



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

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CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P.No.1983 of 2019
and
CrI.M.P.No.1257 & 1259 of 2019

1. Kangayan

2. Amuthambikay

3. Natarajan

... Petitioners / Accused

Vs.

The State Rep. By
The Inspector of Police,
Magudanchavadi Police Station,
Magudanchavadi,
Salem District.

... Respondent / Complainant

PRAYER: Criminal Original petition has been filed under Section 482 of Cr.P.C, prayed to call for the records in C.C.No.25 of 2017 (Old C.C.No.190 of 2009) on the file of the Chief Judicial Magistrate, Salem and quash the same.

For Petitioners : Mr.M.R.Thangavel

For Respondent : Mr.R.Vinoth Raja
Government Advocate (CrI. Side)

ORDER

This Criminal Original Petition has been filed to quash the case in C.C.No.25 of 2017 (Old C.C.No.190 of 2009) on the file of the Chief Judicial Magistrate, Salem.

2. The learned counsel for the Petitioners submits that as per the complaint preferred by the second Petitioner, who is the



wife of the first Petitioner, there had been property dispute amongst brothers of the first Petitioner and his brothers. The complaint given by the second Petitioner on 14.06.2009 shows that on 11.06.2009 when she went to sleep, somebody came to their house and knocked the door and on hearing the same, the first Petitioner went out. The persons standing before the doorsteps summoned the First Petitioner to the Police Station stating that they came from Police Station on the complaint given by one Seetha. For which, the first Petitioner replied that he will attend the Police Station on next day Morning, but they wanted him to accompany them. Therefore, he informed his wife about the same. The second Petitioner, who had gone to sleep, after taking medicine for her ear pain, slept. The next day Morning, she came to know that her husband was missing. Therefore, she preferred a complaint to the Respondent Police. Based on the complaint preferred by the second Petitioner, the Officer on duty, had registered a case of "Man Missing". On the basis of the FIR, the Police commenced their investigation and found that the First Petitioner had been hiding at Thiruvannamalai on the conspiracy entered into by the Petitioners herein/A-1 to A-3 in order to escape from the property dispute and to make an allegation against the first Petitioner's brother.

3. As per the submission of the learned counsel for the Petitioners, since the complaint of the second Petitioner did not mention any individual or suspecting any individual and she had just mentioned "Man Missing", the case was initially registered as "Man Missing". Thereafter, the Police had filed alteration report against the Petitioners under Sections 120(B), 182 and 211 of IPC. He further submitted that registration of case under Sections 182, 211 of IPC is barred under Section 195 of Cr.P.C., as it has to be registered only on the complaint preferred by an Officer in the Government invoking Sections 172 to 188 of IPC and therefore, he seeks to quash the charge sheet against the Petitioners herein.

4. The learned Government Advocate (Crl. Side) appearing on behalf of the Prosecution submitted that there was a ploy played by the Petitioners conspiring together to make out a case against the other brothers regarding the property dispute. Therefore, the charge sheet had been filed and the case is pending before the Court. Added to that, the Petitioners herein had given private complaint against the Police Officers and it was also numbered as C.C.No.24 of 2010 pending on the file of the learned Chief Judicial Magistrate, Salem, since it involves Human Rights violation by the Police Officer. Therefore, the learned Government Advocate (Crl. Side) objects to quash the same stating that the valuable defence of the Petitioners can be raised during trial and this Court in



exercise of its discretion under Section 482 of Cr.P.C., to quash the charge sheet cannot at all be accepted in the light of the ruling of the Hon'ble Supreme Court reported in 2020 (3) SCC 317 in the case of Rajeev Kourav Vs. Baisahab and others.

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5. In view of the above decision of the Hon'ble Supreme Court, the submission of the learned Government Advocate (Crl. Side) is accepted and the submission of the learned counsel for the Petitioners is rejected. However, the Petitioners are at liberty to agitate their valuable defence before the trial Court. Since the two cases arising out of the same dispute are pending before the trial Court, the learned Trial Judge is directed to proceed with the trial uninfluenced by any of the observations made in this Order.

This Criminal Original Petition stands disposed of on the above terms. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To.

1. The Chief Judicial Magistrate,
Salem.
2. The Inspector of Police,
Magudanchavadi Police Station,
Magudanchavadi, Salem District.
3. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.C.Anbu, Advocate, S.R.No.22607

Crl.O.P.No.1983 of 2019

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NSK 19/04/2022