



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2022

Pronounced on : 10.02.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.1644 of 2022
and
Crl MP(MD)Nos.1189 & 1190 of 2022

1.Arulpandi

2.Aneeshpandi

... Petitioners / Accused 5 & 6

Vs.

1.State, rep.by its
Sub Inspector of Police,
Aviyur Police Station,
Virudhunagar District.
(Crime No.84 of 2019)

...1st respondent / complainant

2.Muthuraja

...2nd respondent/defacto complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.PC to call for the entire records pertaining to C.C.No.99 of 2021 on the file fo the Judicial Magistrate Court No.II, Virudhunagar and quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.T.Arul for Mr.S.Balamurugan

For Respondents : Mr.Thanga Aravindh,
Government Advocate (crl.side) for R1

ORDER

This criminal original petition has been filed to quash the proceedings in C.C No.99 of 2021 on the file of the Judicial Magistrate Court No.II, Virudhunagar insofar as the petitioners are concerned. Notice was ordered to the defacto complainant and he appeared in person before this Court. This Court indicated to the defacto complainant that since the second petitioner has been selected as Grade II Police Constable, he can show magnanimity and forgive him and agree for quashing the proceedings. The defacto complainant told the court that if the petitioners had approached him privately, he would have definitely agreed and that he would



Since the defacto complainant indicated a positive approach, this Court directed the petitioners to go to the house of the defacto complainant and seek his forgiveness without prejudice to their contention that they are utterly innocent. Accepting the suggestion given by the court, the petitioners had gone to the house of the defacto complainant in the presence of the village elders on 03.02.2022 at about 07.45 PM to offer their apologies. It appears that the defacto complainant has had a second thought and he was not responsive.

2.Setting out the sequence of events, the petitioners have filed an affidavit. The petitioners agree to terminate the prosecution initiated against the defacto complainant in STC No.436 of 2021 on the file of the Judicial Magistrate No.II, Virudhunagar and SC No.22 of 2021 on the file of the Assistant Sessions Court (Sub Court), Virudhunagar.

3.This undertaking is placed on record. Since the defacto complainant has had second thoughts, I called upon the learned counsel for the petitioners to argue the case on merits. He reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned proceedings. Per contra, the learned Government Advocate (crl.side) submitted that no case for quashing has been made out.

4.I carefully considered the rival contentions and went through the materials on record. The case of the defacto complainant is that on 30.04.2019 at about 20.15 hours, the occurrence in question took place. Based on the information of the defacto complainant, Crime No.84 of 2019 was registered on the file of the Aviyur Police Station, Virudhunagar District. The grand mother of the petitioners lodged a counter case and the same is presently being tried in STC No.436 of 2021 on the file of the Judicial Magistrate No.II, Virudhunagar. When a complaint and a counter complaint arising out of the same transaction have been made, the investigation officer should follow the procedure laid down in the Police Standing Orders (588A equal to PSO 566). The said provision reads as follows :

"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

<https://hcservices.ecourts.gov.in/hcservices/> before the specified Magistrate if he is



aggrieved by the disposal of the case by the police."

In this case, the investigation officer has not followed the said procedure. This is one major factor vitiating the prosecution. A reading of the statements recorded under Section 161 of Cr.Pc indicate that the primary allegations are directed only against A1 to A4. A4 to A6 are said to have been the members of the unlawful assembly. It is only A3 who is said to have caused simple injury. It is alleged that the accused used filthy language and abused the defacto complainant. But then, it did not take place in any public place. Therefore, Section 294 (b) of IPC is not attracted. The damage caused to the door of the defacto complainant has been valued at Rs.100/-. It is too trivial and Section 95 of IPC can very well be pressed into service. The defacto complainant did not feel any real threat. It was held in Nobel Mohandas v. State (1989 Cri.LJ 669) that the threat should be the real one and not just mere word and the person uttering it, must mean what he says and the person on whom threat is given should feel the threat actually. Such is not the case here. The defacto complainant did not at all feel the threat.

5.It is obvious that there is no love lost between the two families. While there is some justification in prosecuting A1 to A4, implicating the petitioners herein is patently malafide. A4 Gopurapandi is the father of the present petitioners. A7 Neelarani is their mother. Thus, the entire family has been roped in by sweeping general and omnibus allegations. No specific overt acts have been attributed to the petitioners herein. I therefore hold that the impugned prosecution deserves to be quashed insofar as the present petitioners are concerned. This criminal original petition is allowed. However, the other accused will have to necessarily undergo the trial. The learned counsel for the petitioners submitted that he has instructions from the other accused that they would face the trial on merits. Since an affidavit has been filed on instructions, the prosecution initiated against the defacto complainant in STC No.436 of 2021 on the file of the Judicial Magistrate No.II, Virudhunagar and SC No.22 of 2021 on the file of the Assistant Sessions Court (Sub Court), Virudhunagar would also stand quashed. Accordingly, the impugned prosecution in CC No.99 of 2021 on the file of the Judicial Magistrate No.II, Virudhunagar as far as the petitioners are concerned is also quashed. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

10/02/2022

Sub Assistant Registrar(CS)



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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 Sub Inspector of Police,
Aviyur Police Station, Virudhunagar District.
- 2.The Judicial Magistrate No.II, Virudhunagar.
- 3.The Assistant Sessions Judge (Sub Court), Virudhunagar.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.BALAMURUGAN, Advocate (SR-5297[F] dated 10/02/2022)
PK

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PK(CO)
TR(10.02.2022) 4P 6C