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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No.7490 of 2017 and
CrI.M.P.Nos.5411 and 5412 of 2017

1.L.Prabhu
2.G.Ashokan
3.A.G.Senaullah
4.M.S.Kumar
5.E.Livingston
6.K.Raj Thilak
7.S.Suresh
8.R.Ramesh
9.S.Prakash
10.S.Thanigaiselvam
11.J.Rajendraprasad

...Petitioners

Versus

Union of India
Rep.by Inspector of Police,
Railway Protection Force,
Chennai Central.

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in CRC.No.5333 of 2016, on the file of the learned Special Railway Metropolitan Magistrate Court, Moor Market Complex, Chennai.

For Petitioners	:	Mr.K.R.Ramesh Kumar
For Respondent	:	Mr.S.Vinoth Kumar Govt. Advocate (CrI.Side)

ORDER

This criminal original petition is filed to quash the proceedings initiated in CRC.No.5333 of 2016, on the file of the learned Special Railway Metropolitan Magistrate Court, Moor Market Complex, Chennai.

2. Though this application has been filed to quash the entire proceedings, the learned counsel appearing for the petitioners, pointed out that the offences charged against the



petitioners, have to be tried in a summons-case. But, the learned Special Railway Metropolitan Magistrate, Chennai, without following the procedure under Section 251 Cr.P.C., straight away examined P.W.1, which is against the statute. Only on 27.03.2017, the learned Magistrate has set right the same and treated it as a summons-case and the substance of the accusation was put to the accused, which was denied by the accused. However, prior to the substance of accusation put to the accused under Section 251 Cr.P.C., P.W.1 was examined on 17.10.2016, as a warrant case. Therefore, such a procedure adopted by the learned Magistrate is not valid in the eye of law.

3. Though this application has been filed on various other grounds, since, it is also stated that the entire occurrence is said to have taken place due to emotional issues, as their demand for water supply, was not met by the Railway authorities. Therefore, it is the contention of the learned counsel for the petitioners that the departmental proceedings have already been initiated against the petitioners and they have suffered a lot in that regard and further L.W.2 has already given a letter for withdrawal of case, which has not been considered by the respondent police, the petitioners have sought the indulgence of this Court to interfere in this matter to quash the proceedings.

4. At the outset, this Court is of the view that, as the materials collected by the prosecution indicate the prima facie allegation against the petitioners, the quashment of charge-sheet does not arise at all and this court will not interfere under Section 482 Cr.P.C. But, at the same time, it is the domain of the trial Court to consider the nature of the alleged offences, which was said to have been taken place emotionally, while demanding water supply. All such aspects are in the domain of the trial court to appreciate the evidence and take appropriate decision.

5. As far as the contention of the learned counsel that Section 251 Cr.P.C. procedure has not been followed, it is admitted by both the sides that it is a summons-case and procedure for trial in summons case has to be followed. Section 251 of the Cr.P.C. deals with trial of Summons-cases by Magistrates. The section makes it obligatory on the Magistrate to state the substance of accusation to the accused. If the accused pleads guilty, the same shall be recorded by the Magistrate as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon. If the Magistrate, does not convict the accused under Section 252 or 253 Cr.P.C., the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence, as per Section 254. Therefore, before taking any evidence on the side



of the prosecution, it is imperative on the Magistrate to put the substance of accusation to the accused.

6. In this case, the adjudication produced before this Court indicates that the accused appeared before the Magistrate and no substance of accusation was put to the accused. Without giving an opportunity for the accused to deny or to make a plea of guilty, the evidence has been recorded on 17.10.2016. The above mistake was pointed out to the Magistrate only on 27.03.2017. By this date, the learned Magistrate has converted the case as a summons trial and substance of accusation has been put to the accused. The accused have denied the accusation. Therefore, this Court is of the view that only thereafter, question arise whereas to examining the witnesses on the side of the prosecution, in this case, without following such a procedure, the learned Magistrate has examined P.W.1, which is against the statute.

7. In such view of the matter, the learned Magistrate is directed to examine P.W.1 afresh and complete the trial, as expeditiously as possible. By taking note of the nature of the accusation made against the petitioners, the personal appearance of the petitioners/accused before the learned Special Railway Metropolitan Magistrate Court, Moore Market Complex, Chennai, is dispensed with, except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., or on any other date as may be required by the trial Court. It is very well open to the petitioners/accused to raise, all their defence before the trial Court.

8. With the above direction, the criminal original petition is dismissed. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

psa/asr

To

1.The Special Railway Metropolitan Magistrate Court,
Moor Market Complex, Chennai.

2.The Inspector of Police,
Railway Protection Force,
Chennai Central.



3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.R.Ramesh Kumar, Advocate SR. No.68880

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JPL (CO)
PR (24/01/2022)