



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2022

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.2291 of 2021
and
Crl.O.P. (MD)No.770 of 2022
and
Crl.M.P. (MD)No.1161 of 2021
and
Crl.M.P. (MD)No.561 of 2022

Crl.O.P. (MD)No.2291 of 2021:-

Ponnarasan ... Petitioner/ Defacto Complainant
Vs.

- 1.The Director General of Police,
South Zone,
Madurai.
- 2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.
- 3.The Assistant Commissioner of Police,
Palayamkottai,
Tirunelveli City,
Tirunelveli District. ... Respondent/Investigation officer
- 4.The Deputy Superintendent of Police,
CBCID,
Tirunelveli. ... Respondent/ Respondent
- 5.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City. ... Respondent/ Complainant
(Crime No.1511 of 2020)

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to direct the 1st respondent to order change of investigation in the matter relating to the Crime No.1511 of 2020 on the file of the 5th respondent and entrust the same to the respondent No.4 for investigation of the case and file a charge sheet before the learned II Additional District and Sessions Judge (FAC), Tirunelveli within the time stipulated by this Court.



For Petitioner : Mr.Sricharan Rangarajan
For Mr.C.Mayilvahana Rajendran
For Respondents : Mr.M.Sakthi Kumar,
Govt. Advocate (Crl. Side).

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Crl.O.P. (MD)No.770 of 2022:-

1.A.Hari @ Hariharan
2.A.Manishankar
3.Ponnarasan
4.Muthuraj
5.Mariappan
6.A.Chellappa
7.R.A.Srinivasan
8.D.John Selvaraj ... Petitioners/ Accused Rank not Known

Vs.

1.State rep. by
The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City.
(Crime No.1510 of 2020) ... 1st Respondent/ complainant
2.Prammanayagam ... 2nd Respondent/ Defacto Complainant

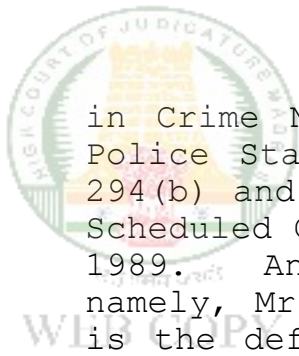
Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the FIR in Crime No.1510 of 2020 on the file of the 1st respondent police and quash the same as illegal in respect of the petitioners herein.

For Petitioners : Mr.Sricharan Rangarajan
For Mr.C.Mayilvahana Rajendran
For Respondents : Mr.M.Sakthi Kumar,
Govt. Advocate (Crl. Side) for R1.
Mr.S.Palani Velayutham for R2.

C O M M O N O R D E R

Heard the learned counsel on either side.

2.Hotel Madhura is one of the well known restaurants in Tirunelveli. Its employee, Mr.Ponnarasu is the defacto complainant
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in Crime No.1511 of 2020 registered on the file of Palayamkottai Police Station, Tirunelveli City, for the offences under Sections 294(b) and 352 of IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. An advocate by name Mr.Prammanayagam and his assistant namely, Mr.Maharajan are shown as accused therein. Mr.Prammanayagam is the defacto complainant in Crime No.1510 of 2020 registered on the file of the very same police station for the offences 147, 294 (b), 323, 342, 324, 427, 307, 355 and 506(ii) of IPC. There can be no dispute that they are cross-cases. They arise out of the same transaction which took place on 23.10.2020 at around 18.30 hours. To quash Crime No.1510 of 2020, Crl.O.P.(MD)No.770 of 2022 has been filed. Seeking transfer of investigation in Crime No.1511 of 2020, Crl.O.P.(MD)No.2291 of 2021 has been filed.

3.The petition for transfer of investigation was filed on 09.02.2021 and notice was ordered shortly thereafter. Whiles, the investigation officer filed the final report dated 26.03.2021 closing Crime No.1511 of 2020 as 'mistake of fact'. RCS notice has been issued to the defacto complainant also.

4.The learned counsel appearing for the petitioners in Crl.O.P.(MD)No.770 of 2022 submitted that Mr.Prammanayagam has filed scores of complaint against the hotel and there is no love lost between them. Some of the consumer complaints against Hotel Madhuram in which Mr.Prammanayagam is appearing as counsel for the complainant have been enclosed in the typed set of papers. The learned counsel would state that when the relationship between the hotel management and Mr.Prammanayagam was already considerable strain, only to create trouble, he had visited the hotel on the occurrence date and picked up quarrel. He also emphasized that the hotel employee Mr.Ponnarasu belonged to scheduled caste and that he was abused by the advocate and his assistant by referring to his community.

5.Eventhough I find the contentions advanced by the learned counsel to be highly persuasive, in view of the disposal that I propose to give to both the criminal original petitions, I refrain from considering the same. The learned counsel drew my attention to Police Standing Order 566, which reads as follows:-

"566. Investigation to be impartial -

(1) Investigating officers are warned against prematurely committing themselves to any view of the facts for, or against a person. The aim of an investigating officer should be to find out the truth, and, to achieve this purpose, it is necessary to preserve an open mind throughout the Inquiry.

(2) Charge-sheets in cases and counter cases.-In a complaint and counter complaint obviously arising out of



the same transaction, the investigating officer should enquire into both of them and adopt one or the other of the two courses viz., (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he should find them untrue. He should place before the court a definite case which he asks it to accept. The investigating officer in such cases should not accept into one complaint and examine only witnesses who support it and give no explanation at all for the injuries caused to the other side. It is his duty to exhibit the counter-complaint in the court and also to prove medical certificates of persons wounded on the opposite side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the court to enable it to arrive at the truth and a just decision.

(3) If the Investigating Officer finds that the choice of either course is difficult, viz., to charge one of the two cases or to throw out both, he should seek the opinion of the Public Prosecutor of the district 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 No. 90 and to seek remedy before the specified Magistrate, if he is aggrieved by the disposal of the case by the Police."

6. When before the investigation officer there is a case and counter case, investigation should proceed parallelly and final report should be filed at the same time. The investigation officer can file a positive final report in one case and refer the other case as 'mistake of fact'. But then, final report in both will have to be filed at the same time, so that aggrieved complainant can take recourse to the remedy available to him under law. But in this case, the investigation officer had shown utmost alacrity in filing the final report closing Crime No.1511 of 2020 as 'mistake of fact', even when the petition for transfer of investigation is pending. The final report in other case is yet to be filed. The filing of the final report in Crime No.1511 of 2020 is in clear violation of Police Standing Order directives and also the order passed by a learned Judge of this Court in Crl.O.P.(MD)No.560 of 2020. I have no hesitation to mould the relief in Crl.O.P.(MD)No.2291 of 2021 and set aside the final report filed in Crime No.1511 of 2020 as 'mistake of fact'.

7. The Commissioner of Police, Tirunelveli City is directed to appoint a new investigation officer, who will investigate both the FIRs and adhere to the procedure set out in the aforesaid Police Standing Order. All the contentions raised by the petitioners in



CrI.O.P.(MD)No.770 of 2022 are left open. CrI.O.P.(MD)No.770 of 2022 is disposed of accordingly and CrI.O.P.(MD)No.2291 of 2021 is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

IAS / PMU

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 Director General of Police,
South Zone, Madurai.
- 2.The Commissioner of Police,
Tirunelveli City, Tirunelveli.
- 3.The Assistant Commissioner of Police,
Palayamkottai, Tirunelveli City,
Tirunelveli District.
- 4.The Deputy Superintendent of Police,
CBCID, Tirunelveli.
- 5.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.MAYILVAHANARAJENDRAN, Advocate (SR-4086[F] dated 03/02/2022)

CrI.O.P(MD)No.2291 of 2021and
CrI.O.P.(MD)No.770 of 2022
03.02.2022

RD(19.04.2022) 5P 8C

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