

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.08.2020

PRONOUNCED ON : 21.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.26847 of 2016

Jayapaul Mohan

... Petitioner/ Accused

Vs.

1.State rep.by
Inspector of Police,
T-8, Muthapudupet Police Station,
Chennai-600 055. ...1st Respondent/Complainant

2.Mr.Kumar Baral
...2nd Respondent/ defacto complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records of First Information Report filed in Crime No.1075/2016 dated 02.12.2016 pending on the file of the 1st respondent and quash the same.

For Petitioners : Mr.M.Anand Raj

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor for R1

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O R D E R

This petition is filed to call for the records of First Information Report filed in Crime No.1075/2016 dated 02.12.2016, which is pending on the file of the 1st respondent and quash the same.

2. The case of the prosecution is that the defacto complainant/Kumar Baral had lodged a complaint to the respondent police on 27.11.2016. The petitioner, who is the neighbour of the defacto complainant, had picked up quarrel with the defacto complainant, questioning the stone pillars kept in his place. The defacto complainant explained that these stone pillars are kept in his place and the petitioner has no right in questioning the same. Though the defacto

complainant explained about the stones kept in his place, the petitioner abused the defacto complainant in filthy language and started to break the fencing pole. While so, one of the pole fell on the head of the petitioner/accused. At that time, the petitioner/accused took one brick and hit the defacto complainant on his chest. Thereafter, the accused ran away from the scene of occurrence. The defacto complainant informed about the incident to the Sub-Inspector of police, who visited the scene of occurrence, registered a case against the petitioner. Prior to the occurrence, the accused had come to the place of the defacto complainant and abused in filthy language. Thereafter, the defacto complainant lodged a complaint. Initially, C.S.R was assigned and after enquiry, FIR was registered on 02.12.2016 for offence under Sections 294(b), 336 and 427 IPC.

3. The contention of the petitioner is that the petitioner son's purchased a property at No.88D, Defence Colony, Muthaputhupet, Chennai, to an extent of 1620 sq.ft but there was 1890 sq.ft of land available with constructed residential building having built up area about 526 sq.ft , through a registered document No.4238 of 2016 at SRO, Avadi dated 12.04.2016. The defacto complainant/second respondent is the neighbour of the said property, encroaching upon the petitioner son's land and attempting to put up the fence. On 19.11.2016, the second respondent trespassed into the property, demolished the compound wall and cut down fully grown coconut tree. Therefore, the petitioner lodged a complaint with the respondent police on the same day and C.S.R.No.495 of 2016 was given. However, no action was taken by the respondent police. Hence, the petitioner filed a civil suit before the District Munsif Court, Ambattur in O.S.No.48 of 2016 and I.A.No.1987 of 2016 seeking injunction restraining the second respondent and his men claiming any right over the petitioner son's property. On 23.12.2016, the District Munsif Court granted injunction order against the second respondent. Thereafter, on 27.11.2016, the petitioner visited his son's residence, and informed the second respondent about the injunction order of the Civil Court. The second respondent got outraged and attacked the petitioner with stone on his head. Thereafter, the petitioner fell down, sustained injuries. Immediately, he was taken to Avadi Government Hospital for treatment, where he was referred to Stanley Hospital, Chennai and he took treatment as in-patient from 28.11.2016 to 02.12.2016. He was referred to Ortho, Neuro and ENT Department. From the hospital, information was sent to the respondent Police, who visited the hospital, recorded the statement of the petitioner and a case in Crime No.1076 of 2016 was registered against the second respondent/defacto complainant for offence under Sections 294(b), 323 IPC. On completion of investigation, charge sheet filed in C.C.No.381 of 2017, which is pending trial before the learned Judicial Magistrate, Ambattur. The second respondent/defacto complainant, to escape from the assault made on the petitioner

and violating the injunction order of the Civil Court, had lodged a false complaint against the petitioner . Hence he prayed for quashing of the complaint.

4. The learned Additional Public Prosecutor submitted that the petitioner and the defacto complainant are neighbours. There was some dispute with regard to the boundary of the land. The petitioner's son had purchased the property situated at No.88D, Defence Colony, Muthaputhupet, Chennai to an extent of 1620 sq.ft., but there was 1890 sq.ft., of land. This difference is the problem because that was claimed by the second respondent. The petitioner had put up fence in the disputed land, which is the second respondent land. Thereafter, a complaint was lodged by the second respondent. Both the petitioner and the defacto complainant were called for enquiry and they were advised to approach Civil Court seeking appropriate relief. Even thereafter, dispute between the petitioner and the second respondent persisted and the second respondent was assaulted by the petitioner with a brick on his chest. Thereafter, the second respondent informed the police and lodged a complaint. The complaint given by the second respondent has been registered in Crime No.1075 of 2016 against the petitioner and the complaint given by the petitioner registered in Crime No.1076 of 2016 against the second respondent/defacto complainant. In Crime No.1076 of 2016 lodged by the petitioner, investigation is completed and charge sheet filed, which is pending trial before the learned Judicial Magistrate, Ambattur. Due to the interim stay granted by this Court, investigation in Crime No.1075 of 2016 registered on the complaint of the second respondent, is stalled.

5. Despite the notice being served to the second respondent on 22.07.2017, there was no representation for the second respondent.

6. Considering the submission and on perusal of the materials, it is seen that a case in Crime No.1075 of 2016 for offence under Section 294(b), 336 and 427 IPC, was registered against the petitioner. Likewise, a case in Crime No.1076 of 2016 for offence under Sections 294(b), 323 IPC was registered against the second respondent. The genesis of both the cases are one and the same. There is a slight difference in the occurrence. Both the occurrences are in the nature of case and counter case. In view of the stay granted in Crime No.1075 of 2016, investigation could not be completed. On the other hand, on completion of investigation in Crime No.1076 of 2016, charge sheet was filed and the same was taken on file as C.C.No.183 of 2010. Since there are case and counter case, the Investigating Officer ought to have followed the guidelines issued as per the Police Standing Order of this Court. It would be appropriate that the investigation in both the cases are to be conducted. In this case, the respondent Police had already completed the investigation in Crime No.1076 of 2016

and filed a charge sheet. Hence, the respondent police is directed to take up the investigation in Crime No.1075 of 2016, without any delay and complete the same and file a final report before the concerned Magistrate. If positive report is filed in Crime No.1075 of 2016, the concerned Magistrate, after receiving the final report, to dispose both cases in Crime Nos.1075 & 1076 of 2016 simultaneously but separately.

7. With the above observations, the Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssb

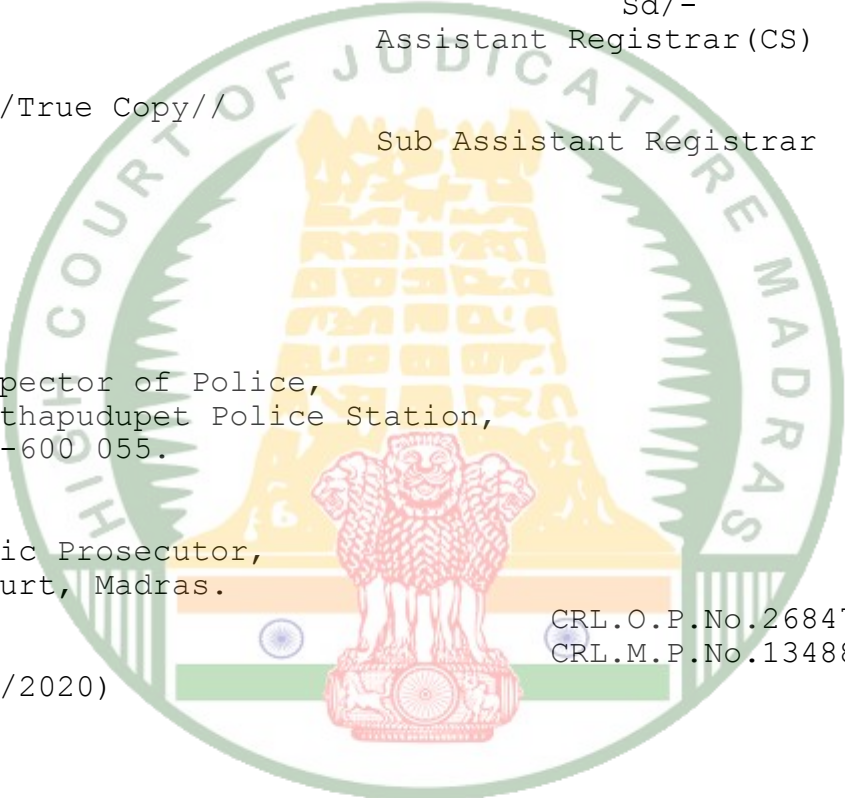
To

1. The Inspector of Police,
T-8, Muthapudupet Police Station,
Chennai-600 055.

2.The Public Prosecutor,
High Court, Madras.

A.SK(07/10/2020)

CRL.O.P.No.26847 of 2016
CRL.M.P.No.13488 of 2016



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