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CRL.O.P.No. 8070 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 8070 of 2021

and

Crl.M.P.No. 5322 of 2021

1.D.Arumugam

2. A.Anbu

3. Kanthasamy

... Petitioners

Vs.

1. The Inspector of Police,
Kottakuppam Police Station,
Kottakuppam.

2.P.Sethuraman

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.
praying to call for the records in C.C.No.48 of 2016 pending on the file of the
District Munsif Cum Judicial Magistrate Court at Vanur Villupuram District
and quash the same.

For Petitioner : Mr.V.Giri Shankar

For Respondents

For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)

For R2 : Mr.K.M.Balaji



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ORDER

This petition has been filed to call for the records in C.C.No.48 of 2016 pending on the file of the District Munsif Cum Judicial Magistrate Court at Vanur Villupuram District and quash the same.

2. The case of the prosecution is that there was a land dispute between the petitioners and the second respondent. Due to the land dispute, there is a civil suit pending in O.S.No.92 of 2014 on the file of the District Munsif Cum Judicial Magistrate Court at Vanur, Villupuram District between the petitioners and the second respondent. While being so, on 27.03.2015, when the petitioners went to their land to harvest their agricultural crops, second respondent had came there and both attacked each other. Both groups sustained injuries and admitted in the hospital. On the complaint lodged by the second respondent, FIR has been registered against the petitioners in Crime No.216 of 2015 for the offences under Sections 147, 447, 427, 452, 506(i) of IPC. On the complaint lodged by the petitioners, first respondent registered FIR against the second respondent in Crime No.217 of 2015 for the offences under Sections 341, 294(B), 324, 323, 506(ii) of IPC. After completion of investigation in both the FIR, first respondent filed final report. As far as Crime No.216 of 2015 is concerned, which was registered as against the petitioners, charge sheet has



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been filed and the same has been taken cognizance in C.C.No.48 of 2016.

Insofar as, Crime No.217 of 2023 is concerned, which was registered as against the second respondent, trial Court had taken cognizance in C.C.No.46 of 2016. Both are pending trial on the file of the learned District Munsif Cum Judicial Magistrate Court at Vanur Villupuram District. Now, petitioners have filed this petition seeking quashment of C.C.No.48 of 2016 on the ground that, second petitioner was not present in the scene of occurrence. That apart, occurrence took place at about 04.50.p.m., where as FIR was registered belatedly. Though, petitioners lodged the complaint first, first respondent had registered the FIR on the complaint lodged by the respondent in Crime No.216 of 2015. There is absolutely no evidence to attract any of the offences as against the petitioner.

3. Heard the submission made by the learned Government Advocate (Crl.Side) appearing for the first respondent.

4. The grounds raised by the petitioners cannot be considered under Section 482 of Cr.P.C., since all are mixed question of facts and it can be considered only before the trial Court during the trial. That apart, in both the FIRs, first respondent now completed investigation and filed final report and



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the same has been taken cognizance in C.C.No.46 of 2016 and C.C.No.48 of 2016.

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5. On a perusal of the materials available on records, it is evident that in complaint and counter complaints, the Investigation Officer shall follow the procedure laid down in the Police Standing Order 588-A to find out the real aggressor, whereas in the present case, the respondent police found both the parties as aggressors and filed two final reports. When that being so, the trial Court has to follow the procedure laid down by the Hon'ble Supreme Court in the case of *Nathilal Vs. State of U.P. reported in (1990) Supp SCC 145* the relevant portion is extracted hereunder:

“We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgement. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgement in that case. The same learned Judge must thereafter dispose of the matters by two separate judgements. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into nor can the



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judge be influenced by whatever is argued in the cross case.

Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgements must be pronounced by the same learned Judge one after the other.”

6. Despite the case, in the present case, both the cases have been taken cognizance in C.C.No.46 of 2016 and C.C.No.48 of 2016. on the file of the learned District Munsif Cum Judicial Magistrate cum Vanur. Therefore, the trial Court is directed to conduct simultaneous trial in both the cases and judgements in respect of both the cases must be pronounced one after the another.

7. In view of the above, this Court is not inclined to entertain the quash petition to quash the entire proceedings. Therefore, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

04.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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G.K.ILANTHIRAIYAN, J.
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To

1. District Munsif Cum Judicial Magistrate, Vanur.
2. Inspector of Police,
Singanallur Police Station,
Coimbatore City.
3. The Public Prosecutor
Madras High Court.

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