

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4915 of 2020
and Crl.M.P.No.2810 of 2020

1. K.Veeramani
S/o. Krishnaradjou,
No.46, Bharathi Street,
Cheran Nagar,
Muthiraipalayam,
Puducherry - 602 009.
2. V.Bhuvaneshwari,
W/o.K.Veeramani,
No.46, Bharathi Street,
Cheran Nagar,
Muthiraipalayam,
Puducherry - 605 009.
3. K.Padhma,
W/o. Krishnaradjou,
No.46, Bharathi Street,
Cheran Nagar,
Muthiraipalayam,
Puducherry - 605 009.

... Petitioners

Vs.

1. The Union Territory of Puducheery
Rep. by the Sub-Inspector of Police,
Mettupalayam Police Station,
Puducherry.
2. Krishnaveni,
W/o.Thesingu,
No.40, Bharathi Street,
Cheran Nagar,
Muthiraipalayam,
Puducherry - 605 009.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to impugned proceedings in S.T.C. No.693 of 2020 on the file of the learned Judicial Magistrate No.IV, Puducherry and quash the same.

For Petitioners : Mr.Prakash Adiapadam

For Respondents

For R1: Mr.V.Balamurugane

Additional Public Prosecutor (Pondy)

For R2: No appearance.

ORDER

This petition has been filed to quash the proceedings in S.T.C. No.693 of 2020 on the file of the learned Judicial Magistrate No.IV, Puducherry, thereby taken cognizance for the offences under Sections 323, 354 r/w 34 of IPC as against the petitioners.

2. The learned counsel appearing for the petitioners would submit that the petitioners are A1 to A3. The second respondent lodged complaint alleging that on 26.10.2019 at about 9.30 hours, when the second respondent was searching and enquiring about her husband with neighbours as he found missing, the first petitioner called the second respondent and said that he had lodged police complaint against her and her daughter. It is further alleged that the first petitioner was outraged her modesty by holding her saree and the petitioners 1 & 2 attacked the second respondent with hands and broomstick. Therefore, she raised alarm, and on hearing her voice one Muthulakshmi and Padma have intervened and questioned the petitioners. Thereafter the neighbours also intervened and rescued them and also taken to the hospital.

2.1. The learned counsel appearing for the petitioners further submitted that the second respondent encroached some government poramboke land including water bodies along with her patta land ad measuring 0.0055 Hac comprised in re-survey No.121, situated at Thattachavady Village, Puducherry and put up construction of her house. Therefore the petitioners being the office bearers of the Cheran Nagar - Golder Palace Nagar Narpani Sangam, on 15.11.2016, lodged a complaint before the competent authorities for taking appropriate action by removing the encroachment put up by the second respondent herein. Therefore, on 03.12.2016, the Commissioner, Oulgaret Municipality, Puducherry, passed order to remove the encroachment made by the second respondent herein. Thereafter, so many orders were passed till 19.02.2019 by the officials concerned for taking appropriate action to remove the encroachment put up by the second respondent on the Government poramboke land and save water bodies. Even after passing so many orders, the concerned officials could not able to remove the encroachment put up by the second respondent. Therefore the petitioners lodged complaint before the police authorities to stop construction work. Therefore on 24.10.2019, the second

respondent along with her husband abused the petitioners with filthy language and also threatened with dire consequences. Hence the second petitioner lodged complaint to the first respondent and the same was registered in Crime No.93 of 2019 for the offences under Section 294(b), 506(i) of IPC r/w. 34 of IPC, as against the second respondent and her relatives.

2.2. Again on 26.10.2019, at about 9.30 hours, the second respondent along with other three persons abused the petitioners with filthy language and also attacked with broomstick. Therefore, the first petitioner sustained multiple injuries all over the body and lodged complaint before the first respondent. On receipt of the same, the first respondent registered a case in Crime No.95 of 2019 for the offences punishable under Section 294(b), 324 r/w 34 of IPC as against the second respondent and her children. After registration of the said FIR, the second respondent also lodged complaint on the very same occurrence before the first respondent and the first respondent registered a case in Crime No.96 of 2019 for the offences under Sections 323 & 354 r/w 34 of IPC as against the petitioners herein. Thereafter the first respondent completed the investigation in both FIR and filed final reports. On the complaint lodged by the second respondent, the first respondent police filed final report in S.T.C.No.693 of 2020 on the file of the learned Judicial Magistrate No.IV, Puducherry. The first respondent also completed the investigation on the complaint lodged by the first petitioner in Crime No.95 of 2019 and filed final report in C.C.No.114 of 2019 on the file of the IV Judicial Magistrate, Puducherry. Therefore, the first respondent failed to follow the procedure, and when there are two complaints for the very same occurrence, the first respondent ought to have found out the real aggressor and filed final report by closing the another FIR. He further submitted that the impugned proceeding has been initiated by the second respondent with malafide intention with ulterior motive in order to wreck vengeance on the petitioners, due to private and personal grudge. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in 1992(supp 1) SCC 335 in the case of State of Haryana Vs. Ch.Bhajanlal & ors.

3. The learned Additional Public Prosecutor (Pondy) submitted that on the complaint lodged by the first petitioner, the first respondent registered a case in Crime No.95 of 2019 for the offences under Sections 294(b), 324 r/w 34 of IPC as against the second respondent and others. For the very same occurrence, which was took place on 26.10.2019, the second respondent also lodged complaint and the same was registered in Crime No.96 of 2019 for the offences under Sections 323, 354 r/w 34 of IPC as against the petitioners. Both the FIR have been investigated and filed final report before the concerned Court and the same were taken cognizance

in C.C.No.114 of 2020 and S.T.C.No.693 of 2020 respectively and both the cases were pending trial. He further submitted that there are specific allegations as against the petitioners to attract the offence under Sections 323, 354 r/w 34 of IPC, as such all the points raised by the petitioners have to be considered only before the trial Court during trial. Therefore, he prayed for dismissal of this quash petition.

4. Heard Mr.Prakash Adiapadam, learned counsel appearing for the petitioners and Mr.V.Balamurugane, learned Additional Public Prosecutor (Pondy) appearing for the first respondent police. Though notice served to the second respondent, no one is appeared on behalf of the second respondent either by person or through pleader.

5. There are totally three accused in which the petitioners are arrayed as A1 to A3. On 26.10.2019, there was a wordy quarrel between the petitioners and the second respondent and her family members, in which both of them attacked each others by using broomstick and stones. Thereafter, both of them lodged complaints before the first respondent police and both were registered in Crime Nos.95 of 2019 and 96 of 2019 for the offences under Sections 294(b), 324 r/w 34 of IPC and Sections 323, 354 r/w 34 of IPC respectively. After completion of investigation, the first respondent filed final report in both FIR and the trial Court had taken cognizance both the final reports in C.C.No.114 of 2020 and S.T.C.No.693 of 2020 respectively.

6. Though for the Sate of Pondicherry there is no standing order to regulate the investigation, when there is a complaint and counter complaint are lodged, there is a proceeding of the Chief Judicial Magistrate, Pondicherry in No.270/JUD/CJM/93 dated 20.10.1993, regarding 588A of Tamil Nadu Police Standing Order, which extracted here under :-

"It is seen that in a number of cases of complaints and counter complaints arising out of the same transaction, the investigating officers simply lay charge sheets separately in both the cases, in utter disregard to the direction contained in order 588-A of the Police Standing Orders.

In a plethora of decisions, the High Court of Judicature at Madras held that charging both the cases is illegal.

The proper course of investigation into such complaints and counter complaints would be to inquire into both and adopt one or the other of the two courses, viz.,

1. to charge the case whether the

accused were aggressors of

2. to refer both the cases if he should find them untrue.

They should, in the event of finding the choice of either course difficult, seek the opinion of the Director of Prosecution and act accordingly and a final report should be submitted in respect of the case referred as 'mistake of law' after complying with other procedural aspects."

Therefore, the first respondent ought to have been followed the above said proceeding with the case in counter complaints arising out of the same occurrence and the investigating officer should not lay charge sheet separately in both cases.

7. It is relevant to rely upon the judgment passed by this Court dated 29.08.2016 in CrI.O.P.(MD)No.13177 of 2016 in the case of Prasath Vs. the Inspector of Police, Avaniyapuram Police Station and anr, which reads thus:-

"14. What is the procedure contemplated, when there are two complaints in respect of the same incident, each complaining against the other.

15. It is relevant to focus attention on Rule 588-A of the Madras Police Standing Order, which stipulates as under: "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."

16. It is the settled law that both the cases in counter have to be tried

together so as to find out the real aggressor.

17. The investigating Officer should have taken up the investigation in both the cases together and the investigation is to be held side by side so as to find out the truth attached to both the complaints by rival parties, particularly in view of the fact that the parties are one and the same and the causes of action alleged are also either same or similar.

18. The Hon'ble Supreme Court has held that the provisions of P.S.O. 145 is administrative in nature and therefore, it has no force of Law. However, it would be relevant to point out that so far as P.S.O. 588A is concerned, it was an outcome of the Judgment rendered in the case of Thota Ramakrishnayya v. State reported in (1954 MWN Cr 9), wherein P. N. Ramaswami, J. thought it fit to make certain observations as to how a complaint made and a counter complaint made, have to be dealt with by the Investigating Agency. At that time, P.S.O. 588A was not available.

18.1. Mr. V. Sairam, learned counsel for petitioners in Cri M.P.No.3861/1989, represents that P.S.O. 588A was the outcome of the decision in Ramakrishnayya's case. The learned Judge observed, that it is improper for the police to prosecute at the same time two counter cases in regard to the same occurrence, one of which must be false. The Police cannot charge both cross-cases and must either find out the truth and charge that version which is true, or if they are unable to do so to throw out both the cases or charge one version leaving it open to the aggrieved party to resort to his own remedies. If he finds out that the choice of either course is difficult, he should seek the opinion of the Public Prosecutor of the District and act accordingly. A Magistrate before whom such a case is

charged by the police and a private complaint from the party whose case had been referred should hear both the cases together and commit both of them to the Sessions, even if only one of them is exclusively triable by a Court of Sessions. The procedure suggested is salutary and may help the Investigating Agency when they are confronted with two complaints in respect of the same occurrence."

The above judgment is squarely applicable to the case on hand and therefore, the entire proceedings are vitiated and liable to be quashed.

8. In view of the above discussion, this Criminal Original Petition stands allowed and the proceedings in S.T.C.No.693 of 2020 on the file of the learned Judicial Magistrate No.IV, Puducherry is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.IV,
Puducherry
- 2.The Sub-Inspector of Police,
The Union Territory of Puducherry
Mettupalayam Police Station,
Puducherry.
- 3.The Public Prosecutor
High Court Madras
Chennai.

CRL.O.P.No.4915 of 2020
and CrI.M.P.No.2810 of 2020

BR(CO)
CB(05/11/2020)