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CrI.O.P.Nos.2965, 6248 & 6307 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

CrI.O.P.Nos.2965, 6248 & 6307 of 2021

and

CrI.M.P.Nos.1672, 1673, 4122, 4121, 4180 & 4179 of 2021

CrI.O.P.No.2965 of 2021

K.Kavitha ... Petitioner / 2nd Accused

Vs.

1.State Rep by

The Assistant Commissioner of Police,
E1, Mylapore Police Station,
Mylapore Range,
Chennai 600 004.

... Respondent / Complainant

2.C.Ayyavoo

... Respondent / defacto complainant

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the entire records and quash the proceedings in Charge sheet / final report filed on 06.03.2019 in Spl.S.C.No.3 of 2019 in Crime No.3275 of 2014 on the file of the Principal Sessions Court, Chennai with respect to the petitioner / 2nd accused.



CrI.O.P.Nos.2965, 6248 & 6307 of 2021

CrI.O.P.No.6248 of 2021

K.Muthu kumar

... Petitioner / 4th Accused

Vs.

1.State Rep by

The Assistant Commissioner of Police,
E1, Mylapore Police Station,
Mylapore Range,
Chennai 600 004.

... Respondent / Complainant

2.C.Ayyavoo

... Respondent / defacto complainant

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the entire records and quash the proceedings in Charge sheet / final report filed on 06.03.2019 in Spl.S.C.No.3 of 2019 in Crime No.3275 of 2014 on the file of the Principal Sessions Court, Chennai with respect to the petitioner / 4th accused.

CrI.O.P.No.6307 of 2021

1.V.Veerasekar

2.S.Sundar

... Petitioners / Accused Nos.1 & 3

Vs.

1.State Rep by

The Assistant Commissioner of Police,
E1, Mylapore Police Station,
Mylapore Range,
Chennai 600 004.

... Respondent / Complainant

2.C.Ayyavoo

... Respondent / defacto complainant



Crl.O.P.Nos.2965, 6248 & 6307 of 2021

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the entire records and quash the proceedings in Charge sheet / final report filed on 06.03.2019 in Spl.S.C.No.3 of 2019 in Crime No.3275 of 2014 on the file of the Principal Sessions Court, Chennai with respect to the petitioners / 1st & 3rd accused.

In all Crl.O.Ps

For Petitioners	...	Mr.M.Kempraj
For Respondents	...	Mr.A.Gopinath, Govt. Advocate (Crl.Side) for R1 Mr.M.Anandaraj for R2

COMMON ORDER

These Criminal Original Petitions have been filed to call for the entire records and quash the proceedings in the charge sheet / final report filed on 06.03.2019 in Spl.S.C.No.3 of 2019 in Crime No.3275 of 2014 on the file of the Principal Sessions Court, Chennai with respect to the petitioners herein.

2. Heard the learned counsels for the petitioners and the second respondent and the learned Government Advocate (Crl.Side) appearing for the first respondent.



3. Mr.V.Veerasekar and Mr.S.Sundar, the petitioners in

Crl.O.P.No.6307 of 2021 are the first and third accused. Mrs.K.Kavitha, the petitioner in Crl.O.P.No.2965 of 2021 is the second accused. Mr.K.Muthukumar, the petitioner in Crl.O.P.No.6248 of 2021 is the fourth accused.

4. The case of the prosecution as it appears from the records is that on 02.10.2014 at about 6.00 p.m A1 to A4 came to the residence where the defacto complainant is working as a watchman and asked him to open the gate. The defacto complainant told them that he would open the gate after getting permission of the owner. While he came inside, the petitioners concealed the CCTV Camera with umbrella and abused him in filthy language by making caste calling. The first accused removed his chappal and assaulted the defacto complainant on his cheeks. The second accused also humiliated him with caste calling and kicked on his face with her legs. The third accused also scolded him with his caste name and asked him to run away from the place of occurrence. On seeing this, the house owner Mohan came there and asked them why his watchman was attacked. The occurrence was witnessed by the other witnesses also who were present



there. The second respondent gone to the hospital and taken treatment.

Because of the humiliation he faced, he did not want to continue his job and he went to his native place once and for all. On the above allegations, the accused have been charged for the offence under Sections 294(b), 355, 323 of IPC and 3(1)(r)(s) of SC/ST (Prevention of Atrocities) Act.

5. The learned counsel for the petitioners submitted that the Investigation Officer had failed to appreciate the fact that the accused 1 and 2 are the husband and wife who were living in the first floor of the portion of the same house and the landlord of the entire building; L.W.6 Mohan itself is an illegal trespasser and he cannot be the boss for the defacto complainant; infact, there is no watchman in the building, which comprises of ground floor and first floor; the first floor is owned by the first accused; L.W.2,3,4 & 5 belong to the same family and they are relatives; hence they are interested witnesses; L.W.6 Mohan is a mastermind for the entire issue and the complaint has been given in such a way to invoke SC/ST Act; there is no such incident had taken place on 02.10.2014 which was a Gandhi Jayanthi Day.



5.1. Even as per the statement of the second respondent, the entire occurrence is said to have taken place inside the building and not within the public view; L.W.6 is a very influential person and with his undue influence, the present charge has been filed after five years of the date of the incident; since the alleged occurrence was an inflated narrative, the charge sheet was not filed within time; that itself would show that this is a false case; during the CSR enquiry conducted by L.W.14, the Inspector of Police, Mylapore Police Station, the witnesses have not stated about the abuse by caste calling or assault; the later statement of witnesses are exaggerated one.

5.2. The Special Sub-Inspector of Police who was enquired as L.W.13 have not stated that when he visited the place of occurrence, the witnesses have given any statement about the assault or abuse made by the petitioners; L.W.13 has stated that when he went to the place of occurrence after getting intimation of quarrel, the villagers of the second respondent were not there; his enquiry only revealed that there was some dispute between the first accused and L.W.6, in connection with the sale of the



ground floor and related money transactions; the ingredients to make out an offence under Section 294(b) is not there for the obvious reasons that the occurrence did not take place in public view; even L.W.12 Doctor who examined the second respondent has stated that there is no external injuries found on the body of the second respondent.

5.3. The second respondent / defacto complainant had given two different complaints on two different dates with different contents; no independent witnesses has been examined by the police; the first one is the complaint lodged in the Mylapore Police Station which was taken in CSR No.1397 of 2014, wherein the statement of the first and second accused is recorded; another complaint has been filed on 25.08.2015 before the XVIII Metropolitan Magistrate, Saidapet and that was rejected by the Court *vide* its order dated 27.11.2015; the said order was set aside by this Court and thereafter, the complaint has been numbered as C.C.No.900 of 2017 and the said complaint was given by L.W.6; the present complaint was given by the second respondent who is alleged to be the watchman of L.W.6; for the very same complaint and the very same cause of action, three different



complaints have been given by both the second respondent and L.W.6; there is no ingredient to make out the offence against the accused for the offences under Sections 294(b), 355, 323 of IPC and 3(1)(r)(s) of SC/ST (Prevention of Atrocities) Act; hence the charge sheet should be quashed against these petitioners.

6. The learned Government Advocate submitted that the witnesses including the defacto complainant has spoken about the way in which he was abused and attacked by the accused 1 to 4 and that has been corroborated by the other eye witnesses; since there are sufficient materials available on record to make out the case against the accused for the offence under Sections 294(b), 355, 323 of IPC and 3(1)(r)(s) of SC/ST (Prevention of Atrocities) Act, it is right for the learned Magistrate to take cognizance of the same; only when the accused are subjected to trial, the real facts will come to light and hence, the petitions should be dismissed.

7. Though there are various submissions made by the learned counsel for the petitioners, the first relevant point is with regard to



multiple complaints given by the first accused and L.W.6 and the second respondent. The first accused Veerasekar and the second accused Kavitha were also the residents of the same building. On 02.10.2014, the first accused has given a complaint by stating that he had purchased the first floor of the building during the year 2011 from Mayadevi and her Legal Heirs and during April 2014, the wife of L.W.6 had sold the ground floor of the building for a sale price of Rs.3,50,00,000/- to the first accused and the first accused was carrying out the renovation work there.

8. The first and second accused got married and they went to several places on tour. After the renovation works were completed, the first accused went to call his wife from her mother's place, L.W.6 and his wife came with unknown people and threatened the contractor and sent him away. They trespassed into the house on 02.10.2014, when the first and second accused attempted to go into the house, L.W.6 and his watchman abused and attacked them. On these allegations, a complaint has been given and it is treated as a petition and CSR number has been assigned in CSR No.1398 of 2014. The said complaint has been received by L.W.14,



the Inspector of Police, Mylapore Police Station, at about 8.45 p.m on 02.10.2014. On the same day at about 8.30 p.m. L.W.6 has also given a complaint to L.W.14 and it is given with CSR No.1397 of 2014. In the said complaint, L.W.6 has alleged that that the ground floor of the building belonged to him and his wife and the first and second accused who are the residents of the first floor had cheated the L.W.6 and his wife in a sale transaction pertaining to his ground floor. In this regard, he had already given a complaint even before the Mylapore Police Station and he has also filed a civil suit in C.S.No. 5056 of 2014 and the said suit is pending.

9. L.W.6 has also stated that on the very same day (i.e) on 02.10.2014 at about 6.30 p.m the first and second accused along with the other accused and 25 persons with deadly weapons trespassed into his house and threatened him that they would eliminate L.W.6 and his wife and attempted to slap him. They also assaulted the wife of the L.W.6. The third accused came behind L.W.6 and attacked him. A1 and A2 also assaulted L.W.6. The second respondent / defacto complainant has also given a complaint that on 02.10.2014 at about 6 p.m. the accused came to the



building and assaulted him. The present charge sheet has been filed basing on the complaint given by the defacto complainant / L.W.1.

10. As rightly pointed out by the learned counsel for the petitioners, three complaints have been given about one occurrence that is said to have occurred on 02.10.2014 at about 6 p.m. Even though the time of occurrence was not stated in the complaint given by the first accused to L.W.14, Inspector of Police, the CSR would show that the complaint has been given at about 8.45 p.m. on 02.10.2014. The occurrence alleged to have taken place at 6.30 p.m. was the subject matter of the complaint given by L.W.6 also. The second respondent has stated that the occurrence had taken place at about 6 p.m. on the same day. According to the second respondent, his master is L.W.6 Mohan. If the occurrence which had taken place at about 6 p.m. where the second respondent got insulted and injured is true, that would have been stated by the L.W.6 Mohan himself in his complaint given at about 8.30 p.m. on the same day.



11. The complaint of the second respondent was given at about 9.45 p.m. However, the occurrence is said to have taken place at 6 p.m. The accused 1 and 2 are also the residents of the same building and they were residing in the first floor. According to the complaint given by L.W.6 himself, the ground floor of the building belonged to him. In the statement of L.W.6 also he has not stated about the alleged occurrence that had taken place at about 6.00 p.m. and for which he had given the complaint. In fact, the statement of L.W.6 was recorded on 19.12.2014. But his statement does not contain any other facts other than the facts stated by L.W.1. All the three complaints given by L.W.6, the first accused and the second respondent revolve around the occurrence that had taken place in the evening of 02.10.2014 at about 6.00 p.m.

12. Since the first accused and L.W.6 are opposite parties, it is understandable that they might have given counter complaints against each other. But the second respondent who is said to be the watchman of L.W.6 has also given a separate complaint. In the statement of L.W.6 Mohan, there is no reference about the said occurrence. Similarly, the occurrence



which has been stated in the complaint given by L.W.6 on the same day, is not found place in the statement of the second respondent /L.W.1.

13. Since the accused 1 and 2 are also the residents of the first floor of the building, the second respondent who is said to be the watchman, need not have got the permission to L.W.6 who is the owner of the ground floor. In the statement of L.W.13 who is the Special Sub-Inspector of police and L.W.14, the Inspector of Police, they have stated that on hearing the intimation that there was some quarrel at the place of occurrence at about 6.30 p.m, they went and enquired and their enquiry revealed that there was a dispute between L.W.6 and the first accused in connection with the sale transaction of the ground floor. L.W.14, the Inspector of Police has also stated that L.W.13 brought both the parties to Police Station after visiting the place of occurrence and at that time, L.W.6 had stated that the accused had pushed away his watchman and assaulted him. But he has not stated anything about the alleged caste calling humiliation caused by the accused. L.W.13 statement further reveals that L.W.6 had not stated to him that the accused had assaulted ayyavoo (L.W.1) with chappal.



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14. Some of the witnesses have given 164 statement and in the same also they have not stated that the accused had called the second respondent with his caste name and humiliated him. They have just stated that there was a dispute with regard to the sale of the ground floor belonged to L.W.6 to the first accused. The materials available on record would show the facts that there was a dispute between L.W.6 Mohan and the first accused in connection with the deal of sale with regard to the ground floor which belonged to L.W.6. When L.W.6 and the accused are flat mates of the same building, there cannot be any separate watchman for separate flat owners. Apart from the rival complaints given by L.W.6 and the first accused, the second respondent has also given a complaint wherein alone it has been stated that he was abused with caste name.

15. The above facts about the caste calling was not found in the earlier complaint given by L.W.6, though he has stated that the second respondent was assaulted in the occurrence. So the complaint given by L.W.6 and the second respondent relate to the same cause of action and which had taken place at about 6.00 p.m on 02.10.2014. The spontaneous



statement of the witnesses was obtained by L.W.13, Special Sub-Inspector of Police who went to the place of occurrence after getting intimation about the quarrel. None of the witnesses have spoken to him that the second respondent was abused or humiliated with caste calling. When both the parties were brought by L.W.13 and produced before L.W.14, neither L.W.6 nor the second respondent had stated that the accused had humiliated the second respondent with caste calling. When there is an earlier complaint given about the occurrence and the same is pending as a private complaint in C.C.No.900 of 2017 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, once again the second respondent has given a complaint and it contains certain exaggerated version.

16. Even if the materials now produced before the Court is uncontroverted, in view of the earlier complaint given by L.W.6 and the statement given by L.W.13 and 14, no case will be made out against the accused 1 to 4. Since the materials would show some after thought, exaggeration and patent inconsistencies coupled with inordinate delay, that



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causes thick cloud on the case of the prosecution. In such circumstances, subjecting the accused to undergo the ordeal of trial would only waste of time of the Court. Instead of treating the second respondent as a witness in the earlier case given by L.W.6, he was treated as a defacto complainant for a fresh case with some exaggerated version. In view of the above stated reasons, I feel it is appropriate to invoke the powers of this Court under Section 482 of Cr.P.C. and quash the proceedings against the petitioners.

17. In the result, The Criminal Original Petitions in CrI.O.P.Nos.2965, 6248 & 6307 of 2021 are allowed and the proceedings in Spl.S.C.No.3 of 2019 in Crime No.3275 of 2014 on the file of the Principal Sessions Court, Chennai is quashed as against the petitioners herein. Consequently, connected miscellaneous petitions are closed.

25.01.2023

Index: Yes/No
Internet: Yes/No
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To
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- 1.The Principal Sessions Court, Chennai.
- 2.The Assistant Commissioner of Police,
E1, Mylapore Police Station,
Mylapore Range,
Chennai 600 004.
- 3.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA ,J.

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