



Crl.O.P.No.3275 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No.3275 of 2021

and

Crl.M.P. No.1862 of 2021

1.K.N.Saravanan

2. K.N.Suresh Kumar

... Petitioners/A Party

Versus

1.The Sub-Divisional Magistrate,
and Sub Collector,
Thirupathur,
Thirupathur District.

... First Respondent

2. The Inspector of Police,
Kanthili Police State,
Thirupathur District.

... Second respondent/Complainant

3. Thirupathi

4. Srinivasan

5. Sivaji

6. Kesavan

7. Vijayakumar

8. Gunasekaran

9. Aravindan

1/8



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10. Agathiyan

11. Senthil

12. Vijayakumar

... Respondents 2 to 12/ B Party

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to quash or set aside the notice issued by the 1st respondent dated 03.02.2021 in M.C.No.1 of 2021.

For Petitioners : Mr.V.Parthiban

For R1 : Mr. A.Damadoran
Additional Public Prosecutor.

For R2 : Mr.P.Vasanth

ORDER

This Original Petition has been filed to quash the proceedings in M.C.No.1 of 2021 on the file of the learned Sub Divisional Magistrate and Sub Collector, Thirupathur, initiated under Section 107 of the Code of Criminal Procedure Code.



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2. The petitioners have been shown as A-party and the hostile parties have been shown as B-party. It is alleged in the notice that the members of the A-party had insulted the caste of the members of B-party.

3. The learned counsel appearing for the petitioner would submit that the impugned notice under Section 107 of the Code of Criminal Procedure cannot be sustained, since a joint enquiry has been initiated against A and B parties. He relied upon the following judgments of this Court in

1. ***Chinnathambi Gounder @ Rama Gounder and others v. State by Inspector of Police, Natham Dindigul Quide-Milleth District***, reported in ***1994 1 MLJ(Crl) 110***;

2. ***K.P.Murugesan and others v. State by Inspector of Police and others***, reported in ***1983 (2) Crime (HC) 712***;

3. ***Sekar and others v. R.Padmalosai and others***, reported in ***1987 (6) L.W. Crl 262***; and

4. ***Shahul Hameed v. The Sub Divisional Magistrate*** made in ***Crl R.C.(MD) No.607 of 2017 dated 31.07.2017***.



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in support of his submission that the learned Magistrate under Section 107 of the Code of Criminal Procedure cannot conduct a joint enquiry against rival parties.

4. The learned Additional Public Prosecutor submitted that the impugned notice does not suffer from any infirmity and prayed for the dismissal of the Criminal Original Petition.

5. This Court finds that in the impugned notice, the petitioners who are shown as A-party and the hostile persons are shown as B-party have been jointly called for an enquiry. Section 116 Sub Clause 5 of the Code of Criminal Procedure which reads as follows:

Section 116 (5):- *Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.*



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The above provision provides for joint enquiry only in respect of persons who have been associated together. However, in the instant case admittedly A and B parties cannot be said to be associated together. The issue is covered by the judgments of this Court in:

1. ***Chinnathambi Gounder @ Rama Gounder and others v. State by Inspector of Police, Natham Dindigul Quide-Milleth District***, reported in ***1994 1 MLJ(Crl) 110***;
2. ***K.P.Murugesan and others v. State by Inspector of Police and others***, reported in ***1983 (2) Crime (HC) 712***;
3. ***Sekar and others v. R.Padmalosai and others***, reported in ***1987 (6) L.W. Crl 262***; and

6. This Court has held that two opposing parties of hostile groups cannot be bound over in one and the same proceedings. The latest judgment of this Court is ***Shahul Hameed v. The Sub Divisional Magistrate*** made in ***Crl R.C.(MD) No.607 of 2017 dated 31.07.2017***. The relevant portion of the order is extracted hereunder:



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“4. Now, it is settled proposition of law that proceedings in Section 107 and 111 Cr.P.C. 'A' party and 'B' party should not be clubbed together.”

7. In view of the same, the impugned notice under Section 107 is liable to be set aside and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

15.03.2023

jv

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

- 1.The Sub-Divisional Magistrate,
and Sub Collector,
Thirupathur,
Thirupathur District.
2. The Inspector of Police,
Kanthili Police State,
Thirupathur District.
- 3.The Public Prosecutor
High Court of Madras,
Chennai.



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SUNDER MOHAN, J.

jv

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