



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.18787 of 2021

and

Crl.M.P(MD)Nos.10415 & 10416 of 2021

WEB COPY

S.Joseph Vathiyar

... Petitioner/Accused No.6

Vs.

1.The State represented by,
The Sub-Inspector of Police,
Ilayangudi Police Station.
Crime No.71 of 2019

... 1st Respondent/
Complainant

2.Innasiraja

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in C.C.No.11 of 2021 on the file of the District Munsif cum Judicial Magistrate Court, Ilayangudi and quash the framing of charges proceedings in C.C.No.11 of 2021.

For Petitioner : Mr.V.RG.Mohan

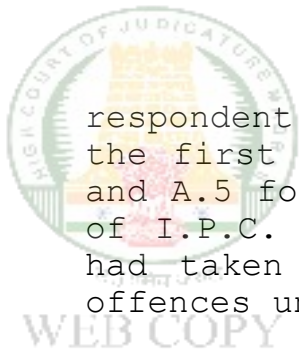
For R - 1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

For R - 2 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.11 of 2021 on the file of the District Munsif cum Judicial Magistrate Court, Ilayangudi, as against the petitioner.

2.The second respondent lodged a complaint alleging that the petitioner and five others on 02.03.2019 attacked him and also threatened him with dire consequences. Therefore, he sustained injuries and lodged the complaint. On receipt of the same, the first respondent registered a case in Crime No.71 of 2019 for the offences under Sections 147, 148, 294(b), 323, 324 and 506(ii) of I.P.C, in which the petitioner is arraigned as sixth accused. After completion of investigation, the first respondent filed a final report only as against A.1 to A.3 and A.5 deleting A.4 and A.6. The first



respondent filed alteration report thereby deleting A.4 and A.6 and the first respondent filed final report only as against A.1 to A.3 and A.5 for the offences under Sections 294(b), 323, 324 and 506(2) of I.P.C. On receipt of the same, the learned Judicial Magistrate had taken cognizance as against all the accused persons for the offences under Sections 294(b), 324 and 506(ii) of I.P.C.

3.Though the name of the second respondent has been printed in the cause-list, none appeared for the second respondent either in person or through any counsel.

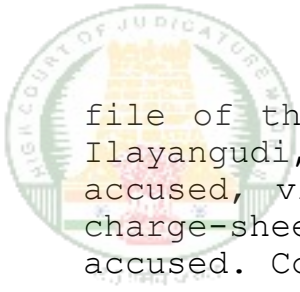
4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent and perused the entire materials available on record.

5.On a perusal of the statement recorded under Section 161 of Cr.P.C revealed that though the second respondent stated that at the time of occurrence, all six accused persons came and scolded him with filthy language, he categorically stated about the overt act only as against A.1 to A.3 and A.5. Other eye witnesses, namely, L.W.2 to L.W.4 also stated that only four persons came to the place of occurrence and attacked the second respondent. Nowhere stated about the presence of the petitioner and A.4 in the place of occurrence and there is absolutely no overt act as against the petitioner. However, mechanically, the learned District Munsif cum Judicial Magistrate, Ilayangudi, had taken cognizance as per the F.I.R registered in Crime No.71 of 2019.

6.Further, on a perusal of the deletion of the petitioner and A.4 report dated 03.03.2019 revealed that there is no evidence to show that the petitioner and A.4 were present in the place of occurrence and as such, the first respondent rightly deleted their names from the final report. In fact, the second respondent also did not file any protest petition as against the deletion report filed by the first respondent herein.

7.The learned Magistrate completely without application of mind mechanically had taken cognizance as against all the accused without any material to attract any of the offences as against the petitioner and A.4. Further, the learned Magistrate has power to reject the deletion report and no doubt the learned Magistrate can take cognizance as against the deleted accused, but the Magistrate without stating any reason to nullify the deletion report filed by the first respondent, without application of mind mechanically had taken cognizance as against the petitioner and A.4.

8.In view of the above, the cognizance taken as against the petitioner and the fourth accused, namely one Arokiyasamy, son of Innasi cannot be sustained. Accordingly, this Criminal Original



file of the learned District Munsif cum Judicial Magistrate Court, Ilayangudi, is quashed against the petitioner. Though the fourth accused, viz., Arokiyasamy, son of Innasi, failed to challenge the charge-sheet, the same benefit is also extended to the fourth accused. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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 District Munsif cum Judicial Magistrate Court,
Ilayangudi.
- 2.The Sub-Inspector of Police,
Ilayangudi Police Station.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Crl.O.P(MD)No.18787 of 2021
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MGJ(24.03.2022) 3P 4C