



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2022

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.14917 of 2021

and

Crl.M.P.(MD)Nos.7955 and 7956 of 2021

V.Rama Subbu

... Petitioner/Accused No.1

Vs.

1. The State rep. by

The Inspector of Police,

Tirunelveli Junction Police Station,

Tirunelveli City.

(Crime No.780 of 2017).

... Respondent/Complainant

2.P.Mohideen Abdul Wajith

... Respondent/

Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the case in C.C.No.175 of 2018 pending on the file of the learned Judicial Magistrate No.IV, Tirunelveli and quash the same as against the petitioner.

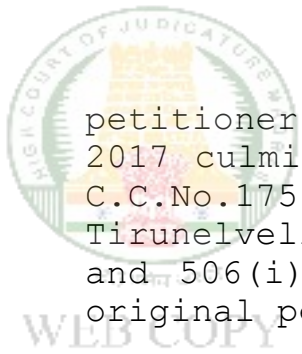
For Petitioner : Mr.R.Anand

For Respondents : Mr.B.Thanga Aravindh,
Govt. Advocate (Crl. Side) for R1.
Mr.K.Navaneetharaja for R2.

O R D E R

Heard the learned counsel for the petitioner, the learned Government Advocate (Crl. Side) for the first respondent and the learned counsel for the second respondent.

2.The petitioner is a practising lawyer. He is said to have accompanied his client to the office of the Assistant Commissioner of Police, Tirunelveli on 27.12.2017. It was a matrimonial complaint. It is stated that in the office of the Assistant Commissioner of Police, there had arisen a quarrel between the petitioner on the one hand and the second respondent on the other. At the instance of the second respondent, Crime No.780 of 2017 was registered for various offences. At the instance of the



petitioner, Crime No.781 of 2017 was registered. Crime No.780 of 2017 culminated in final report and the same was taken on file in C.C.No.175 of 2018, on the file of Judicial Magistrate No.IV, Tirunelveli. Cognizance of the offence under Section 294(b), 323 and 506(i) of IPC was taken. To quash the same, this criminal original petition has been filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned proceedings.

4.Per contra, the learned Government Advocate (Crl. Side) as well as the counsel for the second respondent/defacto complainant submitted that no case for quashing has been made out. The learned counsel for the defacto complainant submitted that specific overt act had been attributed to the petitioner and that therefore, there is no scope for quashing the impugned proceedings.

5.I carefully considered the rival contentions and went through the materials on record. It is beyond dispute that a case and a counter case was registered. However, the counter case registered at the instance of the petitioner was closed as 'mistake of fact'. The manner of investigating such cross cases has been set out in Police Standing Orders 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.It is firmly stated by the petitioner's counsel that the final report in the counter case closing the case as mistake of fact was filed much later. In fact the petitioner came to know about the same, when he filed a criminal original petition for transfer of investigation. Since the investigation officer did not follow the procedure, the impugned proceeding will have to be interfered with. Eventhough the defacto complainant would strongly claim that the occurrence took place in the presence of the Assistant Commissioner of Police himself, interestingly he has not been shown as a witness. The omission to show the Assistant Commissioner of Police as a witness goes to the root of the matter. The petitioner namely Mr.Rama Subbu is also present before this Court through video conferencing. Even though he has not been formally served with the copy of the final report and he has right to file a protest petition, he states that he will treat the matter as closed. Since the petitioner has decided to give a quietus to the issue and since the investigation in the present case suffers from a vital deficiency, I deem it fit and appropriate to quash the impugned proceedings. The impugned proceedings are quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

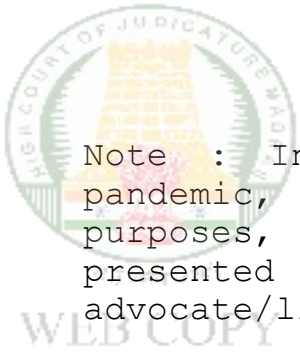
Sd/-

Deputy Registrar (Accounts)

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/ /2022

Sub Assistant Registrar (CS)



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 Judicial Magistrate No.IV,
Tirunelveli.
2. The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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