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Crl.O.P.(MD)No. 19753 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22/06/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.19753 of 2018

and

Crl.MP(MD)No.9019 of 2018

1.Mr.Gokul

2.Mr.Balakrishnan

: Petitioner/Rank not
known

Vs.

1.The Sub Inspector of Police,
Suchindram Police Station,
Kanyakumari,
Kanyakumari District.
(Crime No.631 of 2014)

: R1/Complainant

2.Mr.Neelamohan

: R2/Informant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the Docket order passed by the learned Judicial Magistrate No.3, Nagercoil, dated 10/09/2018 in CC No.347 of 2016 and set aside the same.

For Petitioners : Mr.N.Dilipkumar

For Respondents : Mr.SS.Madhavan
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.T.Arul



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This criminal original petition is filed seeking in order to set aside the Docket order passed by the learned Judicial Magistrate No.3, Nagercoil, dated 10/09/2018, in CC No.347 of 2016.

2.The facts in brief:-

The 2nd respondent made a complaint stating that on 22/10/2014 at about 7.30 pm, when he was available in the house, the accused Dharmalingam, his son Gokul and his son-in-law Balakrishnan came to his house, abused in filthy language and caused assault with iron rod, hands and legs etc. At the intervention of the neighbours, further assault was prevented and he was taken to the hospital. On the basis of the complaint given by him, a case in Crime No.631 of 2014 for the offences under sections 294(b), 323, 324 and 506(ii) IPC was registered. After completing the formalities of investigation, final report was filed before the concerned court stating that only A1 was involved in the occurrence and A2 and A3 were not involved and they were wrongly roped. On the basis of the final report, cognizance was taken against A1 in CC No.347 of 2016 by the



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Judicial Magistrate No.3, Nagercoil. The trial court, took up the trial and during the course of evidence by PW1 namely the complainant, in his chief examination, he has stated that he was assaulted by all the accused persons namely Balakrishnan, Gokul and Dharmalingam. Nothing that two other persons also alleged to have involved in the assault, the trial court in a cryptic order, directed to include them and issue a summon to the petitioners under section 319 Cr.P.C.

3.Challenging the same and to set aside the above said summon, this petition has been filed by the petitioners on the ground that during the court of the investigation, it was found that these two persons were not involved in the occurrence. But in order to wreck vengeance, such an information has been furnished to the court by the second respondent. Except the oral testimony, no other materials or evidence available before the court to issue a summon.

4.Heard both sides.

5.The learned counsel appearing for the petitioners would straightaway rely upon the judgment of the Hon'ble Supreme Court in the case of Hardeep Singh Vs. State of



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Punjab and others [(2014)3 SCC 92} and Dharam Pal and others Vs. State of Haryana and another [(2014)3 SCC 306}.

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6.Per contra, the learned counsel appearing for the second respondent would rely upon the judgment of the Hon'ble Supreme Court in the case of Sartaj Singh Vs. State of Haryana and another [(2021)2 MLJ (Cr1) 168(SC)] and would submit that right from the complaint, the involvement of the petitioners has been spoken by the second respondent, which was not properly investigated by the Investigating Officer. He has spoken about the real facts, at the time of evidence. Noting that no wrong, either on his part or on the part of the trial court in summoning the petitioner, they have to face the trial. It is further contended that before filing the report by deleting the name of the petitioners, no notice was also issued to them by the trial court and no intimation was also served by them upon the second respondent. According to him, it is *per se* illegal.

7.With regard to this specific argument, no particulars are available before the court. The certified xerox copy of the final report shows that the name of the petitioners have been deleted and only Dharmalingam was



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arrayed as an accused and also taken cognizance by the trial court, on 20/01/2014. So, it appears that no notice was sent to the second respondent to make his objection with regard to the deletion of the petitioners' name.

8.Per contra, the learned counsel appearing for the petitioners would rely upon the statement recorded during the course of investigation by the Investigating Officer under section 161(3) Cr.P.C, wherein it has been stated by the complainant that the assault was made by Dharmalingam, but that was prevented by the son-in-law Balakrishnan and his son Gokul. Quite contrary to this, statement has given before the trial court during the course of chief examination. To the same effect, it is a statement of the wife of the complainant and also the other witnesses. So, according to him, it is nothing, but an improvement made by the 2nd respondent during the course of chief examination.

9.As rightly pointed out by the second respondent, it is a consistent case right from the date of filing of the complaint that these two persons have also involved in the assault. When there is a specific allegation by him in the FIR, though it was found to be a false, during the course of investigation, it is for the trial court to find out the



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truth. For that purpose, the presence of the petitioners are also required. They can very well participate in the trial process and may make their defence, at the time of framing of the additional charge.

10.As per the judgment of the Hon'ble Supreme Court in the case of Hardeep Singh Vs. State of Punjab and others [(2014)3 SCC 92], the decree of satisfaction requires for summoning a person under section 319 Cr.P.C is correlated to the satisfaction for framing a charge. So, the petitioners can very well advance their argument at the time of framing of additional charge.

11.With the above said observation, this criminal original petition deserves dismissal and accordingly, it is dismissed. Consequently, connected Miscellaneous Petition is closed.

22.06.2022

Internet:Yes/No
Index:Yes/No
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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.3,
Nagercoil.
- 2.The Sub Inspector of Police,
Suchindram Police Station,
Kanyakumari,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G . ILANGO VAN , J . ,

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