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Crl.O.P.No.14656 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.14656 of 2021
and Crl.M.P.Nos.7971 & 7972 of 2021

1. Palanivel
2. Karpakam

... Petitioners

Vs.

1. The Inspector of Police,
Thittakudi Police Station,
Cuddalore District.

2. Suseela

. . . Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.142 of 2019 on the file of the learned Judicial Magistrate, Thittakudi, Cuddalore District and quash the same.

For Petitioners : M/s.V.Gunasekar

For Respondent R1 : Mr.A.Gopinath,
Government Advocate (Crl.Side)

For Respondent R2 : Mr.K.Kannan



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings pertaining to the charge sheet in C.C.No.142 of 2019 on the file of the learned Judicial Magistrate, Thittakudi, Cuddalore District.

2. The case of the prosecution is that there was a partition dispute in respect of ancestral property between the first petitioner and the defacto complainant's husband. Due to which, there arose a wordy quarrel between them, in which the petitioners have assaulted the defacto complainant and her husband. Hence, a complaint had been lodged by the second respondent and the case was registered in Cr.No.174 of 2019 for the offences under Section 294(b), 323 & 506(ii) IPC as against the petitioners.

3. It is seen that there is a counter complaint lodged by the 1st petitioner and the respondent police has also registered the FIR and completed the investigation in Cr.No.173 of 2019 for the offence under Sections 294(b), 323, 506(ii) IPC as against the second respondent and two others. After completion of the investigation, the first respondent



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police has also filed a final report and the same has been taken cognizance, pending for trial on the file of the learned Judicial Magistrate, Thittakudi.

4. It is to be noted that, for the very same occurrence, the first respondent police has also registered the FIR in Crime No.173 of 2019 and filed a final report and the same has also been taken cognizance on the file of the Judicial Magistrate, Thittakudi. This clearly shows that the respondent police, without following the Police Standing Order and the procedure under order 588-A, filed final report in regard to the same occurrence. According to the said order, the respondent police ought to have found out the real aggressor in the said occurrence and filed a final report, however, the respondent police has filed two final reports in cross cases.

5. It is relevant to rely upon the judgement of this Court in ***Vellapandy Thevar and Others Vs. State reported in 1984 L W (Crl) 257***, in which this Court has held that, in case of complaint and counter complaints, the procedure to be followed by the investigating officer is



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laid down in Order 588A of Madras Police Standing Order. The Investigation Officer has to enquire into both the complaints and find out who were the aggressors and file a charge sheet against them or refer both the cases if he finds them untrue. Where the Investigating Officer finds it difficult to choose either of the above courses, he should seek opinion of the Public Prosecutor and act accordingly. The result is there are now two prosecutions in respect of the same occurrence against the opposite parties.

6. Heard the submission made by the learned Government Advocate (Crl.Side) appearing for the first respondent as well as the learned counsel for the second respondent.

7. On a perusal of the materials available on records, it is evident that in complaint and counter complaints, the Investigation Officer shall follow the procedure laid down in the Police Standing Order 588-A to find out the real aggressor, whereas in the present case, the respondent police found both the parties as aggressors and filed two final reports. When that being so, the trial Court has to follow the procedure laid down



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by the Hon'ble Supreme Court in the case of ***Nathilal Vs. State of U.P.***

reported in (1990) Supp SCC 145 the relevant portion is extracted

hereunder:

“We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that 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 judgement. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgement in that case. The same learned Judge must thereafter dispose of the matters by two separate judgements. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded 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 judgements must be pronounced by the same learned Judge one after the other.”



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8. In view of the above, this Court is not inclined to entertain the quash petition to quash the entire proceedings. Therefore, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. However, the trial Court is directed to conduct simultaneous trial in both the cases, which have been taken cognizance in C.C.No.142 of 2019 and the other as emanated from Cr.No.173 of 2019 and judgements in respect of both the cases must be pronounced one after the another.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To

1. The learned Judicial Magistrate, Thittakudi
2. The Inspector of Police,



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Thittakudi Police Station,
Cuddalore District.

3. The Public Prosecutor,
Madras High Court.

G.K.ILANTHIRAIYAN, J.,

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