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Crl.O.P.(MD)No.4651 of 2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.34651 of 2019

and

Crl.MP(MD)No.2857 of 2019

Mr.K.Ayyanar : Petitioner/Accused

Vs.

1.The State rep. By its
Sub Inspector of Police,
Tenkasi Police Station,
Tirunelveli District.
(Crime No.453 of 2018)

: R1/Complainant

2.Mr.Dirai Raj

: R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in connection with case in Crime No.130 of 2019 on the file of the Judicial Magistrate, Tenkasi and quash the same.

For Petitioner : Mr.N.Dilip Kumar

For 1st Respondent : Mr.P.Kottai Chamy
Government Advocate
(Criminal side)

For 2nd Respondent : No appearance



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This criminal original petition is filed seeking quashment of the case in STC No.139 of 2019 on the file of the Judicial Magistrate, Tenkasi.

2.The case of the prosecution is that on 29/08/2018 at about 9.00 pm, the de-facto complainant was standing near Harihara Vinayagar Kovil Street, Mottaiyan Kovil and talking with friends. At that time, the accused persons came to that place under impression that they have been talking about him, prevented the de-facto complainant, abused him in filthy language, caused assault with hands and torn the dress. He was also criminally intimidated. Based upon the complaint, the case was registered in Crime No.453 of 2018 for the offences under sections 341, 294(b), 323 and 506(i) IPC. After completing the formalities of investigation, it was taken cognizance in CC No.130 of 2019 on the file of the Judicial Magistrate, Tenkasi.

3.Seeking quashment of the same, this petition has been filed by the petitioner on the ground that a counter case was given by the petitioner and that was not properly investigated. But the complaint against the petitioner was



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proceeded and the complaint given by this petitioner was closed as 'Mistake of Fact', over which, he has also filed a protect petition. Apart from that, it is also stated that the complaint given by the petitioner was closed, on 01/09/2018. But the summon was issued to him to appear for enquiry, on 27/09/2018, 28/09/2018, 23/11/2018 and 24/11/2018. Only on 24/11/2018, it was informed that the complaint given by him was closed as 'Mistake of Fact'.

4.Heard both sides.

5.The only ground on which this petition came to be filed is that proper procedure was not followed by the respondent police while investigating the case in Crime Nos.452 and 453 of 2018. The Crime No.452 of 2018 was registered on the basis of the complaint given by the petitioner.

6.Reading of the FIR in Crime No.452 of 2018 shows that the occurrence said to have taken place, on 29/08/2018 at 8.30 pm, wherein, it has been stated that on the date of the occurrence, on 29/08/2018, he was scolded by the accused person and also criminally intimidated. He was assaulted, pushed down, caused damage to the vehicle, over



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which a case in Crime No.452 of 2018 for the offences under sections 147, 294(b), 323 and 506(ii) IPC was registered.

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7.It has been stated by the complainant to the effect that there was assault by the petitioner on the particular date. It is also seen that the petitioner is neighbour and the complaint that was given by the petitioner was closed as 'Mistake of Fact' on 10/10/2018. Now the protect petition has been filed by the petitioner before the concerned court.

9.But on perusal of the records shows that on 20/10/2018 in respect of the enquiry in Crime No.452 of 2018, the petitioner was summoned, on 24/11/2018. He was informed that his case was closed as 'Mistake of Fact, on 10/10/2018 itself. But why the summon was issued is not properly explained. This shows that proper investigation was not undertaken by the respondent in both the matters. The procedure to be adopted by the respondent, while investigating the case and counter as stated in ***Sulian @ Chinnathambi v. State, 2009 (1) MWN (Cr.) 423 (DB): 2009 (3) MLJ (Cr1.) 372.***



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10.It is also seen that on the basis of the protect petition filed by the petitioner, further investigation was ordered in Crime No.452 of 2018 and another investigating officer was appointed. Now further investigation is pending before the respondent police and it has not been completed so far.

11.In the light of the above said development and since counter case is also under investigation, it is not proper on the part of this court to quash the criminal proceedings. As ordered by the concerned Judicial Magistrate, the respondent has to conduct the further investigation and followed the procedure set out in PS0588A and the judgment of Chinnathu Vs State. If at all only limited relief can be granted to the petitioner.

12.So the trial process in this matter may be kept in abeyance till the investigation completed in Crime No.452 of 2018. As directed by the court, the investigation in Crime No.452 of 2018 must be undertaken within a period of three months from the date of receipt of a copy of this order.



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13.With the above said direction, this criminal original petition stands **disposed of**. Consequently connected Miscellaneous Petition is closed.

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Internet:Yes/No
Index:Yes/No
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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.



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G . ILANGO VAN , J . ,

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