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Crl.O.P.No.47 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.47 of 2021

Gurunathan

... Petitioner

Vs.

1. State rep. by

Inspector of Police,
Irumbulikulurich Police Station,
Ariyalur District.
Crime No.82 of 2019.

2. Palanisamy

... Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to call the entire records pertaining to the S.T.C.No.475 of 2019 on the file of the learned Judicial Magistrate, Sendurai and quash the same in so far as the petitioner concerned.

For Petitioner	: Mr.B.Kumarasamy for M/s.R.Gokulakrishnan
For Respondents	: Mr.L.Baskaran, Government Advocate, for R2. R2 – No appearance.



ORDER

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It is the submission of the learned Counsel for the Petitioner that originally to wreak vengeance and motive, the second Respondent assaulted the Petitioner with flower tree wood when the Petitioner was grazing his goats on the lake side. Due to the assault, he was hospitalised and underwent treatment as inpatient at Government Hospital, Jeyamkondam. With regard to the said assault, the police received a private complaint from the Petitioner. Whiles, The second Respondent herein has also preferred complaint against the Petitioner and the same has been registered in Crime No.83 of 2019 before the Respondent police for the alleged offence punishable under sections 294(b), 324 of IPC.

2. Therefore, it is the submission of the learned Counsel for the Petitioner that when there are two complaints, the Investigation Officer has to conduct proper enquiry while dealing with the case and counter case as per the Police Standing Orders (PSO) No.588A. If he finds any complaint fictitious one, he can drop the investigation and will send a referred charge sheet to the Court of the learned Judicial Magistrate and close the same.



While doing so, the first Respondent has not issued any notice to the Petitioner before the referred Charge Sheet was filed, thus the Petitioner was not aware of the counter case given by him.

3. It is the submission of the learned Counsel for the Petitioner that the complaint given by the second Respondent is nothing but a frivolous one and the first Respondent, without following the procedures enumerated under section 588A of Police Stating Orders, while dealing with the case and counter, in order to give trouble to the Petitioner under the guise of investigation, has filed a final report in STC.No.475 of 2019 on the complaint of the second Respondent, which is against law and unsustainable. Aggrieved by the same, the Petitioner had moved this petition invoking Section 482 Cr.P.C ex-ordinary power of the High Court to call for the records in S.T.C.No.475 of 2019 on the file of the learned Judicial Magistrate No-5, Sendurai and quash the same.

4. The learned Counsel for the Petitioner had also invited the attention of this Court reported in **2003(4) CTC 280** and the relevant paragraph is extracted hereunder:-



“5. When the above matters were taken up for consideration, on a perusal of the materials placed on record and upon hearing the learned counsel for the petitioner, this Court is of the view that since being cases in counter, the investigating Officer should have taken up the investigation in both the cases together and the investigation is to be held side by side so as to find out the truth attached to both the complaints by rival parties, particularly in view of the fact that the parties are one and the same and the causes of action alleged are also either same or similar. But, strangely enough this Court is able to see that the investigating Officer has taken up the complaint given by the said Lalitha and independently investigated into the same and has decided to lay the charge sheet, resulting in the charge sheet filed in the case pending in C.C.No.3976 of 2002 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai 15, never bothered about the other complaint lodged and only on the direction issued by this Court, a slipshod and perfunctory investigation seems to have been conducted, without bringing in the true impact of both the cases preferred by rival parties, ultimately ending



up referring the same as mistake of fact, which is not the way in which such cases in counter are to be dealt with in law.”

5. The learned Government Advocate (CrI.Side) vehemently objected to the argument made by the learned Counsel for the Petitioner stating that as per Police Standing Orders (PSO).No.588A, Investigation Officer had to proceed with the enquiry and find out that the complaint given by the Petitioner is proved or not. Since the second Respondent herein viz., De-facto Complainant Palanisamy was injured, regarding the complaint given by the De-facto Complainant herein, the Respondent police, after calling for sufficient materials during the course of the investigation and on being satisfied with the same, had laid the final report before the Court of the learned Judicial Magistrate. The learned Judicial Magistrate after taking cognizance of the offences under Sections 294(b), 323 & 506 of I.P.C., numbered the case as S.T.C.No.475 of 2009. He would further submit that what all the facts now submitted by the learned Counsel for the Petitioner shall be very well agitated before the trial court during the course of trial. Therefore, on the above stated grounds, the Petitioner cannot seek to quash



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the final report laid before the Court of the learned Judicial Magistrate. It is his further submission that the PSO.No.588A is not mandatory and in order to drag on the proceedings, the Petitioner has filed the present petition to quash the final report. Therefore, he seeks dismissal of this petition.

6. On perusal of the typed set furnished along with the petition filed by the learned Counsel for the Petitioner, it is found that it is the case of the complaint and the counter complaint. On the basis of the complaint, the Investigation Officer proceeded with the investigation and also it is submitted that the referred charge sheet was filed by the Investigation Officer. Notice was served on the same to the Petitioner, however, the learned counsel for the Petitioner dispute the same as the notice was not served on the Petitioner as he was undergoing treatment at the relevant point of time. It is seen that the second Respondent had preferred a complaint only on 11.09.2019, whereas the complaint preferred by the Petitioner was registered on the same day.

7. In view of the above, this Criminal Original Petition is allowed and the charge sheet in S.T.C.No.475 of 2019 pending on the file of the learned



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Judicial Magistrate, Ariyalur is quashed.

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Index : Yes / No

Internet : Yes / No

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To

1. The Inspector of Police,
Irumbulikulurich Police Station,
Ariyalur District.
2. The learned Judicial Magistrate, Sendurai



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SATHI KUMAR SUKUMARA KURUP., J.

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