

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2020
PRONOUNCED ON : 01.04.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3775 of of 2015
in
M.P.No.1 of 2015

S.S.Krishnamurthy ... Petitioners / Accused No.1

Vs.

1.State by :
The Inspector of Police,
Salem Town Police Station,
Salem City
(Crime No.1143 of 2012) ... 1st Respondent/ Complainant

2.S.Ramalingam ... 2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash all the proceedings against the petitioner only in C.C.No.21 of 2014, on the file of the Judicial Magistrate No.1, Salem District.

For Petitioners : Mr.A.M.Esakkiappan

For 1st Respondent : Mr.C.Iyyapparaj
Addl.Public Prosecutor

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.21 of 2014, on the file of the Judicial Magistrate No.1, Salem District, as against the petitioner.

2. The case of the prosecution, in nutshell, is as follows:-

The second respondent / defacto complainant gave complaint against the accused to the 1st respondent Police alleging that on 28.11.2012, while the defacto complainant was working in the Tahsildar Office, Salem, one Dinesh(A2) came there and asked to give Community Certificate. When the 2nd respondent asked him to come tomorrow, the said Dinesh(A2) attempted to assault and thereby, prevented the 2nd respondent and others from doing their work. At that time, the witness Sunderraj went out to call police through phone, the accused wrongfully restrained the witness. Hence, the case.

3. The learned counsel for the petitioner / A1 submitted that the alleged occurrence said to have taken place on 28.11.2012, FIR registered on the same date, but the final report filed after a long time ie., on 27.02.2014, which is not maintainable on law and on facts. Further, the 1st respondent did not conduct property enquiry and forwarded the final report to the learned Judicial Magistrate No.I, Salem, on 2.02.2014. The 1st respondent Police did not act properly in the official capacity, caused injustice to the petitioner, it is purely abuse of process of law. The learned counsel submitted that when A2 asked community certificate, the Tahsildar simply and lethargically answered that come tomorrow, without assigning reasons. This is nothing but dereliction of duty and abdication of responsibility on the part of the Tahsildar. Instead of patching up the dispute, the Tahsildar along with other officials created unwanted situation. Hence, the learned counsel for the petitioner is before this Court with aforesaid prayer.

4. Per contra, the learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that on 28.1.2012, the 2nd respondent – defacto complainant was in Taluk

Office and discharging his duties. A1 came to the Office of the 2nd respondent, asked Community Certificate. When the Tahsildar, requested him to come tomorrow, immediately A2 attempted to assault the Tahsildar, further called his friends through phone and thereby, prevented the 2nd respondent-defacto complainant and other officials from doing their duties. He would further submit that there are five eye-witnesses in this case. The occurrence took place within the premises of Tahsildar Office. The witnesses are the officials of the Government, who are working in the Office of Tahsildar. The evidence of all the witnesses is clear, cogent and consistent and there is no doubt in their version about the incident in question. Hence, the learned Additional Public Prosecutor prayed for dismissal of the petition.

5. I have considered the rival submissions advanced by learned Counsel for the parties and gone through the First Information Report.

6. On perusal of the complaint it is seen that on 28.11.2012, while the defacto complainant / Tahsildar, discharging his duties in his office, one Dinesh(A2) came there, asked Community

Certificate, he was instructed to come tomorrow. On saying so, heated arguments took place between them. It is natural, the other officials of the Taluk Office joined with the Tahsildar. In the meantime, the petitioner called his friends through phone. Immediately, one of the officials went out to make a call to Police, which efforts was prevented by the petitioner herein, who is arrayed as A1 in this case. On complaint, police came, investigated the witnesses viz., one Ramalingam, Sunderraj, D.Senthilkumar, Muruganantham and Madhiyalagan and recorded their statements under Section 161 Cr.P.C., after investigation, registered the case in Crime No.1134 of 2012, for the offence punishable under Sections 341 and 353 of IPC., and filed the final report before the learned Judicial Magistrate No.1, Salem, on 27.11.2014, after two years of the occurrence, which was taken on file in C.C.No.21 of 2014.

7. It seen that the prosecution has not examined any independent witness. All the witnesses referred to above are the officials of the complainant and it could be presumed that their witnesses are interested. No doubt, merely because a witnesses are interested, their testimony cannot be discarded or

thrown away, but the Court has to assess it with great care and caution and keeping in mind whether otherwise the witnesses are reliable and trustworthy. But, the case on hand is different. It is to be noted that the Taluk Office is always a busiest place, as the people come there to find solution to various issues and applying different kinds of certificates for different purposes. It is found that there was possibility for securing independent witness at the time of occurrence and still, for the reasons best known to the prosecution, has not secured then in a given set of fact, the court can raise presumption about embellishment and view the testimony with suspicion. Hence, this circumstance alone can be fatal for prosecution. In the light of the above, this Court is inclined to quash the proceedings in C.C.No.21 of 2014, on the file of the Judicial Magistrate No.1, Salem District.

8.In the instant case, though A2 & A3 have not challenged their case, this Court is inclined to quash the proceedings as against A2 & A3 also, who are similarly placed as that of the petitioner/A1.

9. In view of the forgoing discussions, this Criminal Original Petition is allowed and the proceedings in C.C.No.21 of 2014, on the file of the Judicial Magistrate No.1, Salem District, is hereby quashed, as against the petitioners/ A1 to A3. Consequently, the connected miscellaneous petition is closed.

01.04.2021

Index : Yes/No

Internet : Yes/No

MPK

To

1. The Judicial Magistrate No.1,
Salem District.

2. The The Inspector of Police,
Salem Town Police Station,
Salem City

3. The Public Prosecutor,
High Court, Chennai.

M.NIRMAL KUMAR, J.

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