



CrI.O.P.(MD) No.11837 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CrI.O.P.(MD) No.11837 of 2022

and

CrI.M.P(MD)Nos.7477 & 7479 of 2022

G.Ganesan

...Petitioner/A3

Vs.

1.State Rep. by
The Inspector of Police,
Kadambur Police Station,
Kadambur,
Thoothukudi District.
(In Crime No.38 of 2021).

2.Sudalaimuthu

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in connection with in C.C.No.83 of 2022 on the file of the learned Judicial Magistrate No.II, Kovilpatti and quash the same in respect of the petitioner alone as illegal.



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For Petitioner : Mr.S.P.Vijay Nivas

For Respondents : Mr.E.Antony Sahaya Prabahar
Addl. Public Prosecutor
(for R1)

ORDER

This criminal original petition is filed to quash the proceedings in C.C.No.83 of 2022 on the file of the learned Judicial Magistrate No.II, Kovilpatti in respect of the petitioner alone as illegal.

2.Fact:- On 06.04.2021 at about 08.15 a.m, while the State Assembly Election Voting was going on, the second respondent/defacto complainant was proceedings to the polling booth to cast his vote. At that time, the petitioner/accused intercepted him and canvassed him to cast his vote in favour of their party, for which, he refused. Hence, the accused Nos.1 to 3 pushed the defacto complainant down and the accused Nos.4 to 6 attacked him with hands and abused with filthy language and threatened him with dire consequences. Hence, the complaint has been given and the same has been registered in Crime No. 38 of 2021 under Section 147, 341, 295(b), 323 and 506(ii) IPC. After



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investigation, the respondent police filed the final report and the same is taken on file as C.C.No.83 of 2022. To quash the said proceeding, the present petition is filed.

3. The learned counsel appearing for the petitioner/A3 submitted that the petitioner is an innocent person and he has not committed any offences as alleged by the prosecution and he has been falsely implicated in this case. He further submitted that the petitioner is an ex-service man and presently, he is working as Driver in the TNSTC. At the time of election, there was a dispute between two political parties, in which, the petitioner's own brother was attacked by the opposite party and hence, the petitioner's brother lodged a complaint in Crime No.37 of 2021. Hence, in order to give counter complaint, the defacto complainant has given the false complaint on the next day and no witnesses have been examined. Hence, the learned counsel prays for quashing the criminal proceedings.



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4.The learned Additional Public Prosecutor appearing for the first respondent police submitted that from the statement of the injured, there is a specific overt act against this petitioner. Further, the accused pushed down the defacto complainant and attacked with deadly weapons, hence, the trial has to be conducted and proceedings cannot be quashed. Hence, the learned Additional Public Prosecutor prays for dismissal of this petition.

5.I have considered the rival submission of the learned counsel appearing for the petitioner/A3 and the learned Additional Public Prosecutor appearing for the respondent police and perused the materials available on records.

6. On perusal of the records, it is seen that the petitioner is the third accused in C.C.No.83 of 2022 on the file of the Judicial Magistrate No.II, Kovilpatti. Originally, the case is registered against the petitioner along with six others for the offences under Sections 147, 341, 294(b), 323 and 506(2). After investigation, final report has been filed and the



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same was taken on file as C.C.No.83 of 2022. The learned counsel for the petitioner raised factual defence that there is no specific allegation attributed against this petitioner. But on the contrary, the defacto complainant and other witness, by name, Silambarasan were attributed specific allegation as against this petitioner. Hence, the factual defence has to be decided before the trial Court by considering the prosecution witnesses. It may not be decided by exercising under Section 482 Cr.P.C at this stage.

7. Further, on perusal of the charge sheet and the statement of witnesses shows that *prima facie* an offence and allegation made therein will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the commencement of trial and leading of evidence, to quash prosecution is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition.



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8. In the result, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petitions are also dismissed.

01.07.2022

Internet: Yes

Index: Yes/No

Speaking/Non speaking order
skn

To

1.The Judicial Magistrate No.II, Kovilpatti.

2.The Inspector of Police,
Kadambur Police Station,
Kadambur,
Thoothukudi District.

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



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V.SIVAGNANAM, J.

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