



Crl OP No.22143 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 13.04.2023
PRONOUNCED ON : 25.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 22143 of 2019
and
Crl.M.P. Nos. 11484 & 11485 of 2019

Mr.J.B.Solomon Peter Kamaldoss

... Petitioner

Versus

1.State of Tamil Nadu rep., by
The Inspector of Police,
Law & Order,
D-1, Triplicane Police Station,
Triplicane, Chennai.
Cr.No.334/2018

2.Mr.Arulmani,
Sub-Inspector of Police,
D-1, Thiruvallikeni Police Station,
Chennai – 2.

3.Mr.Gopu,
The Sub-Inspector of Police,
D-1, Thiruvallikeni Police Station,
Chennai – 2.

(R2 & R3, *suo motu*, impleaded as per Court
order dt.08.03.2023 in Crl.O.P. No. 22143 of
2019 and Crl.M.P.Nos.11484 & 11485 of 2019)
Respondents

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PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and quash the final report in P.R.C. No. 69/2019 now pending before the II Metropolitan Magistrate Court, Egmore, Chennai against the petitioner.

For Petitioner : Mr. N.R. Elango, Senior Counsel for
Mr. A. Thirumaran.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor.

ORDER

The petition is to quash the final report for the alleged offences under Sections 294 (b) and 353 of the Indian Penal Code.

2. It is alleged in the final report that on 31.05.2018, at about 10.45 a.m., when the complainant and other policemen were waiting at the junction between Swami Sivanantha Salai and Anna Salai to arrest the accused involved in dacoity and robbery and also to seize the Honda Active two wheeler bearing Registration No.TN 03 R 1999 involved in



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these offences; that the petitioner and one Madhan Kumar came in the said two wheeler; that when the respondents attempted to stop vehicle A1 Madhankumar had threatened the policemen with a knife and started running from the scene of occurrence; that the petitioner pushed the Sub-Inspector of Police by name Gopu and escaped with the two wheeler.

3. Mr. N.R. Elango, learned Senior Counsel for the petitioner, would submit admittedly that the petitioner was a lawyer for the first accused viz., Madhan kumar, who was involved in a robbery case. The petitioner had filed several petitions before this Court on behalf of the said Madhan Kumar. In some of those petitions, he had made allegations against the respondents regarding the high-handed manner in which they acted against the said Madhan Kumar. The respondents, aggrieved by the allegations made by the petitioner against them, falsely implicated the petitioner in the impugned proceedings. The petitioner's right to protect and defend his client is sought to be scuttled by the illegal action of the respondent police. The reading of the final report would show that the allegations are highly improbable and have been invented only to victimise the petitioner. The petitioner had also given details of the cases filed by him to show that he is a regular practising lawyer and that there



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was no necessity for him to indulge in such illegal activity. The learned Senior Counsel therefore prayed that the proceedings as against the petitioner were clearly an abuse of the process of law.

4. The learned Additional Public Prosecutor would submit that there are allegations in the impugned final report, and it is for the trial Court on the basis of the evidence to ascertain whether the allegations against the petitioner are true. Hence he prayed for the dismissal of the quash petition.

5. This Court by an earlier order dated 29.01.2020 had directed the petitioner to implead the policemen viz., Arul Mani and Gopu, Sub-Inspectors of Police. It is represented that subsequently, on account of the shutdown of Courts due to covid and the long gap, the petitioner inadvertently omitted to implead the police officers. Therefore, this Court, by order dated 08.03.2023, *suo motu*, impleaded the two victims and directed issuance of notice to them. Pursuant to the notice sent, the second respondent appeared in person and expressed that he had no objection for quashing the proceedings against the petitioner alone. He did not, however, engage a counsel. The third respondent, however, was

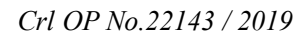


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not available at the address mentioned. Hence, he could not be served.

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6. This Court, on perusal of the impugned final report, finds that the allegation is that on the day of occurrence, the petitioner was accompanied by an accused who was involved in robbery cases. The allegation is that when the respondents were standing near the junction to apprehend the accused involved in robbery cases and to seize the two wheeler which was used for the said purpose, and when they stopped the petitioner and the said accused, the petitioner assaulted the police officer and escaped from the scene of occurrence. It is the petitioner's version that a few men in plain clothes had stopped them and took away the accused; and that the impugned complaint was lodged to prevent the petitioner from making a complaint against the police officers. This Court would not ordinarily go into a factual controversy in a quash petition. But in a case of this nature, where admittedly, a lawyer for an accused who had filed petitions against the police officers concerned is prosecuted for an offence, this Court has to necessarily analyse the facts in a detailed manner. This Court, on considering the overall circumstances of the case, finds that the petitioner is a regular practising lawyer and had filed numerous petitions on behalf of the said Madhan Kumar. The petitioner



However, the allegations against him appears to be exaggerated. The prosecution version with regard to the manner in which the occurrence took place suffers from inherent improbability.

“6....It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case,



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there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294(b) of IPC is made out....”

8. Even as regards the offence under Section 353 of the Indian Penal Code, there is no allegation that the petitioner was aware of the fact that the policemen were involved in the duty to apprehend the accused. In order to attract the offence under Section 353 of the Indian Penal Code, the accused must be aware that the respondents were public servants. It is seen from the records that the petitioner has given a complaint stating that the respondents came in plain clothes and took away the first accused into their custody. The respondents ought to have investigated the said complaint also in a fair manner. The complaint of



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the petitioner has not been investigated at all. Hence, it cannot be said that the petitioner knowingly assaulted or used criminal force on a public servant. Thus, for the above reasons, the offences under Sections 294(b) and 353 of the Indian Penal Code are not made out as against the petitioner.

9. Before drawing the curtains to this case, we may observe that the petitioner's right to defend his client cannot be silenced by a prosecution. However, this Court, at the same time, would like to remind the petitioner that lawyers cannot afford to identify themselves with a client. Their conduct must be such that it commands respect from the Court and the society in general. It is hoped that the petitioner understands the role of a lawyer and acts accordingly in future.

10. For the above reasons, this Court is inclined to quash the impugned proceedings as against the petitioner alone. The trial Court may proceed against the other accused without being influenced by any of the observations made in this order.

11. Accordingly, this Criminal Original Petition is allowed, and the



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proceedings against the petitioner alone is quashed. Consequently, the connected Miscellaneous Petitions are closed.

25.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police,
Law & Order,
D-1, Triplicane Police Station,
Triplicane, Chennai.
2. The II Metropolitan Magistrate,
Egmore, Chennai.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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Dated: 25.04.2023