



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.No.4195 of 2018

and

Crl.M.P.Nos.1931 and 1932 of 2018

Ramareddy

...Petitioner/Sole Accused

Versus

1.State rep.by

Inspector of Police,
E-2, Royapettah Police Station,
Royapettah, Chennai 600 014.
(Cr.No.362 of 2017)

2.Vijayakumar

...Respondents/Complainant/ Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.6257 of 2017 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Concerned in Cr.No.362 of 2017 on the file of the 1st respondent under Sections 294(b) IPC based on the alleged averments contained in the complaint made by the 2nd respondent and to quash the same in respect of the petitioner.

For Petitioner: Mr.M.Kamalakannan
For RR1 : Mr.A.Gopinath
Government Advocate (Crl.Side)

O R D E R

The petitioner has filed this petition seeking to call for the records relating to C.C.No.6257 of 2017, on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Concerned in Cr.No.362 of 2017, on the file of the 1st respondent and quash the same.

2. The case of the prosecution is that the petitioner and the defacto complainant are neighbours and there was a property dispute with regard to the construction of fencing to an extent of 3 ½ feet in the 5 ½ feet passage, which was the subject matter of Suit. It is alleged that when the defaco complainant questioned about the construction of fencing in the extent of 3 ½ feet, the petitioner, in a drunken stage, scolded



him in filthy language. Hence the defacto complainant has lodged a complaint in Cr.No.362 of 2017 on the file of the respondent Police. After investigation, the respondent Police had filed a Charge Sheet in C.C.No.6257 of 2017, on the file of the learned XVIII Metropolitan Magistrate, Saidapet.

3. The petitioner claims that earlier there was a Civil Suit in O.S.No.704 of 1970 filed by Parthasarathy and Vedachalam / plaintiffs, from whom the defacto complainant claims his right and the grandmother of the petitioner herein was the defendant in the said Suit. The Suit was dismissed on 30.08.1972 wherein the plaintiffs have failed to establish their right over the property and the said judgment was not put to challenge and therefore, it has become final. The petitioner further claims that though the defacto complainant knows very well about all these facts, unnecessarily he picked up quarrel with the petitioner on 04.07.2021 with regard to the fencing to the extent of 3 ½ feet, where the defacto complainant has no right. Without ascertaining the civil nature of the dispute, the complaint has been entertained by the 1st respondent Police, as if the petitioner had committed mistake.

4. The learned counsel appearing for the petitioner submitted that the defacto complainant had given a complaint against the petitioner as if the petitioner was attempting to put up a gate at the defacto complainant's place and further complained that the petitioner has abused the defacto complainant in a drunken state. The fact is that the petitioner was never drunken as stated in the complaint. In order to escape from their act of manhandling, whereby they caused grievous injury to the petitioner, the defacto complainant along with his brother lodged a false complaint before the respondent Police in Cr.No.362 of 2017, which is only a counter complaint, as even before the said complaint of the defacto complainant, the petitioner herein has also lodged a complaint against the defacto complainant in Cr.No.361 of 2017. Further the petitioner was also referred to Royapettah Government Hospital, Royapettah, Chennai, for the injuries caused by the defacto complainant, where he was treated and discharged. The 1st respondent has filed the Charge Sheet in the complaint given by the petitioner in C.C.NO.6256 of 2017, wherein the Doctor who attended the petitioner has spoken about the injuries sustained by the petitioner and in the Charge Sheet filed in C.C.No.6257 of 2017 in Cr.No.362 of 2017, there is no evidence to state that this petitioner had consumed alcohol and had quarrel, on the alleged date of incident. While being so, allegation against the petitioner that he abused the defacto complainant, is not made out and thereby, implicating the petitioner by registering a case in Cr.No.362 of 2017 for the offence under Section 294(b), is not sustainable and prays for quashment of proceeding pending



before the Trial Court.

5. The learned Government Advocate (Crl.Side) fairly conceded that in respect of the petitioner's complaint, C.C.No.6256 of 2017, on the file of the learned XVIII Metropolitan Magistrate, Saidapet, the same ended in conviction as the respondent pleaded guilty and further no records to prove that the petitioner was drunk was annexed along with the Charge Sheet filed in C.C.No.6257 of 2017 in Cr.No.362 of 2017.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. On an overall consideration of the factual matrix, this Court is of the view that there was complaint and counter complaint by the petitioner and the defacto complainant in Cr.No.361 of 2017 (petitioner's complaint) and Cr. No.362 of 2017 (defacto complainant's complaint) and in both Criminal Cases, the Charge Sheets were filed in C.C.No.6256 of 2017 in Cr.No.361 of 2017 and C.C.No.6257 of 2017 in Cr.No.362 of 2017. It is represented that C.C.No.6256 of 2017 ended in conviction of the defacto complainant, who pleaded guilty. However, though allegation has been made against the petitioner as if he consumed alcohol and quarreled with the defacto complainant, when he questioned about the construction of fence on the property in question, no medical records relating to the drunken state of the petitioner was filed along with the Charge Sheet. Further for implicating the petitioner under Section 294(b) IPC, no evidences were produced and no witnesses were examined. Therefore, without producing any evidence alleging that the petitioner was in drunken state and entered into quarrel with the defacto complainant and abused him is not borne out by record and conducting trial against the petitioner in C.C.No.6257 of 2017 (Cr.No.362 of 2017) for the commission of offence under Section 294(b) IPC, is unsustainable and therefore, this Court has no hesitation to quash the case.

8. Accordingly, for the reasons aforesaid, this Criminal Original Petition is allowed and C.C.No.6257 of 2017, on the file of the learned XVIII Metropolitan Magistrate, Saidapet, is quashed. Consequently connected miscellaneous petition are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The XVIII Metropolitan Magistrate,
Saidapet.

2.Do Thro The Chief Metropolitan Magistrate,
Egmore, chennai-8.

3.The Inspector of Police,
E-2, Royapettah Police Station,
Royapettah, Chennai 600 014.

4.The Public Prosecutor,
Madras High Court.

+1cc to Mr.M.Kamalakannan, Advocate, S.R.No. 33848

CRL.O.P.No.4195 of 2018

NMI (CO)
GN(13/08/2021)