

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5606 of 2020 and
Crl.MP.No.3160 of 2020

1.Logu @ Loganathan
2.Sekar @ Seduraman

... Petitioners/Accused

Vs.

1.State by, The Inspector of Police,
Katterikuppam Police Station,
Puducherry
(Cr.No.43 of 2018)

..1st Respondent/Complainant

2.Rajakumar

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and quash the final report in CC.No.841 of 2019 on the file of the Judicial Magistrate-IV, Puducherry as against the petitioners.

For Petitioners : Mr.T.Rajkumar

For Respondents

For R1 : Mr.V.Balamurugane,
Additional Public Prosecutor
(Puducherry)

For R2 : No Appearance

O R D E R

This petition has been filed to quash the proceedings in CC.No.841 of 2019 on the file of the Judicial Magistrate-IV, Puducherry.

2. The learned counsel for the petitioners would submit that the petitioners are brothers and the second respondent is their neighbour. On 14.09.2018, the defacto complainant trespassed into the backyard of the petitioners' house and started cutting the portia tree belonging to the petitioners. When the first petitioner objected for the same, the second respondent abused him with filthy languages and also intimidated with dire consequences. He also attacked the first petitioner with stick. When the second petitioner intercepted the quarrel,

he was also attacked. Immediately, the first petitioner was taken to Primary Health Centre and given treatment. While being so, the second respondent lodged the false complaint before the first respondent as if the petitioners abused him with filthy languages trying to escape from the clutches of law. The first respondent without even conducting any enquiry mechanically registered the case in Cr.No.43 of 2018 for the offences under Sections 294(b), 323, 324, 506(ii) of IPC r/w 34 of IPC. In fact, even before that, the petitioners lodged complaint and the same was not even enquired by the first respondent. Therefore, the first petitioner was constrained to file a complaint before the Police Complaints Authority for inaction of the first respondent on the complaint as against the second respondent.

2.1 He further submitted that after conducting enquiry, the Police Complaints Authority passed an order dated 29.11.2018 thereby observed that in case and counter case, the Police should register FIR's on both the complaints separately and investigate them and find out as to who is the aggressor and as against the aggressor, charge sheet should be laid and the other FIR of the aggressor should be dropped. Even without considering the said order, the first respondent filed final report in Cr.No.43 of 2018 on 07.12.2018 and the same has been taken cognizance in CC.No.841 of 2019 on the file of the learned Judicial Magistrate-IV, Puducherry. Thereafter, after so many representations, the first respondent registered case on the complaint lodged by the first petitioner in Cr.No.10 of 2019 on 04.02.2019 for the occurrence took place on 14.09.2018 as against the second respondent for the offence under Section 447, 294(b), 323, 324 and 506(ii) of IPC. The first respondent also completed investigation and filed final report as against the second respondent for the offences under Sections 447, 427, 294(b), 323, 324 and 506(ii) of IPC. Therefore, the present proceedings has been initiated by the second respondent only to escape from the clutches of law and as such he sought for quashment of entire proceedings.

3. The learned Additional Public Prosecutor would submit that on the complaint lodged by the second respondent, the first respondent registered case in Cr.No.43 of 2018 for the offences under Sections 294(b), 323, 324, 506(ii) r/w 34 of IPC, completed investigation and filed final report and the same has been taken cognizance by the trial court in CC.No.841 of 2019, in which the petitioners are arrayed as A1 and A2. He further submitted that on the complaint lodged by the first petitioner and also on the basis of the order passed by the Police Complaints Authority, the first respondent registered case for the occurrence took place on 14.09.2018 in Cr.No.10 of 2019 as against the second respondent for the offences under Sections 447, 294(b), 323, 324 and 506(ii) of IPC. In the said crime also, the first respondent completed

investigation and filed final report and the same has been taken cognizance in SC.No.1471 of 2019 on the file of the Judicial Magistrate-IV, Puducherry and it is pending for trial. Therefore, he prayed for dismissal of the quash petition.

4. Heard, Mr.T.Rajkumar, learned counsel for the petitioners and Mr.V.Balamurugane, Additional Public Prosecutor (Puducherry) for the first respondent. Though notice was served on the second respondent and printed the name in the cause list, no one appeared on behalf of the second respondent in person or through pleader.

5. There are totally two accused, in which the petitioners are arrayed as A1 and A2. On the complaint lodged by the second respondent, the first respondent registered case in Cr.No.43 of 2018 for the offences under Sections 294(b), 323, 324, 506(ii) of IPC r/w 34 of IPC as against the petitioners. The second respondent alleged that on 14.09.2018 when the second respondent was cutting branches of tress which caused disturbance to his children, the petitioners abused him with filthy languages and also attacked him with stick. Therefore, on the very same occurrence, the first petitioner also lodged complaint before the first respondent alleging that on 14.09.2018, the second respondent trespassed into their house and cut the trees belonging to the petitioners. When they questioned about the same, the second respondent abused them with filthy languages and also attacked them. Therefore, they also sustained injuries. Unfortunately, the first respondent did not register any case on the complaint lodged by the first petitioner. Therefore, the first petitioner was constrained to approach the Police Complaints Authority. After detailed enquiry, the Police Complaints Authority passed an order on 29.11.2018 in Complaint No.120/PCA/2018 and observed as follows:

"5.In matters of this nature, so to say, case and counter case, the police should register FIRs on both the complaints separately and investigate them and find out as to who is the aggressor and accordingly as against the aggressor the chargesheet should be laid and the other FIR of the aggressor should be dropped."

Even then, the first respondent did not register any case on the complaint lodged by the first petitioner and completed investigation in Cr.No.43 of 2018 and filed final report and the same has been taken cognizance in CC.No.841 of 2019 on the file of the Judicial Magistrate-IV, Puducherry. Thereafter, the first respondent registered case as observed by the Police Complaints Authority by order dated 29.11.2018 in Cr.No.10 of 2019 on 04.02.2019 as against the second respondent for the offences under Sections 447, 294(b), 324, 323, 506(ii) of IPC. In fact, in the said crime also, the first respondent completed investigation and filed final report on 05.06.2019 and the same has been taken cognizance in STC.No.1471 of 2019 on the file of

the Judicial Magistrate-IV, Puducherry and it is also pending for trial.

6. Therefore, admittedly the first respondent failed to follow the procedures laid down under the Police Standing Order. Though the Police Standing Order 588 A of Tamil Nadu is not applicable to the Union Territory of Puducherry, the Police has to follow the settled law position and find out the real aggressor of the occurrence. Without finding the original aggressor of the occurrence, the first respondent mechanically filed final report on both the complaints lodged by the petitioners as well as the second respondent and both are pending for trial in CC.No.841 of 2019 and STC.No.1471 of 2019 on the file of the Judicial Magistrate-IV, Puducherry. In this regard, it is relevant to rely upon the judgment of this Court in the case of Vellapandy Thevar and others Vs. State rep. by the Inspector of Police, Alangulam Police Station, Tirunelveli reported in 1984 LW Cr1 257, the relevant portion of which 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 Cr1.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 Cr1.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 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 Standing Orders. The investigating officer

ought to have filed the charge sheet Only in CrI. No. 64 of 1982 against the Petitioners in CrI.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?"

The above case is squarely applicable to the case on hand since the first respondent has failed to find out the real aggressor of the occurrence took place on 14.09.2018 and as such the entire proceedings as against the petitioners are vitiated and liable to be quashed.

7. Accordingly this Criminal Original Petition is allowed, and the entire proceedings in CC.No.841 of 2019 on the file of the Judicial Magistrate-IV, Puducherry is quashed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Judicial Magistrate-IV,
Puducherry
- 2.Do Through The Chief Judicial Magistrate
Puducherry
- 3.The Inspector of Police,
Katterikuppam Police Station,
Puducherry
- 4.The Public Prosecutor, Puducherry
Madras High Court,
Chennai.

+1 Cc to Mr.Rajkumar, Advocate sr 27944
+1 CC to The Public Prosecutor Puducherry sr 28051.

सत्यमेव जयते

Cr1.O.P.No.5606 of 2020

MG(CO)

SP(22/10/2020)

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