



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) No.4424 of 2017

and

Crl.M.P. (MD) No.3163 of 2017

- 1) Sujin
- 2) Swaminathan
- 3) Ensilim
- 4) Kuttan
- 5) Alphones
- 6) Edwin ... Petitioners / Accused
Nos.1,2, 4 to 7

Vs.

- 1) The State Rep. by
The Inspector of Police,
Kollamcode Police Station,
Kollamcode,
Kanyakumari District.
(Crime No.171 of 2012) ... Respondent/ Complainant
- 2) James ... Respondent/ De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the final report as made in C.C.No.42 of 2015 on the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District in relation to Crime No.171 of 2012 on the file of the Inspector of Police, Kollamcode Police Station, Kanyakumari District and quash the same as devoid of merits and illegal as against the petitioner's



For Petitioner : Mr.S.Palani Velayutham
For R-1 : Mr.K.Dinesh Babu,
Additional Public Prosecutor
For R-2 : No Appearance

O R D E R

This Criminal Original Petition has been filed challenging the proceedings in C.C.No.42 of 2015 pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District.

2. It is seen from records that there is a case in counter and in both the case as well as the counter case, the final report has been filed and it is pending in C.C.No.42 of 2015 and C.C.No.123 of 2014 before the same Court. The final report has been filed in both the cases on the ground that the respondent Police was not able to find out who was the real aggressor in the case.

3. The learned counsel for the petitioners brought to the notice of this Court several infirmities that have been found in the case of the prosecution. The infirmities that have been pointed out by the learned counsel for the petitioners requires to be dealt with only at the stage of appreciation of evidence. This Court cannot undertake such an exercise in exercise of its jurisdiction under Section 482 of Cr.P.C.

4. It is true that in a case and counter case, the police must investigate both the cases and find out the aggressor and file the final report against the aggressor. There may also be cases where the police will not be able to find out the real aggressor and therefore, a final report will be filed in both the case and the counter case. Such a procedure is not illegal and useful reference can be made to the judgment of this Court in **R.Velladurai vs. State** reported in **2016 (1) MWN (cr.) 291 (DB)**. This judgment has been rendered by the Division Bench and the relevant portions of the judgment is extracted hereunder:

"13. It is not uncommon that the provision contained in Tamil Nadu Police Standing Orders - PSO 588-A is taken handy by the accused before the courts of law to get out of the clutches of law by making a prayer that the failure to follow PSO 588-A is an illegality rendering prosecution vitiated. As a matter of fact, PSO 588-A was introduced

<https://hcservices.hcscourts.gov.in/hcservices/> based on certain observations made by Hon'ble Justice



P.N.Ramaswami in Thota Ramakrishnayya, Vs State, reported in 1954 MWN (Cr.) 9.

14. Before proceeding further let us have a quick look into PSO 19 588-A which reads thus:-

"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."

15. After the introduction of PSO 588A, there were number of judgments out of which one line of thinking was that the failure to follow PSO 588A is an illegality vitiating the conviction. The other line of thinking was that PSO 588-A is only a directory and so the question of prejudice is a matter to be considered on account of the failure to follow PSO 588A. In some cases, analogy was drawn between PSO 145 and 588A. The Hon'ble Supreme Court in State of Andhra Pradesh Vs. Venugopal, reported in AIR 1964 SC 33 held that PSO 145 is nothing more than administrative instructions and it cannot have the force of law. In an attempt to distinguish PSO 145 from 588A in order to get over the judgement of the Hon'ble Supreme Court insofar as PSO 588A is concerned, it was argued before this court in a number of cases that since PSO 145 was not marked with asterisk and it could be safely held that it was not issued under Section 9 of the Madras District Police Act whereas PSO 588A has been issued under Section 9 of the Madras District Police Act and therefore, PSO 588A has got statutory force. In Vellapandy Thevar v. State, reported in 1984 LW Cri 257, a learned Judge of this Court held that the course adopted by the investigating officer without following the procedure contemplated in Section 588A is not only improper, but also bad in law. In Ranganathan V.R. Vs. State (1985 LW Cri 86), the above said judgement in Vellapandy Thevar's case was quoted. But, the learned Judge who decided the Ranganathan's case declined to agree with the reasoning of the former. In Ranganathan's



case the learned Judge held that the police Standing orders cannot be said to be a statute but only a set of rules framed for the guidance of the investigating officers and, therefore, a violation of a standing order in the matter of investigation will not constitute an illegality. In other words, a defect or an irregularity in investigation, however serious, had no direct bearing on the competence or the procedure relating to the cognizance of the trial. The same question again came up for consideration before yet another Hon'ble Judge of this court in Justin v. The State Represented by the Inspector of Police, 1988 LW Cri 467. In that case again following the view expressed in Vellapandy Thevar's case, it was held as follows:

"The Investigating Officer in this case has evidently contravened the express provisions of 588A of the Madras Police Standing orders in Charge-sheeting both the cases. The result is that there are now two prosecutions in respect of the same matter against opposite parties. The course adopted by the Investigating Officer is not only improper, but also bad in law.

16. In yet another case in Ekambaram v. Sundarmurthy, 1989 (1) Crimes 458, the same question came up for consideration before yet another Hon'ble Judge of this Court. In that case, the learned Judge took a contrary view.

17. Finally, it came up before Justice Arunachalam sitting single in V.Karthikeyan and others v. State by S.I. of Police and others, 1992 Crl.L.J. 2948. After having a thorough survey of all the above judgments including the judgement of the Hon'ble Supreme Court cited supra, the learned Judge in para 17 & 18 has held as follows:-

"17. Once this conclusion is arrived at, the judgment of the apex Court steps in and there could be no difference then between P.S.O. 145 and P.S.O. 588A Chapter II of the Code of Criminal Procedure invests the police with the statutory rights to receive and record information of the commission of a cognisable crime and carry on investigation, before a prosecution is launched. Police Standing Orders cannot override the provision of the Code of Criminal Procedure. In State of Punjab v. Rajkumar, after considering the nature and purpose of R. 16.38 of the Punjab Police Rules, the Supreme Court held :

"The rules were not intended to replace and cannot certainly override the provisions of the Criminal 22 Procedure Code. In State of Punjab v.



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Charan Singh, 1981 SCC Cri 407 : (1981 Cri LJ 712) it was declared that R. 16.38 cannot govern criminal prosecution, against the members of the police as it could not override the provisions of the Code of Criminal Procedure. The Punjab Police Act, under S. 12, made a provision for the Inspector General of Police, subject to the approval of the State Government to frame such orders and rules, as stated in the said section, and the Punjab Police Rules were framed in the exercise of the powers conferred under S. 1 and S. 7 which dealt with the appointment, dismissal, etc. of inferior officers. This provision appears akin to S. 9 of the Madras District Police Act. The net result is that P.S.O. 588A will have to be held as only directory and not mandatory. P.S.O. 588A is nothing more than administrative instructions and it cannot have the force of law. The nonfollowing of the procedure prescribed under P.S.O. 588A will not constitute an illegality to quash the impugned prosecutions. The law laid down by the Supreme Court, coupled with the lack of power under S. 9 of the Tamil Nadu District Police Act to issue P.S.O. 588A as a statutory mandate, would answer the question involved and here reference to a Division Bench, does not arise.

18. Administrative instructions in P.S.O. 588A issued on the basis of the decision of P. N. Ramaswami, J. in Ramakrishnayya's case, commend observance, but merely because the 23 provisions of the order have not been followed in a particular case by the Investigating Agency, that would not constitute illegality to quash the prosecutions launched. The decisions rendered by P. N. Ramaswami, J. in Ramakrishnayya v. State, 1954 MWN Cr 9; David Annoussamy, J. in Ekambaram v. Sundaramurthy, 1989 (1) Crimes 458 and S. T. Ramalingam, J. in Pandurangan v. State by Inspector of Police, Thirukazhukundaram, 1987 LW Cri 400 have dealt with the procedure to be followed in cases and counter, taken on file either on the basis of two final reports or one final report and not her private complaint."

18. From the above Judgments, the law now remains well settled that it is not an illegality to file final report in both the case and the counter case. What is to be tested is only the question of prejudice for the accused.

19. In view of the above well settled position of law in the instant case at no stretch of imagination it could



be held that filing of final report in both the instant cases would amount to illegality. We hold that the investigating officer, who was unable to find as to who was the aggressor, was right in placing all the materials before the Trial Court by way of two final reports and therefore, it was for the trial court to appreciate the evidence let in both the cases and to punish the guilty.

20. Now, we have to examine the proper procedure to be followed while conducting the trial of both the cases. In this regard, we may also 24 refer to a judgement of the Hon'ble Supreme Court in *Nathi Lal v. State of UP*, 1990 (Supp) SCC 145 wherein the Hon'ble Supreme Court has in para 2 has held as follows:-

"2.We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross case one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment is that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the case, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in the particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

5. It is clear from the above judgment that the law is now well settled to the effect that it is not an illegality to file a final report in both the case and the counter case, where the Investigating Officer is unable to find out as to who was the real aggressor. In such cases, it would require appreciation of evidence for the trial Court by conducting a simultaneous trial in both the cases. In cases of this nature, the procedure that has been prescribed by the Hon'ble Supreme Court in ***Nathi Lal vs. State of Uttar Pradesh*** reported in **1990 Supp SCC 145** has to be followed. This judgment was also reiterated by this Court in ***Ganesan and others vs. State*** reported in **2011 5 CTC 747**.

6. Therefore, in the present case, the learned Judicial Magistrate II, Kuzhithurai will have to conduct a simultaneous



trial in C.C.Nos.42 of 2015 and 123 of 2014 in accordance with the guidelines given in the judgments that have been referred supra.

7. The learned counsel for the petitioners submitted that the presence of Respondents 4 to 6 (A-4 to A-7) may be dispensed with. Taking into consideration the facts and circumstances of the case, the presence of A-4 to A-7 shall be dispensed with and they shall be represented by a counsel. The learned counsel representing A-4 to A-7 shall cross examine the witnesses on the same day they are examined in chief. A-4 to A-7 shall not dispute the identity of the witnesses. A-4 to A-7 shall be present before the Court at the time of framing of charges, at the time of questioning under Section 313 of Cr.P.C. and at the time of passing final judgment.

8. This Criminal Original Petition is disposed of with a direction to the learned Judicial Magistrate -II, Kuzhithurai to conduct simultaneous trial in C.C.Nos.42 of 2015 and 123 of 2014 and complete the proceedings within a period of four(4) months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate No.II,
Kuzhithurai, Kanyakumari District.
2. The Inspector of Police,
Kollamcode Police Station,
Kollamcode, Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-99709[F] dated 20/11/2019)

Order made in
Crl.O.P. (MD) No.4424 of 2017
Dated:19.11.2019

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AE/ (03.01.2020) 7P 5C

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