

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.01.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.5683 and 5796 of 2013
and M.P.No.1 of 2013

K.Jayashankar

... Petitioner/Accused in
Crl.O.P.No.5683 of 2013

1.K.Jayashankar
2.N.Anandan
3.S.Baskaran
4.T.Anthony Doss
5.A.Chandrasekar
6.K.Rajan
7.M.Veerakumar
8.J.Parthiban
9.D.Vijayakumar
10.N.Murugan
11.Moses Solomon
12.S.Kumar
13.D.Vijaya Shankar
14.D.Nilavazhagan
15.K.Yuvabharathy

... Petitioners/Accused 1-15 in
Crl.O.P.No.5796 of 2013

Vs.

1.The State of Tamilnadu
Represented by The Sub-Inspector of Police,
M6, Manali Police Station, (L&O)
Chennai.
[Crime No.346/2009]

...Ist Respondent in
Crl.O.P.No.5683 of 2013

2.N.Tulasidasan

...2nd Respondent/
Defacto Complainant and
Respondent in Crl.OP.No.5796/13

Prayer in Crl.O.P.No.5683 of 2013: Petition filed under
Section 482 of Cr.P.C., seeking to call for the records in
C.C.No.433 of 2009 pending on the file of the Learned Judicial
Magistrate, Thiruvottriyur in Crime No.346 of 2009 on the file
of Inspector of Police, M6 Manali Police Station, Chennai and
quash the entire proceedings.

Prayer in Crl.O.P.No.5796 of 2013: Petition filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.56 of 2011 pending on the file of the Learned Judicial Magistrate, Thiruvottriyur and quash the same.

In Crl.O.P. No.5683 of 2013

For Petitioner : Mr.R.Muniyapparaj

For 1st Respondents : Mr.C.Iyyapparaj
Additional Public Prosecutor

R-2 : Mr.Karthik Senior Counsel
& M/s.K.M.Ramesh

In Crl.O.P.No.5796 of 2013

For Petitioners : Mr.R.Muniyapparaj

For Respondent : Mr.Karthik
Senior Counsel
For Mr.K.M.Ramesh

COMMON ORDER

These criminal original petitions have been filed seeking to call for the records in C.C.Nos.433 of 2009 and 56 of 2011 respectively, pending on the file of the Learned Judicial Magistrate, Thiruvottriyur and quash the same.

2.The facts leading to filing of these petitions are as follows:

The petitioners and the 2nd respondent are working in Madras Fertilizers Limited, Manali and due to previous enmity with regard to union activities, on 11.09.2009, the petitioners attacked the 2nd respondent and caused injuries. The 2nd respondent lodged a police complaint and based on the said complaint, the police registered a case in Crime No.346 of 2009, under Sections 341, 323, 506(i) of IPC. The trial of the said case is going on before the learned Judicial Magistrate Court, Thiruvottriyur in C.C.No.433 of 2009.

3.The said complaint was investigated by the police and a charge sheet was filed against the petitioner in Crl.O.P.No.5683 of 2013 alone and the names of the other accused did not find place in the charge sheet. Therefore, the 2nd respondent filed a private complaint before the learned Judicial Magistrate Court, Thiruvottriyur which was taken in C.C.No.56 of 2011. It is the case of the petitioners that they are facing trial in two

different cases for the same offence. Therefore, the petitioners prayed for quashing the case filed against them in C.C.Nos.433 of 2009 and 56 of 2011.

4.The learned counsel for the petitioners vehemently contended that the trial court had erred in entertaining the private complaint preferred by the respondent and ordering investigation as already, the police had filed a charge sheet in respect of the very same set of allegations. The learned Magistrate ought to have taken note of the said fact that the act involved in C.C.Nos.433 of 2009 and 56 of 2011 arise out of one and the same incident.

5.It is the further submission of the learned counsel for the petitioners that the evidence to be let in both the cases are one and the same and if the trial of both the cases are allowed to go on, there is every possibility of conflicting judgments being rendered in the case. The learned counsel also contended that the 2nd respondent could have filed a protest petition if he was really aggrieved against the filing of charge sheet only against the first petitioner namely K.Jayashankar.

6.The learned senior counsel appearing for the 2nd respondent supported the order passed by the learned Judicial Magistrate in entertaining the private complaint and prayed this Court to sustain the same.

7.I have heard the learned counsel appearing on either side and perused the documents available on record.

8.It is not in dispute that a case in Crime No.346 of 09 was registered against the petitioners with regard to the incident that took place on 11.09.2009 at about 11.30 a.m., in which the petitioners said to have attacked the second respondent. Subsequent to the investigation, charge sheet was laid only against the petitioner in CrI.O.P.No.5683 of 2013, Viz., Jayashankar, while the names of the other accused did not reflect in the charge sheet. Therefore, on the private complaint preferred by the second respondent before the Judicial Magistrate Court, Thiruvottur, the same was entertained in C.C.No.56 of 2011 against the petitioners in CrI.O.P.No.5796 of 2013 and the first petitioner therein had already been arrayed as an accused in C.C.No.433 of 2009. Therefore, factually, on the same set of allegations, two cases have been registered against K.Jayashankar, the petitioner in CrI.O.P.No.5783 of 2013 and the first petitioner in CrI.O.P.No.5796 of 2013.

9.It is the contention of the learned counsel for the petitioners that laying charge sheet and private complaint

against the same individual for the same incident is per se impermissible and will lead to two orders being passed for the same offence, which would be nothing but a case of double jeopardy. The said contention of the learned counsel for the petitioners is well founded. It at all, the second respondent was aggrieved in the first respondent not arraying the other persons as accused, he could very well have filed a protest petition in the first charge sheet and sought a direction for inclusion of their names as well. However, the learned Judicial Magistrate, without looking into the facts in issue, more particularly the previous charge sheet against the first petitioner and entertained the private complaint. In the above factual scenario, it is certainly open to the learned Magistrate to accept the private complaint, but to have taken recourse to the procedure contemplated u/s 210 Cr.P.C.

10. It is the duty of the learned Magistrate to follow the procedure as contemplated u/s 210 Cr.P.C. For better clarity, Section 210 Cr.P.C is quoted hereunder:-

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

11. In the above circumstances, this Criminal Original Petitions are disposed of directing the learned Judicial

Magistrate to follow the procedure as contemplated u/s.210 Cr.P.C and conducting the necessary enquiry, the learned Judicial Magistrate shall proceed in accordance with law.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

gbi

To

1.The Sub-Inspector of Police,
The State of Tamilnadu
M6, Manali Police Station, (L&O),
Chennai.

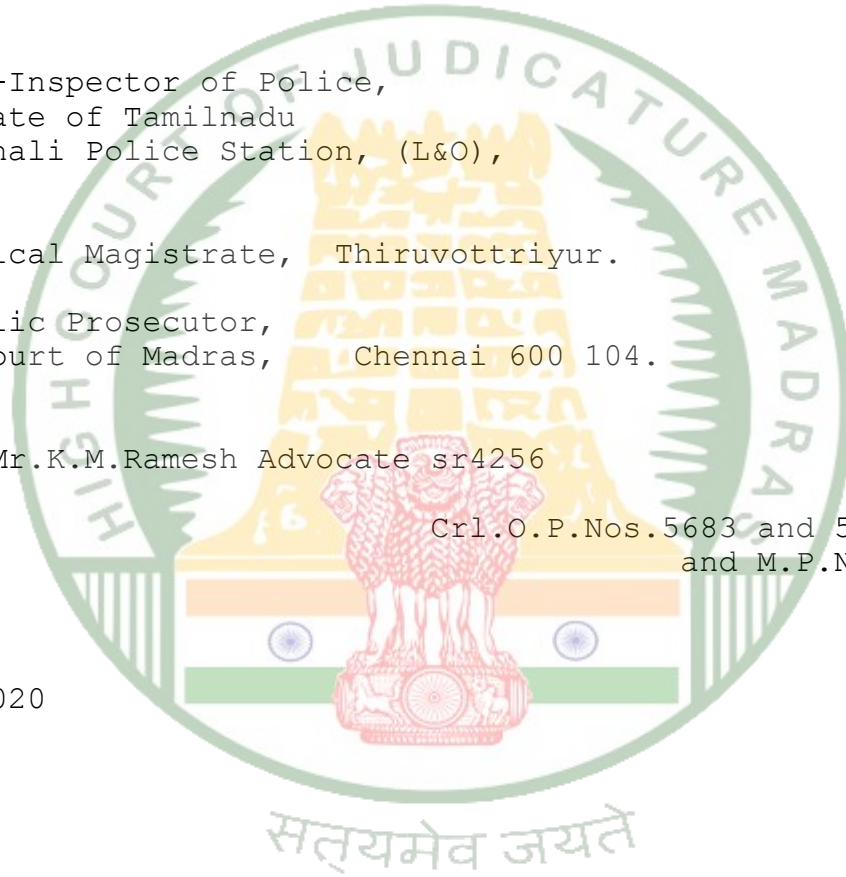
2.The Judicial Magistrate, Thiruvottriyur.

3.The Public Prosecutor,
High Court of Madras, Chennai 600 104.

+1 cc to Mr.K.M.Ramesh Advocate sr4256

Crl.O.P.Nos.5683 and 5796 of 2013
and M.P.No.1 of 2013

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