



WEB COPY

Cr.L.O.P(MD)No.11588 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2022

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Cr.L.O.P(MD).No.11588 of 2022

and

Cr.L.M.P(MD).Nos.7304 and 7305 of 2022

1. Kamala Devi
2. Ganesan @ Ganesh Pandiyan
3. Lingaraj Pandiyan
4. Chelladurai Pandiyan

: Petitioners

Vs

1. State represented by
The Inspector of Police,
V.K. Pudur Police Station,
Tenkasi District.
(Crime No. 145 of 2015).

2. Subbaiah Pandian

: Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records in S.C.No.617 of 2017, on the file of the Subordinate Judges Court, Tenkasi and quash the same against the Petitioners.



For Petitioners : Mr.R.Anand
For M/s.M.Saravanan

For R1 : Mr.R.Meenakshisundram
Additional Public Prosecutor

For r2 : Mr.S.Palanivelayudham

ORDER

This criminal original petition has been filed seeking to quash the case in S.C.No.617 of 2017, on the file of the Subordinate Judges Court, Tenkasi, in so far as the Petitioners are concerned.

2.When the case came for hearing on the earlier hearing date, the learned counsel appearing for the Petitioner had already submitted his arguments. At that stage, this Court had sought for remarks from the Subordinate Judge, Tenkasi.

3.As per the submission of the learned Additional Public Prosecutor, the case in S.C.No.617 of 2017 is pending before the learned Assistant Sessions Judge, who had proceeded upto the examination of L.W.6 and the L.W.2 died. The case arose out of a civil dispute, the accused and the victims are brother



and sister. It is the submission of the learned counsel appearing for the Petitioner that the FIRs in Crime Nos.144 and 145 of 2015 are case and counter, in which, the Investigation Officer had not acted fairly. As per the submission of the learned counsel appearing for the Petitioner, the complaint given by the Petitioner was closed as mistake of fact and other case in Crime No.145 of 2015 was originally registered for the offence under Section 324 and 506(2) IPC, investigation had been completed and laid the final report for the offence under Sections 147, 322, 307, 506(2) and 325 IPC, whereas, the Petitioner herein also suffered injuries in the same clash. But, it was closed as mistake of fact. The Petitioner herein had filed a protest petition in CrI.M.P.No. 2054 of 2019, which is pending. Therefore, this Court had sought for remarks from the learned Judicial Magistrate, Alangulam. Accordingly, she had offered her remarks stating that the case is keeping pending from 2019 onwards.

4.The learned Additional Public Prosecutor submits that the only intention of the Petitioner is to prevent the sessions case from proceeding further with the trial, which cannot be allowed. It is the submission of the learned Additional Public Prosecutor that before the learned Assistant Sessions Judge, the prosecution had examined the witnesses up to P.W.2. Considering the origin of the case that it arose out of a clash during the measuring of the



property, for which, there was already an injunction was granted in favour of the defacto complainant. Therefore, the protest petition is still pending with the learned Judicial Magistrate.

5.It is the contention of the learned counsel appearing for the Petitioner herein that if the sessions case is allowed to continue, the Petitioner, who had also suffered pain and injuries will be convicted and the Petitioner's complaint was thrown out by the Investigation Officer will suffer injustice. Therefore, in the light of the judgment made by the Hon'ble Supreme Court in the case of ***Sudhir and others Vs. State of M.P*** reported in ***(2001) 2 SCC 688*** hearing the 307 IPC case was investigated by the Inspector of Police and the other case and the complaint preferred by the Petitioner was investigated by the Sub Inspector of Police.

6.As per the above ruling of the Hon'ble Supreme Court, the case and the case has to be investigated by the same officer and investigation shall be carried out to its logical conclusion in laying of two final reports. Here, is a case, where the complainant in the counter case had preferred a case and the same was registered in Crime No.145 of 2015, where the Investigation Officer had altered the offence. Even though the case was originally registered for the



offence under Section 323 and 324 IPC and it was converted as 307 IPC and in the investigation file had been handed over to the Inspector of Police, who had conducted the investigation early, completed the investigation and laid the final report in the year 2017 before the Court concerned, from where it was committed to the Court of Sessions in the year 2017 itself. Now, the case was proceeded with the examination of the Prosecution witnesses, whereas, the Petitioner herein, who also suffered injuries and was hospitalised, whose complaint was not taken to its logical conclusion, where it was handed over to the Sub Inspector of Police, who had unfairly treated the complaint and closed the complaint as mistake of fact. The learned counsel appearing for the Petitioner invited the attention of this court to the statement of the witnesses and the averments in the negative final report prepared by the Sub-Inspector of Police, who had already made up his mind that he has to close the investigation as mistake of fact, which cannot be accepted. Therefore, the Petitioner in Cr.L.M.P.No.2054 of 2019 had filed the protest petition. Also, it is the submission of the learned counsel appearing for the Petitioner that even though a final report was filed in the case, which was altered as Section 307 in the year 2017. The notice of the negative final report in the Petitioner's complaint was served on him belatedly. But, immediately, after receipt of notice, he has filed a protest petition in Cr.L.M.P.No.2054 of 2019.



WEB COPY

7.Considering the submissions made by the learned counsel appearing for the Petitioner and the learned Additional Public Prosecutor and the learned Counsel appearing for the second respondent, the learned Assistant Sessions Judge is directed not to proceed with the trial, till the disposal of the CrI.M.P.No.2054 of 2019. The learned District and Sessions Judge, Tirunelveli and the Chief Judicial Magistrate, Tirunelveli shall prevail upon the learned Judicial Magistrate, Alangulam to dispose of the CrI.M.P.No.2054 of 2019 as per law.

8.If the learned Judicial Magistrate, Alangulam accepts the negative final report, as it is filed before her by the Sub Inspector of Police, V.K.Pudur Police Station, in that circumstances, the Petitioner herein, who is also the Petitioner in CrI.M.P.No.2054 of 2019, has the right to file the private complaint, in which also, the Petitioner shall co-operate with the Court and see to it that it should be disposed of within a reasonable period of two to three months, in which case, the learned Principal Sessions Judge shall consider and pass appropriate orders withdrawing whatever the case pending before the learned Judicial Magistrate to the Court of the learned Assistant Sessions Judge to be tried along with the case in S.C.No.617 of 2017. The learned Assistant Sessions Judge, Tenkasi



shall wait for the other proceedings till then. Thereafter, the learned Session Judge shall pass appropriate orders. After completion of the same, the learned Judicial Magistrate shall send a copy of the proceedings to the learned Chief Judicial Magistrate as well as the learned Principal District and Sessions Judge, Tirunelveli, for appropriate orders, so that the case in S.C.No.617 of 2017, shall proceed. Till such time, it has to wait to proceed with the further with the trial. The prosecution can examine upto the Investigation Officer. The learned Assistant Sessions Judge can proceed upto 313 proceedings, but he/she has to wait till recalling of the witnesses as examined to the reported ruling ***Vinoth Kumar Vs. State of Punjab.***

9.The learned Assistant Sessions Judge, Tenkasi and the learned Principal District Judge shall follow the ruling of the Hon'ble Supreme Court in the case of ***Sudhir and others Vs. State of M.P*** reported in ***(2001) 2 SCC 688.***

10.The reported ruling of the Hon'ble Supreme Court in ***Vinoth Kumar Vs.State of Punjab*** is to be given an examination. In the facts and circumstances of the case, the Petitioner herein and in the CrI.M.P.No.2054 of 2017 is to be granted time to recall the witnesses in the case of S.C.No.617 of 2017, after proceedings are completed in CrI.M.P.No.2054 of 2017.



Cr.L.O.P(MD)No.11588 of 20

WEB COPY

11. With the above directions, this criminal original petition is disposed of. Consequently, connected miscellaneous petitions are closed.

15.11.2022

Index : Yes/No
Internet : Yes/No
lr

To
1. The Inspector of Police,
V.K. Pudur Police Station,
Tenkasi District

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



WEB COPY



CrI.O.P(MD)No.11588 of 20

SATHI KUMAR SUKUMARA KURUP, J.

lr

CrI.O.P(MD)No.11588 of 2022

15.11.2022