



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 16.08.2021

Pronounced on : 04.10.2021

CORAM:

THE HONOURABLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD) No.8438 of 2021

and Crl.M.P(MD)Nos.4334,4335 of 2021

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P.Periyakaruppan @ Deepan Raja ... Petitioner/Accused No.2

Vs.

1.The State Through
The Inspector of Police,
Oomachikulam Police Station,
Madurai District.
(Crime No.114 of 2019)

... Respondent/De Jure Complainant

2.P.Periyakaruppan

... Respondent/De Facto
Complainant

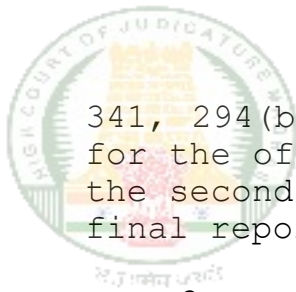
PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the entire records connected with the case in P.R.C.No.56 of 2021 pending on the file of the Learned Judicial Magistrate No.V, Madurai and quash the same as illegal.

For Petitioner	:	Mr.S.Malaikani
For R1	:	Mr.K.Sanjai Gandhi Government Advocate(Crl side)
For R2	:	Mr.S.Ramasamy

O R D E R

This petition is filed seeking quashment of charge sheet in P.R.C.No.56 of 2021 pending on the file of the learned Judicial Magistrate No.V, Madurai.

2. The case of the prosecution in brief: On 10.07.2021 at about 8.30 a.m when the defacto complainant was standing in front of his house, the first accused namely Pethumaharaja and his son namely, Dheepan abused him in filthy language and assaulted him with hands and the first accused stabbed the defacto complainant on the right side of the chest and also assaulted him with the knife on the hands. When the neighbours in that area gathered, both the accused fled away from the place of occurrence. Based upon the complaint given by the second respondent, the case in Crime No.114 of 2021 was registered for the offences under Sections 341, 294(b), 323, 307, 506(ii) IPC. After collecting the materials and recording the statement of witnesses, final report has been filed, which was taken P.R.C.No.56 of 2021 pending on the file of the learned Judicial Magistrate No.V, Madurai for the offences punishable under Sections



341, 294(b), 323, 307 and 506(ii) IPC against the first accused and for the offences under Sections 341, 294(b), 323 and 506(ii) against the second petitioner, who is the petitioner herein. Challenging the final report, this petition came to be filed.

3. Heard both sides.

4. The first accused namely, Pethumaharaja has reported to be dead during the pendency of the investigation. But however, without noticing the same, final report also came to be filed against him. The ground on which this petition is filed is that in the First Information Report, presence of the petitioner has not been mentioned by the defacto complainant. The contents of the First Information Report runs like thus: There is a land dispute pending between the Pethumaharaja and the defacto complainant over which the Pethumaharaja gave a petition before the Tahsildar and that was rejected as false and because of that there was enmity between Pethumaharaja and his son Dheepan and Thirumalai. Thirumalai is working as the Sub Inspector of Police in Virudhunagar. Thirumalai was also instigating Pethumaharaja stating that the defacto complainant must be killed, so that property can be taken by them. In pursuance of the above said instigation, on 10.07.2021 at about 8.30 a.m, when he was standing in front of his house the accused Pethumaharaja and his son Dheepan with some unidentifiable persons waylaid him and assaulted and abused in filthy language. At the instigation of Pethumaharaja one person in the group assaulted him with knife and Pethumaharaja and Dheepan and other assaulted him with hands. He assaulted him with his hands. He tried to ward off the assault made by the person with knife. When the neighbours gathered there all the accused fled away from the place of occurrence.

5. A reading of the complaint shows that there was land dispute between the defacto complainant and the accused persons herein. The learned counsel for the petitioner would submit that on the face of the First Information Report, the presence of the petitioner has not been stated. So according to him, only unidentifiable person assaulted him with knife whereas Pethumaharaja and one Dheepan alleged to have assaulted him with hands. So according to him, the ingredients of offence under Section 307 IPC is not attracted. It is not the case of the petitioner that his father got another son by name Dheepan. It appears that the petitioner's name has been wrongly mentioned as Dheepan in the First Information Report. During the course of investigation, it was found that his correct name is Periyakaruppan. So mistake that has been committed by the defacto complainant at the time of registering the First Information Report cannot be taken advantage by the petitioner. The argument that only unidentifiable person assaulted him with knife and this petitioner is no way involved cannot be taken into account at this stage. No doubt Section 307 IPC may not be attracted against the petitioner but there is specific allegation to the effect that he also assaulted the defacto complainant with hands. So what is correct



provision of the Indian Penal Code which attracts to the offence committed by the petitioner can be matter for consideration at the time of framing the charge. Absolutely, I find no merit in this petition. The petitioner can very well make his defences that are available at the time of framing of charges.

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6. No doubt, during the course of investigation, the defacto complainant has changed his version to the effect that only Pethumaharaja assaulted him with knife but whereas in the complaint he has stated that as I mentioned earlier one unidentifiable person assaulted him with knife. Now Pethumaharaja is no more, the charge against him is also abated. So I am of the considered view that no strong case is made out by the petitioner to quash the final report against him as I mentioned earlier he has to make his defences at the time of framing of charges.

7. In the result, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

CM

To,

1.The Judicial Magistrate V, Madurai.

2.The State Through
The Inspector of Police,
Oomachikulam Police Station,
Madurai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) No.8438 of 2021
and Crl.M.P (MD) Nos.4334,4335 of 2021
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NSN(CO)
KB(20.10.2021) 3P 4C