

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.12373 of 2020 and
Crl.MP.Nos.4894 & 4895 of 2020

Kapilvirej

...Petitioner

Vs.

1. The Sub Inspector of Police,
F5 Choolaimedu Police Station,
Chennai 600 094.
(Crime No.399 of 2018)

2. S.Srividya

...Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records in CC.No.9824 of 2018 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.M.Guruprasad

For Respondents

For R1 : Mr.S.Karthikeyan,
Additional Public Prosecutor

For R2 : Mr.T.Balaji

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in CC.No.9824 of 2018 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai having been taken cognizance for the offences under Sections 294(b), 323 and 506 (2) of IPC and Section 4 of the Prohibition of Harassment of Women Act, 2002, in respect of Crime No.399 of 2018 on the file of the first respondent.

2.The learned counsel for the petitioner would submit that on the complaint lodged by the second respondent, the first respondent registered FIR in Cr.No.399 of 2018 for the offences under Sections 294(b), 323 and 506(2) of IPC and Section 4 of the Prohibition of Harassment of Women Act, 2002 and filed final report and the same has been taken cognizance for those offences in CC.No.9824 of 2018 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, in which the petitioner is arrayed as A1. The learned counsel for the petitioner further submitted that on the very same occurrence, the wife of the

petitioner also lodged complaint and the same was registered by the 1st respondent in Cr.No.412 of 2018 for the offences under Sections 294(b), 323, 448, 506(ii) of IPC as against the 2nd respondent herein. The 1st respondent also filed final report and the same has been taken cognizance in CC.No.9825 of 2018 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai. Therefore, the present proceedings pending against the petitioner is nothing but counter blast to the complaint lodged by the 2nd respondent herein. Under these circumstances, the first respondent without following the procedure laid down under Police Standing Order 588 A while filing charge sheet, filed final report in both the complaint lodged by the petitioner as well as the complaint lodged by the 1st respondent herein without finding out the real occurrence. He also relied upon the judgment passed by 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. Therefore, he sought for quashment of the entire proceedings.

3.The learned Additional Public Prosecutor submitted that on the complaint lodged by the wife of the petitioner, the first respondent registered case in Cr.No.412 of 2018 for the offences under Section 294(b), 323, 448, 506(ii) of IPC, on the occurrence took place on 18.06.2018 at about 8 p.m. as against the second respondent herein. For the very same occurrence, the second respondent also lodged complaint and on the said complaint, the first respondent registered case in Cr.No.399 of 2018 for the offences under Sections 294(b), 323, 506(2) of IPC and Section 4 of the Prohibition of Harassment of Women Act, 2002 and filed final report and the same has been taken cognizance in CC.No.9824 of 2018 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai.

4.The learned counsel for the second respondent would submit that the wife of the petitioner and the second respondent are sisters. Their father died on 28.08.2016 due to train accident. Thereafter, the second respondent fell in love with one Kapilvirej/the petitioner herein and got married on 02.12.2017. Both belong to different community. After death of their father, there was a dispute in respect of the property since their father had no male issues except the wife of the petitioner and the second respondent herein. While being so on 18.06.2018, the 2nd respondent and another trespassed into the house of the petitioner and also attacked the wife of the petitioner. And immediately the petitioner herein came and rescued his wife from the 2nd respondent and another. Only to escape from the clutches of law, the 2nd respondent lodged false complaint against the petitioner herein. And unfortunately, the 1st respondent without even conducting any enquiry mechanically registered the case as against the petitioner herein as if he attacked the 2nd respondent. He further submitted all the points raised by the

2nd respondent cannot be considered herein, and it is a matter of trial and as such he prayed for dismissal of the quash petition.

5. Heard Mr.M.Guruprasad, learned counsel for the petitioner, Mr.S.Karthikeyan, Additional Public Prosecutor for the first respondent, and Mr.T.Balaji, learned counsel for the second respondent.

6. On the occurrence took place on 18.06.2018, the petitioner as well as the second respondent lodged complaint and both were registered in Cr.No.399 of 2018 and 412 of 2018 by the first respondent. In both the FIRs, the first respondent conducted investigation and filed final report. Both final reports have been taken cognizance in CC.Nos.9824 of 2018 and 9825 of 2018. In the present quash petition, the counsel for the petitioner raised main grounds that the first respondent without following the procedure laid down under the Police Standing Order 588 A filed final report in both the FIR registered for single occurrence. In this regard, the learned counsel for the petitioner relied 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 CrL 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 CrL.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 CrL.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 Crl. No. 64 of 1982 against the Petitioners in Crl.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?"

7.In view of the above discussion, the first respondent without following the procedure laid down in Police Standing

Order 588 A, filed separate final reports for the very same occurrence, without even finding who is the real aggressor in the occurrence. Therefore, the above judgment cited by the learned counsel for the petitioner is squarely applicable to the present case as such the entire proceedings as against the petitioner is a clear abuse of process of court and it cannot be sustained as against the petitioner. Under these circumstances, the petitioner need not go for ordeal trial.

8. Accordingly, this Criminal Original Petition is allowed and the proceedings in CC.No.9824 of 2018 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai is quashed as against the petitioner alone. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The learned XVII Metropolitan Magistrate, Saidapet, Chennai.
2. The Sub Inspector of Police, F5 Choolaimedu Police Station, Chennai 600 094
3. The Public Prosecutor, High Court of Madras.

+1cc to M/s.M.Guruprasad, Advocate in SR.NO..26947

सत्यमेव जयते

Cr1.O.P.No.12373 of 2020

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VSN-II (CO)

RV(16/10/2020)