

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.19707 of 2017
and Crl.MP.Nos.11884 & 11885 of 2017

1. A.Senthil Kumar
2. S.Karthik

... Petitioners

Vs.

1. State rep. By the Inspector of Police,
District Crime Branch,
Erode District.
Crime No.16 of 2015

2. M.Arun

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in CC.No.38 of 2017 on the file of the learned Chief Judicial Magistrate, Erode and quash the same.

For Petitioners : Mr.M.Guruprasad
For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor for R1
Mr.N.Manokaran, for R2

ORDER

This petition has been filed to quash the proceedings in C.C.No.38 of 2017 on the file of the learned Chief Judicial Magistrate, Erode.

2. The case of the prosecution is that there was a previous enmity between the accused persons and the second respondent. In continuation of the same, on 21.01.2015 at about 10.00 AM, accused 1 to 3 (A1 to A3) are said to have barged into the property of the second respondent and intimidated the second respondent and the family members and also uttered words insulting the modesty of the women members of the family members. Based on the complaint given by the second respondent, First Information Report came to be registered in Crime No.16 of 2015.

3. On completion of the investigation, a final report came to be filed before the Court below and the Court below has taken

cognizance of the final report, for the offences under Section 452, 506(ii) and 509 of IPC.

4. The learned counsel for the petitioners submitted that the entire complaint is false. The incident is said to have taken place on 21.01.2015. But, however, on the said date, A1 was inside the prison in another case and he came out of the prison only on 10.03.2015. The learned counsel, in order to substantiate his submissions, brought to the notice of this Court the remand report filed in Crime No.02 of 2015, before the concerned Court and the order passed in the bail petition filed by the first petitioner in CMP No.353 of 2015. The learned counsel therefore submitted that the entire petition is an abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

5. Per contra, the learned counsel for the second respondent submitted that there are at least four witnesses who have spoken about the incident and the fact as to whether the incident really took place is a matter involving appreciation of evidence and this Court cannot undertake the said exercise while deciding this petition under Section 482 of Cr.P.C.

6. The learned counsel submitted that there are prima facie materials against the petitioners and the petitioners will have to necessarily prove their innocence only in the course of trial and there is no ground to interfere with the proceedings at this stage.

7. The learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that this Court cannot go into the factual dispute at this stage and the contention raised to the effect that no such incident took place can be established only at the time of trial and there are no grounds to interfere with the proceedings.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The Investigation Officer in the course of investigation has recorded the statements of LW1 to LW6. All these witnesses have spoken in one voice regarding the earlier dispute between the parties and the incident that is said to have taken place on 21.01.2015 at about 10.00 AM. The main ground that has been raised by the learned counsel for the petitioner is that this incident could not have taken place on 21.01.2015 as alleged by the second respondent and the other witnesses and that a false case has been foisted against the petitioners. Under normal circumstances, the contention raised by the petitioners will not

hold water since the happening or otherwise of the incident is a factual issue which can be established only in the course of trial. This Court will not undertake such a course exercising its jurisdiction under Section 482 of Cr,P.C.

10. In the present case, certain materials have been brought to the notice of this Court by the learned counsel for the petitioner. Again under normal circumstance, such defense materials cannot be gone into while considering a quash petition under section 482 of Cr.P.C. The only exception that has been laid down by the Hon'ble Supreme Court with regard to the reliance that could be placed on the defense materials is when such materials are unimpeachable in character and sterling in quality, over which there can be no dispute, such materials can be relied upon by this Court while exercising its jurisdiction under Section 482 of Cr.P.C.

11. The learned counsel for the petitioner has brought to the notice of this Court three vital materials to establish that the incident could not have taken place on 21.01.2015 as alleged by the second respondent. The first material upon which reliance is placed by the learned counsel for the petitioner is the remand report submitted before the learned chief Judicial Magistrate, Erode, in Crime No.02 of 2020, by the same respondent Police on 09.01.2015. This remand report was filed when the first petitioner was arrested and taken into custody and was produced before the concerned Court. The Chief Judicial Magistrate, Erode, had remanded the first petitioner to judicial custody till 23.01.2015, by an order dated 09.01.2015. This is the second material that has been relied upon by the learned counsel for the petitioner. The third material upon which reliance is placed was the order passed in CMP.No.353 of 2015, dated 10.03.2015, which was a statutory bail petition filed by the first petitioner, wherein the learned Chief Judicial Magistrate, Erode had enlarged the first petitioner on bail by an order dated 10.03.2015. It is clear from these materials that the first petitioner was inside the prison from 09.01.2015 to 10.03.2015. These materials are unimpeachable and sterling in quality and these are court documents upon which no doubt could be raised about the genuineness of the same.

12. If really, the first petitioner was in judicial custody from 09.01.2015 to 10.03.2015, there is no way the incident could have taken place on 21.01.2015, as was projected by the second respondent. In other words, the incident is inherently improbable which could not have taken place on 21.01.2015. Therefore, the contention raised by the learned counsel for the petitioners that the entire complaint was without any substance and it is a false complaint, has been sufficiently established. There is already a civil dispute pending between the parties and

the suits are also pending. Therefore, the complaint itself is attended with malafides. The malafide intention got exposed in view of the false complaint given by the second respondent. The continuation of the criminal Proceedings will clearly amount to abuse of process of court and the same requires the interference of this court.

13. In the result, the proceedings in C.C.No.38 of 2017, on the file of the learned Chief Judicial Magistrate, Erode, is quashed and this Criminal Original Petition is allowed accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Erode

2. The Inspector of Police,
District Crime Branch,
Erode District.

3.The Public Prosecutor
High Court of Madras
Chennai - 600 104.

+1cc to Mr.M.Guruprasad, Advocate SR.NO..7316

+1cc to Mr.N.Manokaran, Advocate SR.NO..7273

AKM/18.03.21/ 4P-6C/

सत्यमेव जयते

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