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Crl.O.P.No.25587 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

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

CRL.O.P.No.25587 of 2021 and
Crl.M.P.No.14172 of 2021

1.Manokaran
2.Vijaya
3.Devi

... Petitioners/A1 to 3

Vs.

1.Arun Kumar
2.The Inspector of Police,
Taluk Police Station,
Vaniyambadi,
Vellore District
now Thirupathur District

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in connection in CC.No.93 of 2020 on the file of the learned Judicial Magistrate, Vaniyambadi and to quash the same.

For Petitioners : Mr.K.Thiruvengadam

For Respondents

For R1 : Mr.V.Aravind Kumar
for Mr.S.Jagan

For R2 : Mr.A.Gopinath,
Government Advocate(crl.side)



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ORDER

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This criminal original petition has been filed to quash the proceedings in CC.No.93 of 2020 on the file of the learned Judicial Magistrate, Vaniyambadi taken cognizance for the offences under Sections 294(b), 341, 323, 324 and 506(ii) of IPC as against the petitioners.

2. The case of the prosecution is that on 27.05.2016 at about 10.45 a.m., while the first respondent's father was peeling a coconut in the land belongs to him, the 1st petitioner and his brother in law i.e. Ganesan scolded him in filthy languages and also assaulted him. When the 1st respondent intervened and tried to enquire about the assault, they assaulted the first respondent also with an iron rod, thereby his chest sustained inner injury. Further, they also assaulted him on his head and left cheek with stick. Thereafter, the 2nd petitioner and the 3rd petitioner also came there and criminally intimidated that they would kill him. Suddenly, his father took him to a Government hospital and after examination by police, a statement was recorded from him, based on which the present case has been registered.

3. Heard, the learned counsel appearing on either side.



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It is seen that a counter complaint lodged by the petitioners as against the first respondent and others was registered in crime No.172 of 2016 for the offences under Sections 294(b), 341, 323 and 506(ii) of IPC. The first respondent, after completion of investigation in both the crime numbers i.e. 172 of 2016 and 173 of 2016, closed the present FIR in crime No.173 of 2016 as mistake of fact. Aggrieved by the same, the first respondent filed protest petition and the same has been taken cognizance by the learned Judicial Magistrate, Vaniyambadi in CC.No.93 of 2020, which is under challenge in this petition. Insofar as the counter complaint, the first respondent filed final report and the same has been taken cognizance by the learned Judicial Magistrate, Vaniyambadi in CC.No.21 of 2019 and subsequently transferred to the file of the learned Judicial Magistrate-I, Vellore. The same was re-assigned as CC.No.314 of 2019, which is pending for trial. Therefore, this Court finds no merits in this petition since there are specific allegations as against the petitioners in order to attract the offences under Sections 294(b), 341, 323, 324 and 506(ii) of IPC as against the petitioners.

5. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated



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02.04.2019 in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.,**

wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

6. The Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central**



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Bureau of Investigation Vs. Arvind Khanna, held as follows:

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“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

7. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi**



Vs. K.R.Meenakshi & anr, as follows:

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"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

8. Therefore, this Court is not inclined to quash the impugned proceedings. Further, it is a counter complaint to the earlier complaint lodged



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by the petitioners as against the first respondent. Therefore, the present case in CC.No.93 of 2020 has to be transferred to the file of the learned Judicial Magistrate-I, Vellore.

9. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India rendered in the case of ***Nathilal Vs. State of U.P.*** reported in ***(1990) Supp SCC 145***, the relevant portion of which 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 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



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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.”

10. The above judgment is squarely applicable to the case on hand. As such, the learned Judicial Magistrate, Vaniyambadi is directed to send the entire bundle in CC.No.93 of 2020 to the Court of the learned Judicial Magistrate-I, Vellore forthwith. On receipt of the same, the learned Judicial Magistrate-I, Vellore is directed to conduct simultaneous trial in CC.No.314 of 2019 and CC.No.93 of 2020 and pronounce judgment one after another.

11. With the above directions, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
lok

To



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- 1.The learned Judicial Magistrate,
Vaniyambadi
- 2.The learned Judicial Magistrate-I,
Vellore
- 3.The Inspector of Police,
Taluk Police Station,
Vaniyambadi,
Vellore District
now Thirupathur District
- 4.The Government Advocate,
High Court of Madras.

G.K.ILANTHIRAIYAN, J.

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