

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.09.2020
Pronounced On : 09.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.14511 of 2015
and M.P.Nos.1 & 2 of 2015

- 1.Gnana Mohan,
S/o.Anumuthu,
- 2.Pandiyan,
S/o.Arumugam Udayar,
- 3.Dhamu @ Dhamodiran,
S/o.Narayanasamy,
- 4.Thiyagarajan,
S/o.Narayanasamy,
- 5.G.Pachaiyappan,
S/o.Ganesan,
- 6.P.Karthikeyan,
S/o.Pandiayn,
- 7.Vajiravelu,
S/o.A.Pandiyan,
- 8.Chandira Sekar,
S/o.Boopathy Reddiyar,

Versus

... Petitioners

N.Karunagaran,
S/o.V.Nadukali,

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records in C.C.No.123/2014 pending on the file of the learned District Munsif cum Judicial Magistrate, Vaniyambadi, Vellore District.

For Petitioners: Mr.E.Kannadasan
For respondent : Mr.R.Ganesh Babu

O R D E R

The petitioners, who are A1 to A8 in C.C.No.123 of 2014, which is pending trial for the offence under Sections 147, 214, 218, 221 294(b), 323, 324, 327, 329, 384 and 506(ii) before the Judicial Magistrate, Vaniyambadi, has filed this quash petition.

2. The complaint of the respondent is that on 19.05.2013, the first petitioner along with 10 others had come near his land at Mallagunda Village, Jolarpet and picked up a quarrel with him and abused him with filthy language and forcibly taken his two wheeler bearing registration No.TN-32-B-6570 from him. Due to the same, the respondent sustained grievous injuries and with the help of one Sriram and nearby people he was admitted in Government Hospital, Vaniyambadi as in-patient. In the Hospital he was treated as in-patient for three days and continuously he took treatment as out-patient. While he was in Hospital, one Police Constable enquired him and recorded his statement, but no action was taken against the petitioners. Thereafter, on 22.05.2013, the respondent had lodged complaint against the assailants in Thimmampettai Police Station, since there was no action taken against the petitioners, on 24.05.2013, he sent a representation to the Superintendent of Police, Vellore, even after representation no fruitful result received by him.

3. while being so, on 27.05.2013, again 30 persons came and threatened the respondent to withdraw the complaint given by him. On 13.06.2013, the respondent mother Deivanai had sent representation to the Superintendent of Police, Vellore. Later the respondent had received a phone call from Inspector of Police, Vaniyambadi Police Station, called him for an enquiry based on which on 14.06.2013, the respondent had gone to the Police Station. The assailants who attacked the respondent were present in the Police Station. The Inspector of Police informed the respondent that wherever he gives complaint that ultimately would come to him and he has to enquire the same. The respondent was asked to take back the complaint and the Inspector of Police assured that the two wheeler bearing Registration No.TN-32-B-6570 would be restored to him. When the respondent refused to withdraw the complaint the Inspector of Police slapped on his face and attacked with hands and sticks. Due to which the respondent sustained bleeding injuries in his right ear and the respondent fainted and fell down. Later when the respondent got his consciousness he was forced out of the Police Station. Thereafter, the respondent took treatment in Thirupathur Government Hospital for his ear injury.

4. In the meanwhile, on 16.06.2013, the case was registered against the petitioners before the Inspector of Police, Ambaloore Police Station in Crime No.369 of 2013 for the offence

under Sections 147, 323, 384 of IPC and after registration of FIR, no action was taken against the petitioners and the vehicle was also not traced. Despite knowing about the assault and the offenders and even after several representation made to the Superintendent of Police no investigation carried out. The Sub-Inspector of Police, Thimampettai/A10. The Inspector of Police, Vaniyambadi Town Police Station/ A9 have joined with other accused/petitioners have not taken any action. The respondent had gone to the house of the second petitioner and found that the vehicle was hidden there and he took the photographs of the vehicle and informed the same to the Superintendent of Police. Despite the same no action was taken. Hence he lodged private complaint.

5. The contention of the learned counsel for the petitioners is that the Lower Court ought not to have have taken a complaint on the file on coming to know that already case in Crime No.369 of 2013 was filed before the Ambalore Police Station for the offence under Sections 147, 323, 384 of IPC. The cause of action in the Crime No.369 of 2013, which is being investigated by Ambalore Police and in the private complaint are one and the same. The respondent had not taken any step to find out the status of the inspection. The petitioners and the respondent are adjacent land owners, they had some dispute with regard to their usage of passage and other rights between them. The respondent is a person known to give a false complaint. The Civil dispute between the petitioners and the respondent has given a criminal colour. The petitioners were called for an enquiry by the Ambalore Police, the petitioner had given explanation to the Ambalore Police. The respondent failed to co-operate with the investigation by producing any document as called for. Hence, prayed for quashing the C.C.No.123 of 2014 on the file of the Judicial Magistrate, Vaniyambadi.

6. The Additional Public Prosecutor submitted that the respondent had lodged a complaint on 19.05.2013 stating that 10 persons came near to his land, assaulted him and took away his motor vehicle bearing Registration No.TN-32-B-6570. Due to the same the respondent sustained grievous enquiries. On 22.05.2013, he had preferred a complaint before the Thimmampettai Police Station, since no action was taken against the petitioners he had made a representation to the Superintendent of Police and again on 27.05.2013, 30 persons came and threatened him to withdraw his complaint and following it up on 13.06.2012 the respondent mother had given a complaint for which enquiry was conducted on 14.06.2013 before Inspector of Police, Vaniyambadi. Since no action was taken in Crime No.369 of 2013 the petitioner respondent had lodged private complaint against the petitioners. In this case apart from the petitioners, A9/Inspector of Police, Vaniyambadi Police Station and A10/Sub-Inspector of Police,

Thimmampettai Police Station has arrayed as accused for not taking any action against the petitioners.

7. Further, he submitted that in this case it is admitted that A9 and A10 are public servant and no sanction has been obtained under Section 197 of Cr.P.C. He further submitted that on Crime No.396 of 2013 after inspection was closed for the reason "land dispute due to which complaint filed" and report was filed in R.C.S.No.18 of 2013 on 17.06.2018 before Judicial Magistrate, Vaniyambadi. The respondent can file a protest petition to set aside judicial order and cannot file other complaint for the same cause of action. Further, for proceeding against A9 and A10 no sanction for prosecution has been obtained. Admittedly RCS notice served on the respondent on 13.04.2015 by one S.Thayalan, Special Sub-Inspector attached to Ambalore Police Station. Despite the same the respondent failed to receive the report. RCS notice has also been filed before Judicial Magistrate, Vaniyambadi.

8. Considering the rival submissions and perusal of the materials, it is seen that the petitioner has lodged a complaint on 19.05.2013 that he was assaulted by the petitioners and he was treated as in-patient in Government Hospital, Vaniyambadi. The respondent Police on inspection filed a case in crime No.369 of 2013 for the offence under Sections 147, 323, 384 of IPC and later the case was closed as "mistake of facts" in R.C.S.No.18 of 13. The said RCS was admitted to be served on the respondent by S.Thayalan, Special Sub-Inspector, attached to Ambalore Police Station. The respondent taking no steps to file protest petition on the other hand lodged a complaint narrating the happening in the complaint dated 16.06.2013 in Crime No.369 of 2013. Further the respondent stated that on 14.06.2013 he was assaulted by Inspector of Police, Vaniyambadi/A9 and on 16.06.2013 the Sub-Inspector of Police, Thimmampettai forced him to get compromise with the second petitioner/A2 and he also included the Inspector of Police and Sub-Inspector of Police as A9 and A10 in the private complaint. Apart from this aspect, all other facts have been already investigated in Crime No.369 of 2013 and closure report filed. The petitioner has failed to agitate the same by way of protest petition to set aside judicial order further as regard A9 and A10 for all the allegations there is no specific overt act against them. Further the act of A9 and A10 is set to be committed while discharging their official duty and as per Section 197 Cr.P.C. without prior sanction no Court shall take cognisance of such offence. In view of the same this Court finds the continuation of the prosecution against the petitioner would amount to abuse of process of law.

9. In this case, all the accused/A9 and A10 are police personnels of Vaniyambadi Town Police Station and Thimmampettai Police Station. The sanction point is applicable to the accused A9 and A10. Further the Hon'ble Apex Court in the cases of "Dandu Lakshmi Reddy Vs. State of A.P reported in 1999 (7) SCC 69; Rajaram and others Vs. State of M.P reported in (1994) 2 SCC 568; Akhil Ali Jehangir Ali Sayyed Vs. State of Maharashtra reported in JT 2002 (2) SC 158." have consistently held that on the evaluation of the case, if the Court reaches the conclusion that the prosecution cannot be proceeded against an accused and the same benefit to be extended to the co-accused. It can be done. In this case, the petitioners are A1 to A8 and other accused are A9 and A10, who are similarly placed. Though A9 and A10 have not challenged their prosecution, the benefit of petitioners/A1 to A8 is available to them. This benefit is extended on parity of reasoning and justice.

10. In the instant case, though A9 and A10 have not challenged their case, this Court is inclined to quash the proceedings against A9 and A10 also, who are similarly placed as that of the petitioners/A1 to A8. In the result, the proceedings in C.C.No.123 of 2014 pending on the file of the District Munsif cum Judicial Magistrate, Vaniyambadi, is hereby quashed against all the accused/A1 to A10.

11. The petition is, accordingly, allowed. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1. The District Munsif cum Judicial Magistrate,
Vaniyambadi, Vellore District.

2. The Additional Public Prosecutor,
High Court, Madras.

+1 CC to Mr.E.Kannadasan, Advocate sr 29556.

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NRL (CO)
SP(15/10/2020)