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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL.O.P. NO.13917 OF 2017

AND

CRL.M.P.NOS.8922 OF 2017 & 6248 OF 2018

1.K.Muthukumar

2.P.Munusamy

...Petitioners / Accused No.3 & 7

Versus

Amsavalli

...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records concerned in P.R.C. No.1 of 2013, pending on the file of the judicial Magistrate-I, Chengalpattu, and quash the same.

For Petitioners : Mr.T.R.Ravi

For Respondent : Mr.S.Xavier Felix

ORDER

This criminal original petition is filed to quash the proceedings in P.R.C. No.1 of 2013, filed against the accused for the offences under Sections 147, 148, 149, 448, 324, 326 and 307 of IPC, pending on the file of the judicial Magistrate-I, Chengalpattu.

2. The main contention of the learned counsel appearing for the petitioners is that the private complaint has been introduced later by improved version to implicate many number of accused, whereas the final report filed by the police is only against A1 and A2 implicating them for the offence under Sections 147, 148, 149, 448, 324, 326 and 307 of IPC. The crux of the allegations contains in complaint is, that on 26.02.2011 at 10.30 a.m, A1 and A2 abused the witness and also attacked with wooden log, as a result, she sustained fracture on the right shoulder thereby committed an offence under Sections 147, 148, 149, 448, 324, 326 and 307 of IPC.



3. Now, the private complaint has been filed to the effect that the accused, in order to evict the de facto complainant's sister from a piece of land about an extent of 3 cents, unlawfully assembled and caused violence on her. The main allegation in the private complaint is that the police has one sidedly conducted the investigation and omitted all the accused participated in the occurrence, and final report against A1 and A2 alone. The allegations in the private complaint is to the effect that there was an attempt on the life of the injured. Based on the statements recorded by the Magistrate in the form of sworn statement, the learned magistrate took cognizance of the private complaint for various offences referred above.

4. The main contention of the learned counsel appearing for the petitioners is that, as the police has already filed a final report, the private complaint has to be quashed and he has also placed much relevance on the judgment of this Court in Manikandan and others vs. Jayaraman reported in 1987 LW (Cr1) 385.

5. In the above case, this court has quashed the private complaint which was initiated after the delay of six (6) months, when the police has filed a final report. This Court has quashed the private complaint mainly on the ground that the petitioners who have filed private complaint were already accused under Section 302 Cr.P.C., and only in order to prevent the witness from tendering evidence as against them, the private complaint has been lodged. In such scenario, the court quashed the private complaint on the ground of abuse of process of law. Therefore, at the outset, the above judgment is not applicable to the present case. Every case has to be decided on its own facts and circumstances of the case. Merely, because the police has investigated and filed a final report, there is no bar under law, to initiate a private complaint.

6. It is relevant to note that, when the police report and a private complaint is filed, such situation will be taken care of by the courts by following the procedure contemplated under sub clause (2) of 210 Cr.P.C., Sub clause (2) of 210 Cr.P.C. makes it very clear that, if a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. Therefore, it is for the trial court to decide on the basis of the two cases in the same trail. In such view of the matter, I do not find any merits in this case to quash the private complaint.



7. Accordingly, the criminal original petition is dismissed. Consequently, the connected criminal miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

psa/asr

To

The Judicial Magistrate-I,
Chengalpattu.

+1cc to Mr.T.R.Ravi, Advocate SR.No.67433

+2ccs to M/s.S.Xavier Felix, Advocate SR.No.66529

Cr1.O.P.No.13917 of 2017

GSM(CO)
RVM(03/01/2022)