



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.1081 of 2021

and

Crl.M.P. (MD)No.499 of 2021

WEB COPY

C.M.Raghavan

... Petitioner/Sole Accused

Vs.

1.The State rep by

The Sub-Inspector of Police,
Thatchanallur Police Station,
Tirunelveli City.

...1st Respondent/Complainant

2. Muthukumar

...2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records connected with the case in C.C.No.653 of 2020 pending on the file of the learned Judicial Magistrate No.4, Tirunelveli and quash the same.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.E.Antony Sahaya Prabahar

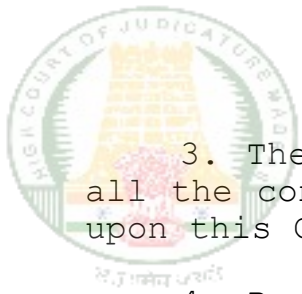
Additional Public Prosecutor(Crl.Side) for R.1

R2 : No Appearance

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent. Even though the defacto complainant has been served and his name is printed in the cause list, he has not chosen to enter appearance.

2. The case of the prosecution is that on 03.05.2020, the petitioner while taking his vehicle had injured the dog belonging to the defacto complainant. After the petitioner returned from his agricultural field, when the defacto complainant questioned the petitioner, the petitioner is said to have not only abused the defacto complainant but also slapped him on his face. In this regard, Crime No.252 of 2020 was registered on the file of Thachanallur Police Station. Investigation was undertaken and final report was filed. Cognizance of the offences under Sections 294(b) and 352 IPC was taken and the case is presently pending trial in C.C.No.653 of 2020 on the file of Judicial Magistrate No.4, Tirunelveli. To quash the same this Criminal Original Petition has been filed.



3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned proceedings.

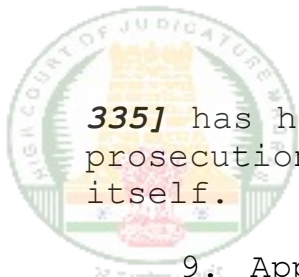
4. Per contra, the learned Government Advocate (Criminal Side) appearing for the first respondent submitted that no case for quashing has been made out as the petitioner has been specifically named by the defacto complainant and over tacts have also been attributed.

5. I carefully considered the rival contentions and went through the materials on record.

6. It is seen that the petitioner had filed Crime No.247 of 2020 on the file of the first respondent. The petitioner's case was that on 03.05.2020 at around 10.00 a.m, when the petitioner was about to start his car, he found a tiny dog underneath and that after removing it, he started the vehicle. But the said dog once again came near the vehicle and suffered a minor injury. Since the injury was only minor, the petitioner left the place for his agricultural field. When at around 01.30 p.m he returned, he was surrounded by the accused and he was badly beaten up. The said case was charge sheeted and taken on file in C.C.No.654 of 2020. The defacto complainant herein namely Muthu Kumar was mentioned as the second accused. Before the trial Court, the accused including the defacto complainant pleaded guilty and paid fine. The petitioner has enclosed the judgment in C.C.No.654 of 2020 dated 22.04.2021 passed by the Judicial Magistrate No.4, Tirunelveli.

7. The learned counsel appearing for the petitioners would state that the case on hand was given as a pure counter blast. Though even according to the defacto complainant, the occurrence had taken place on 03.05.2020, complaint was lodged before Thatchanallur Police Station only on 06.05.2020. The delay of three days has not at all been explained by the prosecution. According to the petitioner's counsel, the impugned prosecution was launched as pure counter blast to wreak vengeance of the petitioner for having lodged the earlier case.

8. I am satisfied that the contention of the petitioner's counsel has substance. The petitioner herein had moved the jurisdictional police first immediately after the occurrence. The case was not only registered as an FIR in Crime No.247 of 2020 but also charge sheeted. The accused including the defacto complainant herein pleaded guilty and paid fine. On the other hand, the case on hand was registered only three days after the occurrence took place. Therefore, I come to the conclusion that the present complaint was lodged as a counter blast. The Hon'ble Supreme Court in **State of Haryana and others Vs. Bhajan Lal and others [1992 (1) Supp (SCC)**



335] has held that if the Court can come to the conclusion that the prosecution is attended by mala fides, it can quash the prosecution itself.

9. Applying the aforesaid parameter, the impugned proceedings stand quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mga

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate No.4,
Tirunelveli.
- 2.The Sub-Inspector of Police,
Thatchanallur Police Station,
Tirunelveli City.

COPY TO:-

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

+1 CC to M/s.S.SARAVANAN, Advocate (SR-113[F] dated 04/01/2022)
Crl.O.P.(MD)No.1081 of 2021
and
Crl.M.P.(MD)No.499 of 2021
03.01.2022

SRK(CO)
GC(20.01.2022) 3P 5C