



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P. (MD) .No.3225 of 2020

and Crl.M.P. (MD) Nos. 1695 & 1696 of 2020

WEB COPY

1. P. Robert Sisil
2. Epiloppus
3. Jerome Anees
4. John Britto
5. Jestus Raju (Justin Raja)
6. Babu
7. Akilan (Abilash)
8. Nasareth

...Petitioners

Vs.

1. The Inspector of Police,
Puthukadai Police Station,
Kanyakumari District.
2. S. Stalin

... Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the proceedings in Charge Sheet No.601 of 2019 on behalf of the learned Judicial Magistrate No.II, Kuzhithurai and quash the same as against the petitioners.

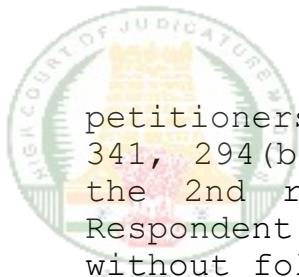
For Petitioners: Mr.H.Velvadhas

For R-1 : Mr.S.Chandrasekar,
Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been to quash the proceedings in Charge Sheet No.601 of 2019 on behalf of the learned Judicial Magistrate No.II, Kuzhithurai and quash the same as against the petitioners for the offences under Sections 147, 341, 294(b), 323, 324 and 506(2) of IPC.

2.The learned counsel appearing for the petitioners would submit that the petitioners are innocent and that based on the false complaint, the case has been registered and the final report has been filed against them in C.C. No. 601 of 2019, before the Judicial Magistrate No.II, Kuzhithurai. He would further submit in fact the petitioners were assaulted by the defacto complainant and based on the complaint given by the first petitioner, the case in Crime No. 96 of 2019 was registered against the defacto complainant and his men for the offences under Sections 147, 294(b), 323 & 324 of IPC, however, a false complaint was given by the defacto complainant, based on which, the present case has been registered against the



petitioners in Crime No. 97 of 2019 for offences under Sections 147, 341, 294(b), 323 and 506(ii) of IPC. He would further submit that the 2nd respondent and his men are the aggressors whereas the Respondent police, without properly investigating the case and without following the regulations in the Police Standing Orders, has filed the final report against the Petitioners, which has been taken in CC No.601 of 2019 against the Petitioners and thereby the proceeding against the petitioners are abuse of process of law and thereby he would seek to quash the proceedings.

3. The learned Additional Public Prosecutor would submit that during the same occurrence, the petitioners as well as the counter parties attacked each other and based on the complaints given by both the parties, the case and the counter case in Cr. No.97 of 2019 and Cr. No.96 of 2019 were registered by the Respondent Police after duly conducting enquiry and finding that both the parties have committed the offences, the Respondent Police has filed the final reports in both cases. He would further submit that there are materials available to proceed with the case as against the Petitioners and also against the counter parties and thereby criminal proceedings cannot be quashed at the threshold and the charges framed against the Petitioners have to be gone into a full fledged trial, however, he would further submit that since both the cases arise out of the same transaction, the trial in CC. No.36 of 2020 and CC No.61 of 2019 have to be conducted in accordance with the procedure laid down by the Honourable Supreme Court in **1990 (Supp) SCC 145 (Nathi Lal and others Vs. State of U.P and another)**. He would pray that a direction may be issued to the learned Judicial Magistrate to conduct the trial in both the cases following the procedure.

4. This Court has gone into the materials available on record.

5. Admittedly, the cases in CC. No. 601 of 2019 and 36 of 2020 are pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai. Both the cases are case and counter case arising out of same occurrence. The Honourable Supreme Court in **1990 (Supp) SCC 145 (Nathi Lal and other Vs. State of U.P and another)**, had held as follows:

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned judge must thereafter dispose of the matters by two separate



judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But, both the judgments must be pronounced by the same learned Judge one after the **other."**

6. Further, this Court in in 2011 (5) CTC 747 (Ganesan and Another -vs- Inspector of Police, Chennai) has also held that in a case and a counter case, the Trial Court shall not record common evidence or substitute the evidence recorded in one case as evidence in the other case and shall not consider the evidence recorded in one case in the other case and has further held that in respect of cross cases, for each case, there has to be a separate Public Prosecutor to conduct the prosecution.

7. In view of the above, this Court is of the opinion that the cases in CC. No. 601 of 2019 and CC. No.36 of 2020 have to be tried one after the other following the procedure laid down by the Honourable Supreme Court in **1990 Supp SCC 145 (Nathi lal and others Vs. State of UP and another)** and each case has to be conducted by a different Public Prosecutor.

8. With the above observations, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate No.II, Kuzhithurai.
2. The Inspector of Police, Puthukadai Police Station, Kanyakumari District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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