

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P.No.3823 of 2016 and
Crl.M.P.No.1956 of 2016

1. Commander Rakesh Prasad
2. Mayank Patel Petitioners/Accused 1 & 2

Vs.
Deepak B. Gunari Respondent /Defacto Complainant

Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records and quash the complaint as against the petitioners / accused in S.C.No.47 of 2016 on the file of the learned VI Additional Sessions Judge, Chennai.

For Petitioners : Mr.T.Muthukrishnan

For Respondent : Mr.C.Samivel

O R D E R

The present Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records and quash the complaint as against the petitioners / accused in S.C.No.47 of 2016 on the file of the learned VI Additional Sessions Judge, Chennai.

2. The case of the petitioners is that the complaint was given by the 1st petitioner, viz., Rakesh Prasad (42215 T 76 097089908178) on 10.05.2011 stating that on 09.05.2011, the petitioners along with one Deepak Gunari have decided to have an dinner at I.I.T. At 07.30 P.M., and when the petitioners went to Deepak Gunari's room at about 10.50 p.m, they found that his door was not locked from outside and when the petitioners pushed the door, it opened and the petitioners could not find him in his room. Thereafter, the petitioners found that the balcony door was open and Deepak Gunari's mobile was on floor near balcony door. When the petitioners looked outside, they saw Deepak Gunari was lying down unconscious. Immediately, the petitioners rushed him in ambulance and admitted him to IIT hospital and thereafter, he was moved to Appollo Hospital.

Subsequently, the petitioners had registered a case in J7 Velacherry Police Station in Crime No.1214 of 2011. Subsequently, a closure report was filed by the Inspector of Police, Velacherry on the ground of 'mistake of fact' stating that the said Deepak Gunari had stayed in Room No.366 at Kauveri Hostel, I.I.T., and on 09.05.2011 at 10.30 p.m., while he was staying at his room, he was talking in the mobile phone, at that time, he was sitting in the wall at balcony in a negligent manner and had fallen down. Accordingly, the complaint is closed and the closure report was also served to the parties.

3. Further, the defacto complainant, viz., Deepak Gunari, filed a petition in M.P.No.1957 of 2015 seeking to take cognizance of the complaint before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and the said court below had observed to issue summons to the petitioners stating that the prima facie case has been made out against the petitioners under Sections 324 and 307 of IPC.

4. The defacto Complainant, viz., Deepak Gunari had filed a objection and sworn affidavit before the court below stating that the petitioners alleged to have kicked him and on account of the same, he sustained polytrauma / severe closed head injury, bilateral pneumothorax with tension pneumothorax on left side fracture 1st and 2nd ribs left and all the ribs on the right side, fracture of iliac bone and left acetabulum and chip fracture of left occipital condyle on 09.05.2011 at around 9.30 hours, due to which, he was continuously taking treatment for a period of more than a month. The defacto complainant was initially treated at Apollo Hospital, Chennai and subsequently, transferred to Airforce Command Hospital, Bangalore on 23.05.2011 and he was discharged on 30.07.2011. The defacto complainant has given various complaints also.

5. The learned counsel for the petitioners would submit that the petitioners were shocked to receive the summons from the learned XVIII Metropolitan Magistrate, Saidapet, Chennai for the alleged offences under Sections 307 and 324 IPC and on appearance, they were served with a copy of the objection filed by the defacto complainant. However, in the said objection, there was no list of witnesses or list of documents relied upon by the defacto complaint to prove the alleged offences were committed by the petitioners.

6. The learned counsel for the petitioners also submits that on perusal of the said objections, it was understood that the defacto complainant alleges that he was assaulted by the petitioners herein resulting in his sustaining grievous injuries and that a case was registered by the Inspector of Police, J-7, Velacherry Police station. Further, the defacto complainant

alleges that he was not at all enquired by the said inspector and the police has closed the FIR as if the complaint is a mistake of fact.

7. It is represented on behalf of the petitioners that even though in the objection filed by the defacto complainant before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, there are no list of witnesses or list of documents, the learned Magistrate has taken cognizance of the same, that too for the alleged offence of "Attempt to commit murder", which is punishable under Sections 307 and 324 IPC, had issued process to the petitioners and further submitted that the court below had treated the objections of the respondent as a complaint and had taken cognizance of the same.

8. It is the further contention of the learned counsel for the petitioners that in the month of May 2011, the defacto complainant was staying in the 2nd floor of Kaveri Hostel, IIT Campus, Adyar, Chennai and on 09.05.2011 at about 10.50 p.m., when the petitioners went to the room of the defacto complainant, they found him missing in his room and on observing from the balcony, the petitioners found the defacto complainant on the ground, thereafter, the petitioners rushed to the ground floor and the defacto complainant was lying in an unconscious state. Thereafter, the petitioners called the IIT ambulance and admitted the defacto complainant in the IIT hospital and from there, the respondent was moved to the Appollo hospital for further treatment. On the next day, viz., on 10.05.2011, the 1st petitioner lodged a complaint with the Inspector of Police, J7 Velacherry police station, Chennai about the fall of the defacto complainant and a case was registered based upon the complaint of the 1st petitioner in J.7 Police Station in Crime No.1214 of 2011. The petitioners were examined by the said Inspector of Police under Section 161(3) of the Cr.P.C.,

9. The learned counsel for the petitioners also contends that further action in the said FIR was dropped and it was concluded by the Investigating officer that the respondent while talking in his cell phone, near the balcony, situated in the second floor, in a negligent manner, had accidentally fallen from the second floor and had sustained injuries. Aggrieved by the closure of the FIR, the defacto complainant has filed his objections before the said magistrate. After recording the statement of the defacto complainant alone, the learned Magistrate, had taken cognizance of the complaint under Section 190 Cr.P.C., for the alleged offences under Sections 324 and 304 IPC.

10. The learned counsel for the petitioners further contends that the learned magistrate had failed to note the crucial fact that all along these years, the respondent had not approached

the appropriate court for alteration of the Section from 'fall from height' to the provisions of the Indian Penal Code, only after closure of the said case, the defacto complainant is now leisurely approaching him to state that he was assaulted. That apart, there is no active act or direct act by the petitioners, which resulted in the defacto complainant sustaining injuries and attributing the petitioners for the same after a lapse of five years, is only to harass the petitioners and prayed for quashing the proceedings in exercise of inherent powers of this Court, he pleaded.

11. The learned counsel appearing for the respondent would submit that the case in S.C.No.47 of 2016 is pending before the learned VI Additional Sessions Judge, Chennai and the trial has been commenced and witnesses have let in evidence , hence pleaded to dismiss the petition.

12. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the documents placed on record.

13. It is the case of the petitioners that only on the complaint given by the 1st petitioner, a case was registered and the petitioners had saved the defacto complainant and admitted in hospital, subsequently, the case was closed. Immediately, the defacto complainant, had filed an objection and sworn affidavit stating that the petitioners alleged to have beaten him and on account of the same, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai had taken cognizance of the complaint. The said contentions are to be agitated before the concerned court below. At present, the case, is pending in S.C.No.47 of 2016 before the learned VI Additional Sessions Judge, Chennai and trial has been commenced and the witnesses are letting in evidence, at this point of time, this petition seeking to quash the FIR is not at all maintainable and the same cannot be quashed. Further, it is also made clear that the petitioners cannot maintain this petition at this stage and the petitioners can proceed with the trial to defend their case.

In the result, the present Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssd

To

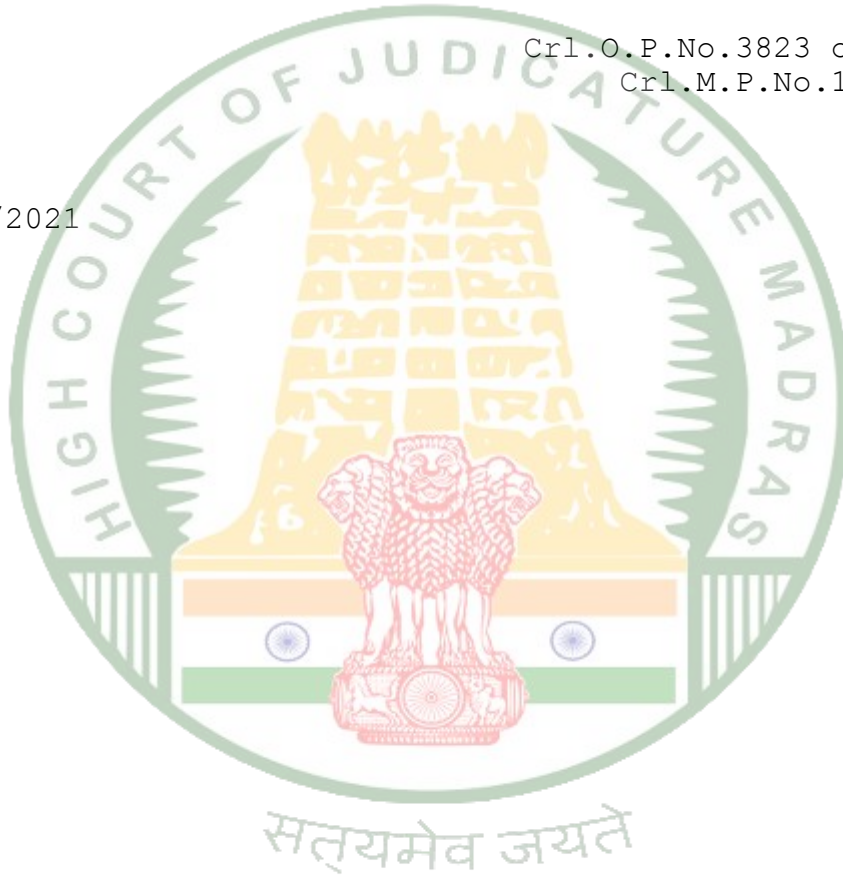
1. The VI Additional Sessions Judge,
Chennai.

2. The Public Prosecutor,
High Court, Madras.

+lcc to M/s.S.Ilangovan, Advocate Sr.23750

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