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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED DATED : 02.07.2021

PRONOUNCED DATED : 22.07.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)Nos.1560 & 8532 of 2021

and

Cr.MP(MD)Nos.4380, 4381 & 745 of 2021

Crl.O.P.(MD)No.1560 of 2021

Hendry Rajan

... Petitioner/accused No.3

Vs.

1.The Deputy Superintendent of Police,
Land Grabbing Special Wing,
Villupuram District.

2.State through
The Inspector of Police,
Ulunthurpet Police Station,
Villupuram District.
Crime No.280 of 2015.

... Respondents/Complainants

3.J.Saranraj

... Respondent/Defacto Complainant

4.K.Sathya

... Respondent/Injured

Prayer: Criminal Original Petition filed under Section 482 Criminal Procedure Code to call for the records in P.R.C.200/2020 on the file of Judicial Magistrate-I, Trichy and quash the charge sheet against this petitioner/Accused in P.R.C.No.200/2020 on the file of Judicial Magistrate-I, Trichy.

For Petitioner	:	Mr.Ka.Ramakrishnan
For R1 & R2	:	Mr.R.M.Anbunithi, Additional Public Prosecutor
For R3 & R4	:	Mr.P.Subbaraj

Crl.O.P.(MD)No.8532 of 2021

A.Ibrahim

... Petitioner/accused No.5

Vs.

1.The Deputy Superintendent of Police,
Land Grabbing Special Wing,
Villupuram District.



2.State through

The Inspector of Police,
Ulunthurpet Police Station,
Villupuram District.
Crime No.280 of 2015.

... 1 & 2 Respondents/Complainants

3.J.Saranraj

... 3rd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings/Charge Sheet in S.C.No.46 of 2021 on the file of the Principal District and Sessions Court, Trichy and quash the same as far as the petitioner is concerned.

For Petitioner	:	Mr.B.Janath Ahmed @ Janarthkumar
For R1 & R2	:	Mr.R.M.Anbunithi, Additional Public Prosecutor
For R3	:	Mr.P.Subbaraj

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in P.R.C.No.200/2020 on the file of the Judicial Magistrate No.I, Trichy and S.C.No.46 of 2021, on the file of the Principal District and Sessions Court, Trichy.

2. Since common question of law and facts arises in both the petitions, they were heard together and common order is passed.

3 The case of the prosecution in nutshell:-

(i) As per the case in Crime No.73 of 2015 for the offences punishable under Sections 294 (b), 355 and 506 (ii) IPC, the witnesses namely, Saranraj and Sathya were arrested on 30.06.2015. For the purpose of escorting them to the Court and jail, the accused persons in the present case namely, Henry Raj (3rd Accused), Ibrahim (5th Accused), Suseenthiran (6th Accused) were appointed and they took the witnesses/injured persons to the Government Hospital for Medical Checkup at about 08.55 p.m. After Medical Checkup, they have produced them before the Judicial Magistrate-I, Ulundurpet and he has ordered to remand the injured persons into judicial custody. But, instead of taking them to the Sub-Jail, Ulundurpet, they took them to Ulundurpet Police Station and produced them before the first accused, namely, Palani, Sub Inspector of Police, Ulundurpet, where the injured persons were detained and confined illegally. The first accused assaulted the above said Saranraj by abusing him in filthy language and caused serious grievous injuries on his left shoulder and right thigh region. He also assaulted the injured Sathya with latthi on his shoulder and right thigh region and back side and apart from that, assaulted him on the right wrist etc., region. He



also criminally intimidated them and made an attempt to murder the injured Saranraj by hitting him in head region with lathi. So, during the course of assault, the accused Nos. 2 to 6 were also abetting and aided the assault made by the first accused upon the witnesses/ injured persons.

(ii) Based upon the complaint given by the defacto complainant, the Deputy Superintendent of Police, Land Grabbing Special Wing, Villupuram District, namely, the first respondent herein, was appointed as the Investigation Officer by the Superintendent of Police, Villupuram District and he took the investigation and filed the final report as mentioned above.

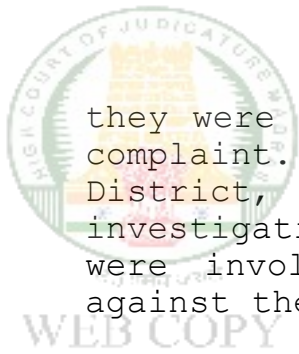
(iii) Now, challenging the above said final report, the third accused namely, Hendry Rajan filed Crl.O.P.(MD)No.1560 of 2021 and the accused No.5 filed Crl.O.P.(MD)No.8532 of 2021 mainly on the ground that they are not involved in the said occurrence and they did not escort the injured persons either to the hospital or to the residence of Judicial Magistrate-I, Ulundurpet or to the Sub-Jail, Ulundurpet after remand. They will also say that they were not present in the place of occurrence, where the alleged assault took place and they have not aided and abetted the commission of the assault. This is the simple ground, on which, both the petitions have been filed.

4. Heard both sides.

5. The history of the case required to be briefly stated, is as follows:-

The injured No.1 Saranraj was an Advocate and is practicing in Ulundurpet. On 30.06.2015, the second injured person, namely, Sathya went to Ulundurpet Tamil Nadu Hotel. At that time, Sathya was assaulted by three unknown persons, due to previous enmity. So, he took Sathya to the Police Station, Ulundurpet, for the purpose of giving a complaint. At that time, the counter party appears to have given a complaint against these two injured persons. On the basis of the complaint given by the counter party, a case in Crime No.273 of 2015 for the offences punishable under Sections 294 (b), 355 and 506 (ii) IPC was registered. So, the Sub Inspector of Police informed them that they are going to arrest them. When the same was questioned by the injured Saranraj, he received the complaint from Sathya and registered a case against the above said three persons, namely, Thenral Balu, Velu and Press Balu in Crime No. 274 of 2015 for the offences punishable under Sections 294(b), 323, 506 (ii) IPC

6. After arrest, the second accused namely, Balasingam and the sixth accused, namely, Suseenthiran escorted them to the Ulundurpet Government Hospital for Medical Checkup. After the checkup was over, they were produced before the Judicial Magistrate-I, Ulundurpet and remanded to judicial custody by him. Instead of taking them to the Sub-Jail, Ulundurpet, they were taken to the Ulundurpet Police Station, where the incident occurred as narrated above in the final report. ~~they were taken to the Sub-Jail, Ulundurpet, where~~



they were detained. After that, the defacto complainant preferred a complaint. Upon which, the Superintendent of Police, Villupuram District, appointed the first respondent herein to conduct investigation and on that basis, he found that the accused persons were involved in the said occurrence and filed a final report against them. This is the history of the case.

7. Now, the question which arises for consideration is **whether any materials have been collected or available on record to show the involvement of the petitioners in the occurrence.**

8. As mentioned earlier, the specific case of the prosecution is that the petitioners/escort police took the injured persons to the Government hospital for medical examination and later, to the residence of the Judicial Magistrate-I, Ulundurpet. Thereafter, instead of taking them to the Ulundurpet Sub-Jail, these persons took them to the Ulundurpet Police Station, for the purpose of making assault and during the assault, they were abetted and aided.

9. The learned counsel appearing for both the petitioners would submit that no materials available on record are connected during the course of investigation to show that these two persons were appointed as escort. Straightaway, the learned counsel for the petitioners took this Court to the copy of the passport, which has been given to the escort party as well as the remand warrant. The clean copy is in page nos. 5 & 6 of the typed set of papers, where it will be found that from the time of remand, one Ramachandran, who is the fourth accused herein and one Suseenthiran, who is the sixth accused herein, signed as escort party, who received the remand order as well as the accused persons for the purpose of lodging them in Prison. So, it would clearly disclose the fact that only the above said two escort party took the injured persons from the residence of the Judicial Magistrate No-I, Ulundurpet to the Police Station, Ulundurpet, where the first accused was waiting for assault to be made upon the injured persons.

10. They would also rely upon the complaint given by the defacto complainant about non involvement of the persons. In the complaint, he has stated that two accused namely, Balasingam and Sasidharan took them to the Government Hospital for Medical Examination. Then, they took them to the Police Station instead of taking straight to the Prison. He has also further stated that when assault was made by the first accused, the second accused, namely, Balasingam and the Special Sub Inspector of Police, Hendryraj, Special Sub Inspector of Police, Shanmugaraj and all other police constables also witnessed the occurrence. So, nowhere in the complaint, it has been specifically stated that these two persons escorted them during the relevant time and took them to the Police Station, for the purpose of committing assault and so, abetting and aiding at this stage, may not be attracted against these



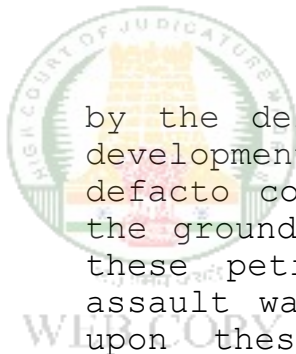
petitioners.

11.The third ground, on which, the petitioners' involvement is disputed. The departmental action has been initiated against the petitioners, mainly on the above said allegation that has been made in the final report and during the course of investigation in the above said case. The charge against the petitioners is that after remand, they took the injured persons to the Police Station at 10.00 p.m, for the purpose taking food and they aided and colluded with the first accused and caused assault. They also did not take any preventive measures to save the injured from assault in their custody and in the course of enquiry, it has been found that the petitioners did not escort the injured persons during the relevant time.

12. For that purpose, Enquiry Officer relied upon the remand report, dated 01.07.2015. It has been found that these petitioners also did not escort the injured persons before or after the remand by the learned Judicial Magistrate. So, on that ground, departmental action was dropped by the Additional Superintendent of Police, PEW of Villupuram District, against the petitioners on 06.02.2019. So, it is also found that only after the above said assault, on the basis of the oral instruction given by the first accused, these petitioners also accompanied the other escort party in the Jeep for the purpose of taking them to the Prison. So, on that ground, they were exonerated. So, from the preliminary enquiry, it is seen that even though these two persons were not nominated for the purpose of escorting the injured persons either to medical examination or for remand purpose, it is seen that they accompanied the escort party, while taking them to Prison, after the incident was over. So, it is seen that these two petitioners involvement is not at all established, during the course of departmental enquiry.

13. Now, going through the materials available on record in this case, as mentioned earlier, in the complaint, no allegations were mentioned by the defacto complainant against these petitioners. But, only during the course of further statement, they implicated these two persons in the statement and that too, it has been stated that they aided and abetted.

14. For that purpose, the learned counsel for the petitioner would rely upon the enquiry report by state Human Rights Commission, wherein, the defacto complainant has implicated only the first and second accused, namely, Palani and Balasingam. Nowhere, it has been made an allegation to the effect that these petitioners were also involved in the occurrence. The recommendation of the commission, dated 19.12.2019, is much after the findings of the final report, in this matter. Even before the Doctor, who examined the defacto complainant, on 01.07.2015, he stated that he was assaulted by one known person with wooden log and motorcycle cable at the Police Station. Nowhere, the involvement of these petitioners is mentioned



by the defacto complainant. So, it is seen that quite contra or development has been made during the further statement by the defacto complainant as well as the above said Sathya, probably on the ground that due to the oral instructions of the first accused, these petitioners also accompanied the escort party, after the assault was over. So, this will not create any criminal liability, upon these petitioners for roping in them for the offences punishable under Sections 143, 166, 342, 324, 506 (ii) and 307 IPC r/w Section 114 and Section 107 defines 'abetment of a thing' in the following words:-

"107.Abetment of a thing - A person abets the doing of a thing, who

First - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thin.

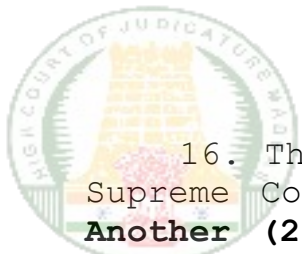
Explanation 1 - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily caused or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

15. The petitioner would rely upon the judgment of this Court reported in **Magesh Vs. State of Tamil Nadu 2021 (1) CTC 734** which deals about the point of vicarious liability. But, however, from the narration and discussion of the facts, it would clearly show that the petitioners did not take the injured persons to the Police Station instead of taking them to the Prison. There is no conspiracy between them for committing crime. So, Section 34 IPC will not be attracted to the facts of the case.



16. The petitioners would rely upon the judgment of the Hon'ble Supreme Court reported in **Subrata Das Vs. State of Jharkhand and Another (2011) 2 MLJ (Crl) 396 (SC)** for the purpose of the above said point, wherein, it has been held that for the purpose of attracting the offence under Section 34 IPC, there must be clear materials available on record to show that there was meeting of mind, on the side of the accused Nos.1, 2 and these petitioners either before commission of offence or after commission of offence for sharing the intention under Section 34 IPC.

17. But, however, the learned counsel appearing for the defacto complainant would submit that enough materials have been collected. Now, *prima facie* case has been made out, during the course of investigation and more particularly, by the observations of this Court, in Crl.OP.No.8363 of 2017, which was filed by the first accused, for the purpose of arguments that *prima facie* materials are available.

18. But, as mentioned earlier, the whole allegation is only against the first and second accused. But, these petitioners are no way involved in the occurrence. After assault, on the oral instruction of the first accused, they escorted the injured persons to Prison, will not fasten any criminal liability upon these petitioners.

19. In the light of the above discussion, no *prima facie* materials are available against these petitioners for roping them in the alleged offence. So, this is the clear abuse of process of law and both the petitions are liable to be allowed.

20. In the result, these Criminal Original Petitions are allowed. Proceedings in P.R.C.No.200/2020 on the file of the Judicial Magistrate No.I, Trichy and S.C.No.46 of 2021, on the file of the Principal District and Sessions Court, Trichy, are quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar (CS)

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WEB COPY

To

- 1.The Deputy Superintendent of Police,
Land Grabbing Special Wing,
Villupuram District.
- 2.The Inspector of Police,
Ulunthurpet Police Station,
Villupuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

**Crl.O.P. (MD)Nos.1560 & 8532 of 2021
and
Cr.MP(MD)Nos.4380, 4381 & 745 of 2021**

22.07.2021

ES (CO)

LR (02.08.2021) 8P 4C