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Crl.O.P.(MD)No.8551 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.08.2020

Delivered on : 02.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP (MD)No.8551 of 2020

and

Crl.M.P. (MD)Nos.4033 and 4034 of 2020

1.P.Rajeshkannan
2.K.Ramakrishnan
3.K.Paulraj
4.Chitradevi
5.Mariamammal
6.Kanagavelrajan
7.Muniammal
8.Seethaganesh
9.Maheshwari

... Petitioners /Accused 3 to 9

Vs.

1. The State

Rep. by the Sub-Inspector of Police,
Ammappatti Police Station,
Virudhunagar District.

(Crime No.14 of 2019) ... 1st Respondent/Complainant

2.P.Siva

... 2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to Charge Sheet in C.C.No.8 of 2020, on the file of the Judicial Magistrate Court No.II, Sattur and quash the same against the petitioners.

For Petitioners : Mr.M.Soalisamy

For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl. side)

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings pending against the petitioners in C.C.No.8 of 2020, on the file of the Judicial Magistrate Court No.II, Sattur, as illegal.

2.The petitioners herein are arrayed as A3 to A9 in C.C.No.8 of 2020, on the file of the Judicial Magistrate Court No.II, Sattur.

3.The case of the prosecution is that due to previous enmity, on 10.02.2019 at 08.30 p.m., when the second respondent/de-facto

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complainant went to a shop near the Kaliyamman Temple to buy a Milk along with her mother viz., Chinnamuniyammal, the petitioners and other accused persons came there and attacked the second respondent/de-facto complainant and his mother with sickle and caused injuries and also threatened them with dire consequences.

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4.The case of the petitioners is that during the time of occurrence, the second respondent/de-facto complainant was in a drunken mood and quarrelled with number of persons in the Village, finally he came to the house of the petitioners and tried to attack the first accused while at the same time the petitioners were attending the Temple festival. On seeing the said occurrence, the petitioners 1 to 3 and 5 herein tried to prevent the attack made by the second respondent. In such circumstances, the second respondent/de-facto complainant attacked the ladies and caused injuries to them. For the said occurrence, a case in Crime No.14 of 2019 has been registered against the petitioners and others by the first respondent, for the offences under Sections 147, 148, 294(b), 323 and 324 I.P.C. read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. After completion of investigation, a final report has also been filed before the Judicial Magistrate Court No.II, Sattur, and the same was taken on file in C.C.No.8 of 2020. Seeking to quash the same, the petitioners are before this Court with the present Criminal Original Petition.

5.The learned counsel appearing for the petitioners would submit that during the relevant point of time, when the second respondent/de-facto complainant and his family members were tried to run away from the occurrence place, sustained injuries by their own weapons. Subsequent to the said incident, the second respondent/de-facto complainant has preferred the present complaint with an ulterior motive. Though A1, A2 and A7 were also sustained head injuries in the alleged occurrence, the first respondent police filed charge sheet against them for the above-mentioned offences. Even though the members of the petitioners' family were also sustained head injuries, initially, the first respondent refused to register a case against the second respondent/de-facto complainant and others. However, after a long time, the first respondent registered a case in Crime No.13 of 2019 against the second respondent and others for the offences under Sections 147, 148, 294 (b), 323, 324 and 379 I.P.C. Thereafter, during the time of investigation, without identifying the real aggressor, the first respondent filed the positive final report against the petitioners and in Crime No.13 of 2019 also, which has been registered upon receipt of the complaint given by the petitioners, therefore, filing a final report against the petitioners is against Order 588-A of the Madras Police Standing Orders. Hence, the charge sheet filed against the petitioners are liable to be quashed *in limine*.



6.The learned Government Advocate (Criminal side) appearing for the first respondent police would submit that Order 588-A of the Police Standing Orders is only directory in nature and not mandatory. Therefore, filing of final report in the above said two F.I.Rs. is not barred by any law. To substantiate the said submission, the learned Government Advocate (Criminal side) relied on the order passed by this Court in **Crl.O.P. (MD)No.4424 of 2017, dated 19.11.2019 [Sujin and others Vs. The Inspector of Police, Kollamcode Police Station, Kollamcode, Kanyakumari District and another]**.

7.Upon considering the arguments advanced by the learned counsel appearing on either side, it is not in dispute that the first respondent police filed the final report in two crime numbers viz., Crime No.14 of 2019 and Crime No.13 of 2019, which have been registered for the same occurrence based on the complaint given by the petitioners and the second respondent vice versa. Now, both the cases are in the stage of trial. In otherwise, it is not denied by the learned counsel on either side that the averments found in the above said two F.I.Rs. made out a *prima facie* case for the cognizable offences, further, in the said occurrence, both the petitioners and the persons, who are all accompanied with the second respondent, sustained injuries.

8.Therefore, the only issue to be decided is, filing of final report by the first respondent in both the crime numbers is permissible under law or not.

9.In this regard, it is relevant and useful to refer the judgment relied on by the learned Government Advocate (Criminal side), wherein this Court has held as follows:-

''4.

17. Finally, it came up before Justice Arunachalam sitting single in V.Karthikeyan and others v. State by S.I. of Police and others, 1992 Crl.L.J. 2948. After having a thorough survey of all the above judgments including the judgement of the Hon'ble Supreme Court cited supra, the learned Judge in para 17 & 18 has held as follows:-

''17. Once this conclusion is arrived at, the judgment of the Apex Court steps in and there could be no difference then between P.S.O. 145 and P.S.O.588A Chapter II of the Code of Criminal Procedure invests the police with the statutory rights to receive and record information of the commission of a cognizable crime and carry on investigation, before a prosecution is launched. Police Standing Orders cannot override the



provision of the Code of Criminal Procedure. In *State of Punjab v. Rajkumar*, after considering the nature and purpose of R. 16.38 of the Punjab Police Rules, the Supreme Court held :

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"The rules were not intended to replace and cannot certainly override the provisions of the Criminal 22 Procedure Code. In *State of Punjab v. Charan Singh*, 1981 SCC Cri 407 : (1981 Cri LJ 712) it was declared that R.16.38 cannot govern criminal prosecution, against the members of the police as it could not override the provisions of the Code of Criminal Procedure. The Punjab Police Act, under S. 12, made a provision for the Inspector General of Police, subject to the approval of the State Government to frame such orders and rules, as stated in the said section, and the Punjab Police Rules were framed in the exercise of the powers conferred under S. 1 and S. 7 which dealt with the appointment, dismissal, etc. of inferior officers. This provision appears akin to S. 9 of the Madras District Police Act. The net result is that P.S.O. 588A will have to be held as only directory and not mandatory. P.S.O. 588A is nothing more than administrative instructions and it cannot have the force of law. The non-following of the procedure prescribed under P.S.O. 588A will not constitute an illegality to quash the impugned prosecutions. The law laid down by the Supreme Court, coupled with the lack of power under S. 9 of the Tamil Nadu District Police Act to issue P.S.O. 588A as a statutory mandate, would answer the question involved and here reference to a Division Bench, does not arise.

18. Administrative instructions in P.S.O. 588A issued on the basis of the decision of P. N. Ramaswami, J. in *Ramakrishnayya's* case, commend observance, but merely because the 23 provisions of the order have not been followed in a particular case by the Investigating Agency, that would not constitute illegality to quash the prosecutions launched. The decisions rendered by P. N. Ramaswami, J. in *Ramakrishnayya v. State*, 1954 MWN Cr 9; David Annoussamy, J. in *Ekambaram v. Sundaramurthy*, 1989 (1) Crimes 458 and S. T. Ramalingam, J. in *Pandurangan v. State* by Inspector of Police, Thirukazhukundaram, 1987 LW Cri 400 have dealt with the procedure to be followed in cases and counter, taken on file



either on the basis of two final reports or one final report and not her private complaint.''

18. From the above Judgments, the law now remains well settled that it is not an illegality to file final report in both the case and the counter case. What is to be tested is only the question of prejudice for the accused.

19. In view of the above well settled position of law in the instant case at no stretch of imagination it could be held that filing of final report in both the instant cases would amount to illegality. We hold that the investigating officer, who was unable to find as to who was the aggressor, was right in placing all the materials before the Trial Court by way of two final reports and therefore, it was for the trial court to appreciate the evidence let in both the cases and to punish the guilty.

20. Now, we have to examine the proper procedure to be followed while conducting the trial of both the cases. In this regard, we may also refer to a judgement of the Hon'ble Supreme Court in Nathi Lal v. State of UP, 1990 (Supp) SCC 145, wherein the Hon'ble Supreme Court has in para 2 has held as follows:-

''2.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 case 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 is that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the case, 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 the 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.



5. It is clear from the above judgment that the law is now well settled to the effect that it is not an illegality to file a final report in both the case and the counter case, where the Investigating Officer is unable to find out as to who was the real aggressor. In such cases, it would require appreciation of evidence for the trial Court by conducting a simultaneous trial in both the cases. In cases of this nature, the procedure that has been prescribed by the Hon'ble Supreme Court in Nathi Lal vs. State of Uttar Pradesh reported in 1990 Supp SCC 145 has to be followed. This judgment was also reiterated by this Court in Ganesan and others vs. State reported in 2011 5 CTC 747.''

10. In view of the above, the issue raised in this Criminal Original Petition has already been discussed elaborately by this Court and this Court has held that filing of final report in both the case and counter case, where the Investigating Officer is unable to find out as to who was the real aggressor, does not suffer from any illegality. In such cases, it would require appreciation of evidence for the Trial Court by conducting a simultaneous trial in both the cases. Therefore, following the said principle, I am of the considered opinion that in the present case also, filing of final report in both the cases, is not fatal to the case of prosecution. Hence, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.II,
Sattur.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Sub-Inspector of Police,
Ammapatti Police Station,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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