating Officer ought to have identified the real aggressor in this case and filed a final report in one case and closed the other case. However, the



Investigating Officer has conveniently filed separate final reports in both the cases.

7. At this juncture, it will be relevant to place reliance upon the judgment referred supra. The relevant portions of the judgment is extracted hereunder.

"9. It is seen that for the very same occurrence, the 1st petitioner had given a complaint and the same as resulted in the filing of a Final Report in SC.No.104 of 2014, for the offences under IPC and SC/ST Act. The investigation was conducted by the very same Investigating Officer in both the cases. The purpose for conducting a joint investigation is only to find out the aggressor and to file the Final Report against him. In a case of this nature, the Police cannot file two Final Reports for the same incident alleging the same offence against the parties.

10. Useful reference can be made to the judgment of this Court in **Vellapandy Thevar and Others .Vs. State rep.by the Inspector of Police, Alangulam Police Station, Tirunelveli Dt.,** reported in [1984 LW (Crl.) 257]. The relevant portions of the judgment is extracted hereunder:

"4. This is a case of complaint and counter complaint. On the complaint given by Tmt.Ramasundaram in Cr. No. 64 of 1982, the Inspector of Police has filed a charge sheet in S.C.132 of 1983 for offences under Sections 147, 148, 427, 324 and 302, Indian Penal Code against the Petitioners in Crl.M.P.5503 of 1984. In respect of the same incident, Tmt.Thangathai has given a complaint in Crime No.65 of 1983 and the Inspector of Police has filed a charge -sheet in respect thereof against the Petitioners in Crl.M.P.4437 of 1983, under Sections 147, 148, 427, 337 and 307, Indian Penal Code now pending in S.C.151 of 1983 on the file of the Assistant Sessions Judge. Tenkasi. In cases of complaints and counter complaints, the procedure to be followed by the Investigating Officer is laid down in Order 588 -A of the Madras Police Standing Orders, which is as follows:

"588 -A. 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



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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. When the investigating officer proceeds on the basis of the complaint 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. He should place before court a definite case which he makes it to accept. The investigating officer in such cases should not accept in to do one complaint and examine only witnesses who support it and give no explanation at all for the injuries caused to the other 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. 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 complaint, as the case may be should be advised about the disposal by a notice in P. 96 and to seek remedy before the specified magistrate, if he is aggrieved by the disposal of the same by the police".

The investigating officer has to enquire into both the complaints, find out who were the aggressors and file a charge sheet against them or refer both the cases if he finds them untrue. Where the investigating officer finds it difficult to choose either of the above courses, he should seek the opinion of the Public Prosecutor and act accordingly. In the instant case, the Inspector of Police has referred the matter to the Public Prosecutor and the Public Prosecutor has advised the filing of the charge sheet only against the Petitioners in Crl. M.P. 5503 of 1984, and not against the Petitioners in Crl. M.P. 4057 of 1983. But the Inspector of Police has not acted according to the opinion of the Public Prosecutor and filed a charge sheet against both the groups. This is certainly not in accord with Order 538 -A of the Madras Police



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Standing Orders. The investigating officer ought to have filed the charge sheet Only in Crl. No. 64 of 1982 against the Petitioners in Crl.M.P. 5503 of 1684, which is now pending in the court of the II Additional Sessions Judge, Tirunelveli in S.C. 132 of 1983 for offences under Sections 147, 148, 427, 324 and 302 Indian Penal Code and must have referred the complaint given by Thangathai registered in Cr.No.69 of 1982, instead of filing another charge sheet in the said crime number against the Petitioners in Cr.M.P. 4437 of 1983, which is now pending in the court of the Assistant Sessions Judge, Tenkasi in S.C. 151 of 1983, for offences under Sections 147, 148, 427, 337, and 307, Indian Penal Code The investigating officer has evidently contravened the express provision of the Order 588 -A which lays down that in the case of doubt he ought to refer the matter to the opinion of the Public Prosecutor and act accordingly. The investigating officer has referred the matter to the opinion of the Public Prosecutor, but has failed to act accordingly. The result is there are now two Prosecutions in respect of the same matter against the opposite parties.;

5.As pointed out by this Court in Thota Ramakrishna and others .Vs. State.

"It is improper for the police to prosecute the same time two counter cases in regard to the same occurrence one of which must be false. It is improper also and disrespectful to the court for the Public Prosecutor to conduct both cases in the sessions court knowing that one must be false. Such counter cases cannot both the prosecuted honestly either by the police or the public prosecutor".

11.It is clear from the above judgment that the respondent Police can file only one Final Report in a case of this nature and there cannot be two Final Reports for the same incident."

8.Taking into consideration the facts and circumstances of the case and also the judgment that has been cited before this Court, this Court is of the considered view that the Investigating Officer went wrong in filing two separate final reports in both the First Information Reports, even without finding who is the real aggressor in the case. Therefore, there is a serious illegality that has been committed and the judgment referred supra will squarely apply to the facts of the present case.



9.The continuation of the proceedings in both the cases will be an abuse of process of Court and therefore, this Court is interfering with both the proceedings and accordingly, quashes the same.

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10.In the result, the proceedings in S.T.C.No.190 of 2016 and S.T.C.No.2253 of 2016, on the file of the Judicial Magistrate, Uthamapalayam, Theni District, is hereby quashed and accordingly, both the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate,
Uthamapalayam, Theni District.
2. The Inspector of Police,
Gudalore North Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.RR KANNAN, Advocate (SR-94407[F] dated 24/10/2019)

CRL.O.P(MD)Nos.11152 & 13597 of 2017
24.10.2019

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