



Crl.O.P.No.20159 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.20159 of 2021
and Crl.M.P.Nos.10981 & 12818 of 2021

1. Gopalakrishnan
2. Revathi

...Petitioners

Vs.

1. The State rep. by
The Inspector of Police,
Madipakkam Police Station,
Crime No.322 of 2017

2. Sathurappan

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.300 of 2017 on the file of the Judicial Magistrate No.II, Alandur, and quash the same.

For Petitioners : Mr.R.Sankarasubbu

For Respondents

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

For R2 : Mr.R.Karthikeyan



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ORDER

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This petition has been filed to quash the proceedings in C.C.No.300 of 2017 on the file of the Judicial Magistrate No.II, Alandur, thereby taken cognizance for the offences under Sections 294(b), 323, 506(1) of IPC, as against the petitioners.

2. The case of the prosecution is that the second respondent lodged complaint alleging that he owned three houses and all the houses were rented out in favour of one Balamurugan in which, he is running hostel. While he was entering into hostel and trying to open the canteen, he was prevented by the accused persons and as such he informed the same to the second respondent. Immediately, the second respondent/ defacto complainant rushed to the place of occurrence and there the petitioners and other accused persons scolded him with filthy language and also assaulted him. Therefore, he sustained injury on his eyebrow and they also threatened him with dire consequences. Hence the complaint. On receipt of the said complaint, the first respondent registered FIR in Crime No.322 of 2017 for the offence punishable under Sections 294(b), 323, 506(i) of IPC. After completion of investigation, the first respondent filed final report and the same has been taken



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cognizance in C.C.No.300 of 2017 on the file of the learned Judicial Magistrate No.II, Alandur.

3. The learned counsel appearing for the petitioners submitted that it is a case in counter. For the very same occurrence, the petitioners were attacked by the second respondent and others. Therefore, the petitioners lodged complaint and the same has been registered in Crime No.323 of 2017 for the offences under Sections 294(b), 323, 506(i) of IPC. After completion of investigation in the counter complaint, the first respondent filed final report and the same has been taken cognizance in C.C.No.301 of 2017 on the file of the learned Judicial Magistrate No.II, Allandur. He further submitted that the first respondent cannot file final report in both cases, and the first respondent has to find out the real culprit and he has to close one case. Whereas in the case on hand, in both cases, the first respondent filed final report and the same has been taken cognizance by the trial Court.

4. Heard the learned counsel appearing on either side and perused the material placed before this Court.



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5. It is settled position of law 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 judgment reported in **(1990) Supp SCC 145** in the case of **Nathilal Vs. State of U.P.** 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 judge be



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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.”

Therefore, the first respondent duly followed the Police Standing Order 588-A and found both the parties are aggressors. Once the first respondent filed final report as against both the parties, the only bestow is that the trial Court has to conduct simultaneous trial and pass judgment one after other.

6. In view of the above discussions, this Court is not inclined to quash the proceeding. The trial Court viz., the learned Judicial Magistrate No.II, Allandur, is directed to conduct simultaneous trial in C.C.Nos.300 & 301 of 2017 and pass judgment one after another. However, considering the facts and circumstances, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court below at the time of furnishing of copies, framing charges,



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questioning under Section 313 Cr.P.C. and at the time of passing judgment.

7. With the above directions, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



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- To
1. The Judicial Magistrate No.II,
Alandur.
 2. The Inspector of Police,
Madipakkam Police Station.
 - 3.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J.

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