



CrI.O.P.No.22567 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P No.22567 of 2022

and

CrI.M.P.No.14499 of 2022

1.Dr.Senthilkumar
2.Vignesh @ Prabhu Vignesh
3.Raja @ Yuvaraja

...Petitioners

vs.

Muniraja

...Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.123 of 2022 pending on the file of the Judicial Magistrate No.I, Sankari, Salem.

For Petitioners : Mr.P.Ravi Shankar

For Respondents : Mr.B.Kumarasamy



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ORDER

This criminal original petition has been filed to quash the proceeding pending before the learned Judicial Magistrate No.I, Sankari, Salem, in C.C.No.123 of 2022.

2. The incident took place on 31.12.2017 where there was a quarrel between both sides and there was a melee. Further, there was assault and exchange of vulgar abuses. It lead to complaints being given by both sides and both the complaints were acted upon and case in counter was registered in Crime Nos.2 of 2018 and 3 of 2018. The first FIR was based on the complaint given by the petitioners herein and the second FIR was based on the complaint given by the respondent herein. Both the FIRs were investigated by the police and ultimately, a final report came be to filed in Crime No.2 of 2018 and it was taken on file by the learned Judicial Magistrate No.I, Sankari in STC.No.1279 of 2019. Insofar as Crime No.3 of 2018 is concerned, a report was filed as “mistake of fact” on 31.08.2018. It is also brought to the notice of this Court that a full pledged trial was conducted in STC.No.1279 of 2019 and it finally ended in conviction. The respondent had filed a private complaint before the Court below with respect to the very same incident and the same has been taken



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cognizance by the Court below for the offence under Sections 294(b), 323 and 506(i) of IPC in C.C.No.123 of 2022. The same has been put to challenge in the present petition.

3. The main ground that was urged by the learned counsel for the petitioner is that for the offence under Sections 294(b), 323 and 506(i) of IPC, the Court below ought to have taken cognizance within a period of three years from the date of incident, failing which there is a bar under Section 468(2)(c) of CrPC. It was submitted that the Court below had taken cognizance of the complaint, which was filed only on 22.01.2022. Hence, the cognizance taken by the Court below has been put to question. It was further submitted that the Court below at the time of taking cognizance did not apply its mind on the closure report that was filed by the police in Crime No.3 of 2018.

4. The learned counsel for the respondent submitted that sufficient allegations have been made in the complaint, which clearly makes out a case for offence under Sections 294(b), 323 and 506(i) of IPC. The learned counsel further submitted that the RCS notice was served on the petitioners only on 26.03.2021. Thereafter, the complaint was filed before the Court below and the Court below has applied its mind and has taken cognizance and that there is



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absolutely no ground to quash the proceedings.

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5. This Court has carefully considered the submissions made on either side and perused the materials available on record.

6. There is no dispute with regard to the fact that FIR, that was registered based on the complaint given by the respondent in Crime No.3 of 2018, ended in filing a closure report. The respondent did not choose to file a protest petition and rather had chosen to file a private complaint before the Court below. This Court has repeatedly held that while the Court takes cognizance of a private complaint pursuant to the closure report filed by the police, the Court has to necessarily apply its mind on the closure report and the statements recorded by the police. An useful reference can be made to the judgement of this Court in *Narayanamma and others vs. Chikka Vekateshaiah* reported in **2019 (2) LW (CrI) 522** and in *Jacqueline Kala vs. Sisily Joy* reported in **2022 (4) MLJ (CrI) 156**. This Court has categorically held that where the cognizance was taken by the Court below without considering the closure report and the statements recorded by the police, the same is bad in law and the same will be interfered.

7. In the present case, there is absolutely no indication that the Court



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below had taken note of the closure report and the statements recorded from the witnesses in Crime No.3 of 2018. The Court has merely applied its mind on the allegations that have been made in the complaint and taken cognizance and the same is liable to be interfered by this Court.

8. Apart from the above, the incident had taken place on 31.12.2017 and the private complaint was filed only on 24.01.2022. This is clearly beyond the three years limitation provided under Section 468 of CrPC. If the Court wants to take cognizance after a period of limitation, a procedure is contemplated in Section 473 of CrPC where a separate order has to be passed by the Court below by condoning the delay and thereafter cognizance should be taken. This procedure has also not been followed by the Court below.

9. In the light of the above discussion, continuation of the proceedings in C.C.No.123 of 2022 against the petitioners will clearly result in abuse of process of Court, which requires the interference of this Court exercising its jurisdiction under Section 482 of CrPC.

10. In the result, this Criminal Original Petition is allowed and



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accordingly, the proceedings in C.C.No.123 of 2022 on the file of the learned

Judicial Magistrate No.I, Sankari, is hereby quashed. Consequently, the

connected miscellaneous petition is also closed.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order
nsa

To

The Judicial Magistrate I, Sankari.



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N. ANAND VENKATESH, J.

nsa

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