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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No.10986 of 2015
and CrI.M.P.No.7622 of 2021
and M.P.No.1 of 2015

1. Vivek
2. Oothi @ Shankar
3. Panneer @ Pannerselvam

.. Petitioners/Accused Nos.3, 10 & 11

Vs.

State rep. By its
The Deputy Superintendent of Police,
Nagapattinam,
Nagapattinam District.
(Crime No.519/2011)

.. Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in Charge Sheet No.2/2012 dated 04.01.2012 pertinent to P.R.C.No.45 of 2013 on the file of learned Judicial Magistrate No.1, Mayiladuthurai and quash the same.

For Petitioners .. Mr. Hari Krishnan

For Respondents .. Mr.E.Raj Thilak
(Govt.Advocate Criminal Side)

ORDER

This Criminal Original Petition has been filed seeking to call for the records in Charge Sheet No.2/2012 dated 04.01.2012 pertinent to P.R.C.No.45 of 2013 on the file of learned Judicial Magistrate No.1, Mayiladuthurai and quash the same.

2.The petitioners herein are the accused Nos.3, 10 and 11 in P.R.C.No.45 of 2013 now pending on the file of the Judicial Magistrate No.I, Mayiladuthurai. The case against them has been split up by the prosecution, in view of the fact that did not appear before the Magistrate Court. There were totally 13 accused in Crime No.519 of 2011 which had been registered on 13.09.2011 based on the complaint given by Aachiammal before the respondent, the Deputy Superintendent of Police, Nagapattinam,



Nagapattinam District and the said crime number resulted in registration of First Information Report under Sections 147, 148, 427, 352 and 506(ii) of I.P.C r/w Section 3(1)(X) of SC/ST (Prevention of Atrocities Act, 1989).

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3. Thereafter, after the case against the present petitioners had been split up, the matter had been referred to the Sessions, in view of the nature of the offences involved. Spl.S.C.No.9 of 2014 was taken on file by the I Additional District Court (P.C.R) in Nagapattinam.

4. I am informed by the learned Public Prosecutor Criminal Side that the trial had ended in acquittal of all other accused. Placing that as a ground, the present petition has been filed to quash the proceedings in P.R.C.No.45 of 2013.

5. The statement of PW-1, Aachiammal had been pointed out by the learned counsel for the petitioners Mr.S.P.Harikrishnan who observed that the complainant had stated that she had not given the said complaint.

6. It must be kept in mind that the said statement was given when the other accused A1, A2 and A4 to A9 and A12, A13 were faced criminal trial in Spl.S.C.No.9 of 2014.

7. The present accused had deliberately taken a decision to abstain from facing such prosecution and the trial. They cannot at this stage take advantage of the statement of PW-1 Aachiammal. At the most, it can be construed as a statement with respect to the said accused who faced trial and the petitioners herein, to a limited extent, can rely on the same as a former statement of PW-1, but still such a statement will have to be tested once again in the course of trial. The petitioners herein could very well have faced the trial and could very well have, if PW-1 maintained the complaint against the present petitioners cross-examined the complainant, as to how the complaint can be maintained as against some of the accused, and not maintained as against other accused, particularly the petitioners herein. If that be the case, the petitioners having not appeared before the trial court also cannot maintain this petition for quash.

8. There is an onus cast on them to appear before the trial court. They can take any other legal issue, but they cannot take advantage of a trial, which was lawfully conducted and which had ended in an acquittal. The petitioners should also face trial as the other accused had faced and thereafter invite a judgment to be passed on merits. I am not inclined to quash the further proceedings in P.R.C.No.45 of 2013.

9. A direction is given to the petitioners to appear before



the Judicial Magistrate No.I, Myladuthurai and face the normal process of trial. The Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

10. After an absconding charge sheet has been filed, I am informed by the learned counsel petitioners that the petitioners herein appeared before the trial court and also obtained bail. Then, nothing prevents them from appearing before the trial court armed with the order granting bail, face the trial, invite PW-1 into the witness box and cross examine PW-1.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smv

To

- 1 The Deputy Superintendent of Police,
Nagapattinam,
Nagapattinam District.
(Crime No.519/2011)
2. The Public Prosecutor,
High Court, Madras.

Copy to:-

The Judicial Magistrate No.I, Mayiladuthurai.

+1cc to Mr.K.M.Vijayan Associates, Advocate, S.R.No.42265

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and M.P.No.1 of 2015

GPL(CO)
CT(17/09/2021)