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CrI.O.P.No.14465 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

CRL.O.P.No.14465 of 2022
and CrI.M.P.Nos.7960 and 7989 of 2022

1.S. Thirumalaivasan
2.K.Semmalai,
3.M.Ranganathan,
4.S.Udaiyasurian,
5.K.Subramani,
6.S.Pownambal,
7.S.Pandian,

... Petitioners

Vs.

1.State Rep by
Inspector of Police,
Nallanpillaipetral Police Station,
Villupuram District.
(in Crime No.314 of 2011)

2.Murugan,

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the Charge sheet filed by the 1st respondent police taken in S.C.No.500 of 2013 on the file of the Assistant Sessions Judge, Gingee, Villupuram District and quash the same as against the petitioners herein.



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For Petitioners : Mr.M.Prabhakar
For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition filed is under Section 482 of Cr.P.C. to call for the records pertaining to the final report filed by the 1st respondent police in Crime No.313 of 2011 for the offence u/s.147, 148, 294, 323, 324, 326, 506(ii) and 307 I.P.C. r/w Sec. 149 I.P.C. taken in S.C.No.500 of 2013 on the file of the Assistant Sessions Judge, Gingee, Villupuram District and quash the same as against the petitioners herein.

2.The main ground on which the final report is sought to be quashed is that the Investigation Officer has not followed the procedure contemplated under 588A of the Police Standing Order. Therefore, the petitioners seek to quash the entire final report. The learned counsel also relied upon the judgment of this Court in this regard in Crl.O.P.(MD)Nos.11152 and 13597 of 2017, wherein this Court had quashed one of the cases on the ground that the Police Standing Orders has not been strictly followed.



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3.Learned counsel for the petitioners vehemently submitted that as long as the procedure is not followed as per the Police Standing Order, two final reports cannot be filed.

4.At this point, it is relevant to extract 588A of Madras Police Standing Order ;

588A : In a complaint and counter complaint arising out of a same transaction, the Investigation Officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter-complainant, as the case may be, should be advised about the disposal by a notice in Form 96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by



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the Police.

5.On a perusal of the above Section, it makes it clear that if the police finds it difficult to find out who is the aggressor, then the police can file the final report in both the cases and there is no bar in filing two final reports on the basis of the counter case.

6.It is to be noted that in the judgment of the Hon'ble Apex Court reported *in 1990 (Supp) Supreme Court Cases 145 in Nathilal and others V. State of U.P. and another*, it is held that where the case and cross case, the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter, he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded



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in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other, which is being the settled position of law.

7. Therefore, merely because the Investigation Officer has chosen to file two final reports in two cases without finding who is the aggressor, that cannot be a ground to quash the proceedings. Even assuming that there is some procedural violation. After all, the procedures and the standing orders are only hand made instructions to aid the investigation properly.

8. Learned single Judge of this Court has not only considered 588A but also considering the nature of the transactions in the particular case has quashed it. Therefore, the same cannot be applied to the present case



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9.It is stated by the learned Additional Public Prosecutor that S.C.No.352 of 2013 is pending before the Sub-Court, Gingee. Accordingly, the Sub Court, Gingee is directed to transfer the case pending in S.C.No.352 of 2013 to the file of the learned Additional Sessions Judge, Gingee where the other case in S.C.No.500 of 2013 is pending to decide both the cases by the same Judge.

10.This petition accordingly stands dismissed as per the guidelines set out in the case of *Nathilal and others V. State of U.P. and another* by the Hon'ble Supreme Court. Consequently, the connected miscellaneous petitions are closed.

27.06.2022

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To

1.Inspector of Police,

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Villupuram District.

2.The Public Prosecutor,
High Court of Madras.
Chennai – 600 104.

N.SATHISH KUMAR, J.

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