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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/09/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.OP (MD) No.17457 of 2018

and

Cr1.MP (MD) No.7726 of 2018

1.Rajendran

2.Selvaraj

3.Uma Maheswari

4.Kasilingam

5.Ramathilagam

: Petitioners/Respondents

Vs.

Sekar

: Respondent/Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the case in PRC No.49 of 2017 on the file of the Judicial Magistrate No.II, Kovilpatti and quash the same.

For Petitioners : Mr.G.Thalaimutharasu

For Respondent : Mr.AR.Jeyrhuthran
(Legal Aid Counsel)

**ORDER**

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This criminal original petition is filed seeking quashment of the case in in PRC No.49 of 2017 on the file of the Judicial Magistrate No.II, Kovilpatti.

2.The case of the prosecution in brief;-

The respondent filed a private complaint against the petitioners and others with the following allegations:-

There was a dispute between the Mookkammal group and Narayanasamy group over the land dispute and the respondent helping the above said Mookkammal group in respect of the above said issue. Because of the above said support, Narayanasamy group were inimical towards the respondent. It was brought to his notice that on 18/11/2012, because of the above said issue between Mookkammal group and Narayanasamy group, both of them were admitted in the hospital with injuries. On 18/11/2012 at about 2.00 pm, the respondent went for condolence and returned to his house at about 07.30 am. At that time, A2 and A3 came to his house. By assault him, they were dragging on stating the Deputy Superintendent of Police asked them to bring him. He was also handcuffed. In the police station, he was detained



3. Seeking quashment of the same, this petition has been filed by all the accused persons stating that A1 is retired from service and even as per the allegation, that has been made against the petitioners, there acted in their official capacity and so, section 197 Cr.P.C has not been complied and no document has been produced to show that they assaulted the de-facto complainant.

4. Per contra, it is the contention on the part of the respondent to the effect that since the allegation of assault has been made and he was admitted in the hospital on the date of the alleged remand itself, it must be thoroughly enquired by way of trial process and the assault of such nature cannot be decided by this court sitting under section 482 Cr.P.C.

5. A report has been called for from the committal Magistrate as to the stage of the committal process. He submitted a report stating that against the case that has been registered against the respondent and others, the trial was conducted in SC No.258 of 2015 and all the accused persons namely Sekar, Palani, Maheswari, Annalakshmi and Mookammal were acquitted, on 15/03/2016.



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In so far as the counter case is concerned that was also registered in Crime No.582 of 2012 against one Ayyalusamy and others and subsequent to that, the result of the above said criminal proceedings is not known. So far as this case is concerned, it is kept pending for furnishing copies.

6.It is contended on the part of the petitioners that the respondent is a history sheeted dowry and he is having 20 cases at his credit, out of the above said cases, 302 IPC offence is also included. But it appears that he was acquitted. Apart from that, 109 Cr.P.C proceedings was also initiated against the respondent and most of the cases are either assault, criminal intimidation, robbery, etc. So according to the petitioners, such a person does not deserve any consideration and the petitioners, who have been acted in discharging their official duty should not be subjected to ordeal of trial.

7.No doubt that the respondent is not a man of good conduct, character, he is a history sheeted and he is having several cases in his credit. But the fact remains



that he was admitted in the hospital for treatment and injuries were also found. Who caused the injury and what is the reason for causing such a injury is a matter for trial.

8. So, I am of the considered view that when allegation of assault has been made and prima facie, it is seen that he has admitted in the hospital, it requires a thorough trial process to find out the truth. Even though the first petitioner is a retired person and others are still working in the police department, their persons appearance is dispensed with before the trial court.

9. Considering the fact that the PRC is of the year 2015 and still it has not been committed. Section 2(1)(d) of Protection of Human Rights Act, reads as follows:-

"2(1)(d) - "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."



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10. Here the Magistrate has taken cognizance and now it is pending for committal process. In view of the above said finding, there shall be a direction to the committal court to complete the committal process within a period of two months from the date of receipt of a copy of this order. After committal process is over, the trial court shall dispose of the matter on merits within a period of three months thereafter.

11. With the above said direction, this criminal original petition is **dismissed**. But however, the first petitioner is retired from service and others are still working in the Police Department, their personal appearance is dispensed with on condition that within 15 days from the date of receipt of a copy of this order, the petitioners must appear before the trial court and file an undertaking affidavit that they will appear as and when required by the court, the attested photograph must be attached in the affidavit and they must ensure that they are properly represented by an Advocate. Consequently, connected Miscellaneous Petition is closed.

Index: Yes/No
Internet: Yes/No
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02/09/2022



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To,

The Judicial Magistrate No.II,
Kovilpatti.



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G. ILANGO VAN, J

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