



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 11/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.19642 of 2018
and
Crl.MP(MD)No.8959 of 2018

1.Abraham Selvam
2.Vinoth
3.Karneesh

:Petitioners/A1 to A3

Vs.

1.The Sub Inspector of Police,
Vadasery Police Station,
Kanniyakumari District,
(Crime No.720 of 2017)

: R1/Complainant

2.Kumaresan

: R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.112 of 2018 pending on the file of the Judicial Magistrate No.II, Nagercoil and quash the same.

For Petitioners : Mr.K.P.Narayanakumar

For 1st Respondent : Mr.P.Kottai Chamy
Government Advocate
(Criminal side)

For 2nd Respondent : No appearance

ORDER

This petition has been filed seeking quashment of CC No.112 of 2018 pending on the file of the Judicial Magistrate No.II, Nagercoil.

2.The case of the prosecution in brief:-

On 09/12/2007 at about 7.00 pm, the de-facto complainant police team was on their petrol duty, finding that the accused person is wanted in connection with a case in Crime No.719 of 2017 for the offences under sections 394(b), 353 and 506(i) IPC, try to arrest him and also asked him to come to the police station for enquiry. But the first accused refused to come and he tried to start the two wheeler and at that time, the other accused persons abused the de-facto complainant in filthy language and preventing from discharging



his official duty. Based upon the complaint given by the de-fact complainant, a case in Crime No.720 of 2017 has been registered for the offences under section 294(b), 341, 353 and 506(i) IPC and after completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.112 of 2018 by the Judicial Magistrate No.II, Nagercoil.

3. Seeking quashment of the same, this petition has been filed.

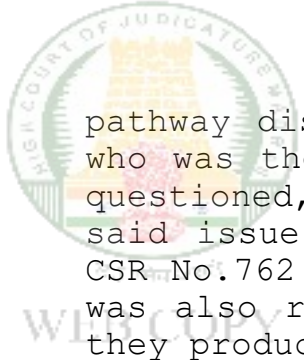
4. Heard both sides.

5. This petition has been filed solely on the ground that the earlier petition filed by the co-accused by name Rex Parimala, who was the 4th accused, proceedings have been quashed by this court in Crl.OP(MD)No.16530 of 2018 and the learned counsel appearing for the petitioners would submit that the petitioners are standing in the very same footing and so, they must also be discharged from the criminal prosecution. Only on that ground, interim stay was granted by this court, by order, dated 08/11/2018. But however, final report stated to be presented before the concerned court, on 17/06/2018 and subsequently, it was taken on file on 12/08/2018, noting that there was an order interim stay. So the learned counsel appearing for the petitioners was permitted to argue the matter on merits.

6. Now let us go back to the allegations. It is a specific case of the prosecution that when the police team about to direct the accused Abraham Selvam to attend the enquiry in connection with the case in Crime No.719 of 2017, he refused and the other co-accused also joined in that attempt of committing the offences. The above said 4th accused, as mentioned earlier, is also standing on the very same footing, that of A2 and A3. But the allegation against the the petitioners is entirely different. So in the facts and circumstances of the case, the police team intercepted A1 for the purpose of making the enquiry and in the above said crime, which was registered for the offences stated above. That case was also registered against A1 for having prevented the police officer while serving summons, since A1 stated to be connected with enquiry in CSR No.757 of 2017. So in that petition enquiry also, Rajappan Abraham Selvam, Vinoth and Karneesh were involved, who are the accused in this crime also. So again the date of occurrence is stated to be on 08/12/2017 and the present occurrence is stated to be taken on 19/12/2017 at about 7.00 pm. Since A1 has already accused in Crime No.719 of 2017, he is not entitled for consideration.

7. As mentioned earlier, the other accused are standing in the same footing with that of the 4th accused, against her, charge sheet has been quashed.

8. The learned counsel appearing for the petitioners would submit that the above said CSR has been registered with the assistance of the police officer and the police officers are standing biased in favour of the complainant. A detailed motivation has also been mentioned in the petition. According to him, it was a



pathway dispute. The pathway belonged to the Church, one Karneesh, who was the neighbor attempted to block the pathway. When that was questioned, dispute arose between them. Only in respect of above said issue, the complaint was given, which was also registered in CSR No.762 of 2017. Another counter complaint was also given, which was also registered in Crime No.754 of 2017. During the enquiry, they produced documents before the enquiry officer. But in spite of that, after receiving the false complaint, the two cases have been registered successively, as if the 1st petitioner refused to receive the summon and caused criminal intimidation etc. So according to him, it is purely a civil dispute, which arose between the above said Kannan and the member of the Church. This petitioners are not at all involved. It is the specific allegation to the effect that all of them colluded with the Kannan and foisted the false cases. These are all the factual issues, that can be gone into only at the time of trial. To ascertain the actual fact, all the petitioner as well the de-facto complainant were directed to be present before this court and they have also present and when enquiry is made, the 2nd respondent repeated the same allegation, whereas the petitioners submitted that only out of the above said enmity between the Kannan and members of the Church, such a false complaint has been given at the instance and to help the above said Kannan.

10. But whatever it may be, as mentioned above, these are all the factual issues, it cannot be gone into at this stage. The enquiry file with regard to CSR Nos. 752 and 726 of 2017 was rejected on the ground that they are relating to some other issues, which are not connected with this petition. So, I am not able to understand the position, the stand taken by the Public Information Officer, namely Additional Superintendent of Police. The information has been sought for only with regard to the issue, for which these petitioners are also stated to have been involved. But whether any appeal has been preferred by the petitioners against the above said order is not clear on record. So the petitioners can work out their remedy in the earlier proceedings, even they can take steps to send for the enquiry file. Such a right is always available to A1.

11. So, I am of the considered view that on the rule of parity, in respect of the petitioners 2 and 3, this petition can be allowed and in so far as the first accused is concerned, since he is involved in one previous case of similar in nature, he is not entitled for the the relief of quashment of the proceedings. So, he must undergo the trial process to its logical conclusion.

12. In the result, this criminal original petition is **allowed in respect of the petitioners 2 and 3 and** the impugned proceedings in CC No.112 of 2018 on the file of the Judicial Magistrate No.II, Nagercoil is quashed against A2 ad A3 alone. In so far as the **first petitioner/A1 is concerned, this criminal original petition is dismissed.** However, considering the limited scope available on file, the trial court is directed to expedite the trial process and complete the same within a period of five months from the date of



receipt of a copy of this order and report the same to the Registry. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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.II,
Nagercoil.
- 2.The Sub Inspector of Police,
Vadasery Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

copy to:

The section officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.K.P. NARAYANA KUMAR, Advocate (SR-18309[F] dated 12/04/2022)

**Cr1.OP(MD)No.19642 of 2018
11.04.2022**

SS/25.04.2022 : 4P/7C