



CRL.O.P(MD)No.15555 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 29.08.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P(MD)No.15555 of 2022
and
Crl.M.P(MD)Nos.10214 and 10215 of 2022

Pitchai Kani

... Petitioner/ Accused No.3

Vs.

1.The State represented by
The Sub Inspector of Police,
Koompatty Police Station,
Virudhunagar District.
(In Crime No.91 of 2021)

... 1st Respondent/Complainant

2.Kaleeswaran

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.112 of 2022 on the file of the Judicial Magistrate Court No.I, Srivilliputtur, Virudhunagar District and quash the same as illegal.

For Petitioner : Mr.M.Jothi Basu

For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



CRL.O.P(MD)No.15555 of 2022

ORDER

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This petition is filed to quash the proceedings in C.C.No.112 of 2022 on the file of the learned Judicial Magistrate No.I, Srivilliputtur, Virudhunagar District.

2.The learned counsel appearing for the petitioner submitted that originally, the respondent police registered a case against the petitioner in Crime No.91 of 2021 for the offence under Section 506(i) of IPC only. Thereafter, they filed additional report and implicated the petitioner for the offences punishable under Section 323 of IPC. But there is no corresponding injury has been noted by the Doctor/PW8 in the Wound Certificate. Hence, the petitioner filed this petition to quash the proceedings.

3. The learned Additional Public Prosecutor appearing for the respondent police submitted that the second respondent/defacto complaint, in his statement and complaint, clearly stated that the petitioner/A3 and other accused persons assaulted the defacto complainant with hands.



CRL.O.P(MD)No.15555 of 2022

Hence, it has to be tried before the Court by examining the witnesses and before the commencement of trial, the proceedings cannot be quashed.

Hence, the learned Additional Public Prosecutor prays for dismissal of the petition.

4. I have considered the submission of the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police.

5. A perusal of records reveals that the petitioner is arrayed as an accused No.3 in C.C.No.112 of 2022 pending on the file of the learned Judicial Magistrate No.I, Srivilliputtur, Virudhunagar District. The petitioner has been prosecuted by the first respondent for the offence punishable under Sections 323 and 506(i) of IPC. Further, the defacto complainant in his complaint and statement specifically stated about the over tact attributed by the petitioner, which is disputed by the learned counsel for the petitioner stating that the allegation is a false one. This factual dispute has to be adjudicated by examining the prosecution witnesses. Therefore, before commencement of trial, the factual dispute



CRL.O.P(MD)No.15555 of 2022

whether the accused assaulted the injured or not, may not be adjudicated, while considering the proceedings for quashing in exercise of power under Section 482 of Cr.P.C. Further, it does not satisfy the parameter laid down by the Hon'ble Supreme Court in the case of ***Neeharika Infrastructure Pvt Ltd vs. State of Maharastra and Others*** reported in ***2021 SCC Online SC 315***.

6. 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.

7. At this juncture, the learned counsel for the petitioner submitted that the personal appearance of the petitioner may be dispensed with before the trial Court. Considering his request, the personal appearance of the petitioner before the trial Court is dispensed with on condition that



CRL.O.P(MD)No.15555 of 2022

the petitioner should be appear before the trial Court, whenever his present is required by the learned Judicial Magistrate.

8.Accordingly, this Criminal Original Petition stands dismissed.

Consequently connected miscellaneous petitions are closed.

29.08.2022

Internet:Yes./No

Index:Yes/no

vsd

To

- 1.The Judicial Magistrate Court No.I,
Srivilliputtur,
Virudhunagar District
- 2.The Sub Inspector of Police,
Koompatty Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL.O.P(MD)No.15555 of 2022

V.SIVAGNANAM, J.

vsd

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