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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

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THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

CRL.O.P No. 26513 of 2016
and Crl.M.P Nos. 13314 & 13273 of 2016

Akbar

...Petitioner

Versus

The State,
Represented by
The Inspector of Police,
E-3, Teynampet Police Station,
Chennai - 600 006.
(Crime No. 311 of 2014)

...Respondent

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the Final Report in C.C.No. 5187 of 2014 pending on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.A. Mohamed Ismail
For Respondent : Mr.E.Rajthilak, Govt. Advocate
(Criminal Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.5187 of 2014 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, thereby taken cognizance of the offences under Sections 341, 294(b) and 326 of IPC, in Crime No.311 of 2014, as against this petitioner.

2. The case of the de-facto complainant is that, on 25.02.2014 at about 12.30 hrs, while he was driving his car near Stella Maris College at Cathedral Road, he stopped the car for the signal. The accused who was riding a two wheeler, hit the rear part of the car and stopped. Further, it is alleged that when the accused hit the car, the de-facto complainant came out of the car and asked the same, but the accused had scolded him and thereafter, he assaulted the de-facto complainant and



punched on his face, due to which he had sustained injuries. Thereafter, the de-facto complainant was taken to the Aswini Soundarajan Hospital and thereafter, he had taken for treatment at Shree Balaji Medical College and Hospital, Chrompet, Chennai, as an in-patient and after that, he came to know that such person one Akbar who drove Hero Honda CD Dawn bearing Registration No.TN-07-AU-8373. Then, the de-facto complainant lodged a complaint before the police on 26.02.2014. Based on the de-facto's complainant, the respondent Police had registered a case in Crime No.311 of 2014 and investigated the matter and filed a final report before the XVIII Metropolitan Magistrate, Saidapet, Chennai, for the offences punishable under Sections 341, 294(b) and 326 of IPC. Aggrieved by the said final report filed against the petitioner, this petition is filed by the petitioner to quash the final report in C.C.NO.5187 of 2014.

3. The learned counsel appearing for the petitioner submitted that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution. Without any basis, the respondent-Police registered a case in Crime No.311 of 2014 for the offences under Sections 341, 294(b) and 326 of IPC, as against the petitioner and the same has been taken cognizance in C.C.No. 5187 of 2014 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai. Hence, he prayed to quash the same.

4. The learned Government Advocate (Criminal Side) appearing for the respondent submitted that the trial has commenced and some of the witnesses have also been examined in this case.

5. Heard Mr.A. Mohamed Ismail learned counsel appearing for the petitioner and Mr.E.Rajthilak, learned Government Advocate (Criminal Side) appearing for the respondent.

6. With regard to the contentions raised by the learned counsel for the petitioner, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., wherein it was held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against



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respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

8. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a



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complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

9. On a perusal of the case records, it is seen that the de-facto complainant was driving his car near Stella Maris College at Cathedral Road, and when he stopped the car for the signal, the accused who was riding a two wheeler, hit the rear part of the car and stopped. It is also seen that LW1, the defacto complainant had come out of the car and was then punched on the face by the accused and there is no mention about the presence of LW2 and LW3 in the car or in the scene of occurrence in the complaint. However, in the final report LW2 and LW3 have been arrayed as witnesses as if they were travelling along with LW1. Even as per the statement of LW1 injured LW1 was taken to the hospital by some other persons whose identity has not been revealed and those persons had not been arrayed as witnesses. Further, it is surprising and illogical to say that when LW1's own brother and his son LW2 and LW3 respectively were present during the time of occurrence, had not taken LW1 to the hospital. It is also seen that LW2 and LW3 are interested witnesses and their evidence cannot be a valuable piece of evidence and the same is liable to be discarded. It is not the case of the prosecution that the accused had assaulted and caused grievous injuries using a weapon or other means and therefore, no offence has been committed as contemplated under Section 326 of IPC. It is the contention of the petitioner weightage with the fact that the complaint did not disclose that



the alleged injury was caused using a weapon nor is it a case of the witnesses also. Therefore, to file a final report alleging offences to have been committed under Section 326 Indian Penal Code, is an arm twisting exercise.

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10. Further, it has been alleged by the prosecution that, on the date of occurrence on 25.02.2014, the de-facto complainant suffered injuries and even went unconscious. It is further alleged that the de-facto complainant was given first aid at Aswini Soundarajan Hospital and thereafter, he was admitted at Shree Balaji Medical College and Hospital, but no document had been put forth by the prosecution to establish that such first aid was given nor any witness from the said hospital has been arrayed as a witness in the charge sheet. Though it has been alleged in the charge sheet and in the complaint that the de-facto complainant was initially treated at Aswini Soundarajan Hospital and later referred to Shree Balaji Medical College and Hospital, there is no piece of evidence for the alleged treatment underwent at Aswini Soundarajan Hospital and therefore, it is evident that the alleged treatment at Shree Balaji Medical College and Hospital is an afterthought and has been invented with an oblique motive to harass the accused.

11. The above contentions of the learned counsel for the petitioner had to be dealt with only after letting in evidence and it cannot be considered at this stage.

12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No. 5187 of 2014 in Crime No. 311 of 2014 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

13. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS-III)

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Sub-Assistant Registrar



To

1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai

2.The Inspector of Police,
E-3, Teynampet Police Station,
Chennai - 600 006.
(Crime No. 311 of 2014)

3.The Public Prosecutor,
High Court,
Madras.

CRL.O.P No. 26513 of 2016
and Crl.M.P Nos. 13314 & 13273 of 2016

PMK(CO)
SP(23/07/2021)