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Crl.O.P.Nos.33146 of 2019 and 6086 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.Nos.33146 of 2019

and

Crl.O.P.No.6086 of 2021

and

Crl.M.P.Nos.18275 of 2019 of 2019
and 3987 & 3988 of 2021

M.Kumar

...Petitioner in Crl.O.P.No.33146 of 2019

- 1.Muthuvadiraja
- 2.Duraimani Rajan
- 3.Mohanraj
- 4.Anantha Pelics
- 5.Arunagiri

...Petitioners in Crl.O.P.No.6086 of 2021

-Vs-

- 1.The State represented by:
Sub-Inspector of Police,
Bhuvanagiri Police Station,
Bhuvanagiri,
Cuddalore District.

2.M. Muthuvadiraja ... Respondents in Crl.O.P.No.33146 of 2019



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1.The State represented by:
Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.
(Crime No.8 of 2019)

2.M.M. Kumar ... Respondents in Crl.O.P.No.6086 of 2021

Prayer in Crl.O.P.No.33146 of 2019: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in S.T.C.No.94 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Bhuvanagiri and to quash the same.

Prayer in Crl.O.P.No.6086 of 2021: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.20 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Portnovo, Cuddalore District and to quash the same.

For Petitioner : Ms. K. Sudha Selvarasi
for Mr.T. Sivagnanasambandan
(in Crl.O.P.No.33146 of 2019)

For Petitioners : Mr. R. Sethuvarayar
(in Crl.O.P.No.6086 of 2021)

For R1 : Mr.A.Damodaran,
(in both Crl.O.Ps) Additional Public Prosecutor



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For R2

: Mr. R. Sethuvarayar
(in Crl.O.P.No.33146 of 2019)

For R2

: Mr. Ms. K. Sudha Selvarasi
for Mr.T. Sivagnanasambandan
(in Crl.O.P.No.6086 of 2021)

COMMON ORDER

Crl.O.P.No.33146 of 2019 has been filed seeking to quash the proceedings in S.T.C.No.94 of 2019 on the file of the District Munsif cum Judicial Magistrate, Bhuvanagiri, filed for the alleged offences under Sections 294(b), 323 and 352 of IPC.

2.Crl.O.P.No.6086 of 2021 has been filed seeking to quash the proceedings in Special C.C.No.20 of 2019 on the file of the District Munsif cum Judicial Magistrate, Bhuvanagiri, filed for the alleged offences under Sections 147, 148, 294(b), 323 and 324 of IPC.

3.The 1st petitioner in Crl.O.P.No.6086 of 2021 is the defacto complainant in Crl.O.P.No.33146 of 2019.



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4.The petitioner in Crl.O.P.No.33146 of 2019 is the defacto complainant in Crl.O.P.No.6086 of 2021.

5.It is alleged in the final reports that on the day of occurrence, there was a quarrel in the school premises; that the petitioners and the defacto complainant in both the Criminal Original Petitions are teachers. In S.T.C.No.94 of 2019 which is challenged in Crl.O.P.No.33146 of 2019, it is alleged that the accused had attacked the defacto complainant and others and abused them in filthy language. In C.C.No.20 of 2019 which is challenged in Crl.O.P.No.6086 of 2021, it is alleged that the accused had attacked the defacto complainant and abused him in filthy language.

6.The learned counsels for the petitioners in both quash petitions submitted that the impugned proceedings are liable to be quashed, since the Investigation Officer after conducting investigation, in the case registered against the petitioners and the case filed by the petitioners, has filed final report in both the cases; that this is in violation of the settled position of law that when there is a case in counter case, it the duty of the



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Investigating Officer to find out as to who is the aggressor and file final report only against the aggressor; and that if the Investigation Officer is unable to find out, as to who is the aggressor, then action has to be dropped against the accused in both cases.

7.It is seen that for the very same occurrence one of the petitioner in Crl.O.P.No.6086 of 2021 and the petitioner in other Crl.O.P.No.33146 of 2019 had given complaints. This has resulted in filing of two final reports. The investigation was conducted by the very same Investigation Officer in both the cases. It is the matter of common sense, that when there are two versions with regard to the same occurrence both cannot be true. Either one has to be true or both have to be false. That is the reason for the procedure that is laid down in order 566 of the Police Standing Orders, where there are clear instructions to the Investigating Officer, as to how to deal with the cases and counter cases.

8.In the instant case, the said procedure has been violated. This Court in ***Vellapandy Thevar and Others Vs. State rep.by the Inspector of Police, Alangulam Police Station, Tirunelveli Dt., reported in [1984***



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LW (Crl.) 257] had held as follows:

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4. This is a case of complaint and counter complaint. On the complaint given by Tmt. Ramasundaram in Cr. No. 64 of 1982, the Inspector of Police has filed a charge sheet in S.C. 132 of 1983 for offences under Sections 147, 148, 427, 324 and 302, Indian Penal Code against the Petitioners in Crl. M.P. 5503 of 1984. In respect of the same incident, Tmt. Thangathai has given a complaint in Crime No. 65 of 1983 and the Inspector of Police has filed a charge -sheet in respect thereof against the Petitioners in Crl. M.P. 4437 of 1983, under Sections 147, 148, 427, 337 and 307, Indian Penal Code now pending in S.C. 151 of 1983 on the file of the Assistant Sessions Judge. Tenkasi. In cases of complaints and counter complaints, the procedure to be followed by the Investigating Officer is laid down in Order 588 -A of the Madras Police Standing



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Orders, which is as follows:

“588 -A. Charge sheets in cases and counter cases: In a complaint and counter complaint obviously arising out of the same transaction the investigating officer should enquire into both of them and adopt one or the other of the two courses, viz, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he should find them untrue. When the investigating officer proceeds on the basis of the complaint it is his duty to exhibit the counter complaint in the court and also to prove medical certificates of persons wounded on the opposite side. He should place before court a definite case which he makes it to accept. The investigating officer in such cases should not accept in to do one complaint and examine only witnesses who support it and give no explanation at all for the injuries caused to the



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other side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite "necessary that all the facts are placed before the court to enable it to arrive at the truth and a just decision.

If the investigating officer finds that the choice of either course is difficult, viz, to charge one of the two cases or to throw out both, he should seek the opinion of the Public Prosecutor of the District and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter complaint, as the case may be should be advised about the disposal by a notice in P. 96 and to seek remedy before the specified magistrate, if he is aggrieved by the disposal of the same by the police”.

The investigating officer has to enquire into both the complaints, find out who were the



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aggressors and file a charge sheet against them or refer both the cases if he finds them untrue. Where the investigating officer finds it difficult to choose either of the above courses, he should seek the opinion of the Public Prosecutor and act accordingly. In the instant case, the Inspector of Police has referred the matter to the Public Prosecutor and the Public Prosecutor has advised the filing of the charge sheet only against the Petitioners in Crl. M.P. 5503 of 1984, and not against the Petitioners in Crl. M.P. 4057 of 1983. But the Inspector of Police has not acted according to the opinion of the Public Prosecutor and filed a charge sheet against both the groups. This is certainly not in accord with Order 538 -A of the Madras Police Standing Orders. The investigating officer ought to have filed the charge sheet Only in Crl. No. 64 of 1982 against the Petitioners in Crl. M.P. 5503 of 1684, which



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is now pending in the court of the II Additional Sessions Judge, Tirunelveli in S.C. 132 of 1983 for offences under Sections 147, 148, 427, 324 and 302 Indian Penal Code and must have referred the complaint given by Thangathai registered in Cr. No. 69 of 1982, instead of filing another charge sheet in the said crime number against the Petitioners in Cr. M.P. 4437 of 1983, which is now pending in the court of the Assistant Sessions Judge, Tenkasi in S.C. 151 of 1983, for offences under Sections 147, 148, 427, 337, and 307, Indian Penal Code The investigating officer has evidently contravened the express provision of the Order 588 -A which lays down that in the case of doubt he ought to refer the matter to the opinion of the Public Prosecutor and act accordingly. The investigating officer has referred the matter to the opinion of the Public Prosecutor, but has failed to act accordingly. The



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result is there are now two Prosecutions in respect of the same matter against the opposite parties.;

5.As pointed out by this Court in Thota Ramakrishna and others .Vs. State.

“It is improper for the police to prosecute the same time two counter cases in regard to the same occurrence one of which must be false. It is improper also and disrespectful to the court for the Public Prosecutor to conduct both cases in the sessions court knowing that one must be false. Such counter cases cannot both the prosecuted honestly either by the police or the public prosecutor”.

9.This Court finds that there are two final reports, which are contrary to each other and serious prejudice is likely to be caused to both the parties. Therefore, this Court is of the view, for all the above reasons that both the impugned final reports in S.T.C.No.94 of 2019 and C.C.No.20 of 2019 on the file of the District Munsif Cum Judicial



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Magistrate Court, Bhuvanagiri, are liable to be quashed, as there cannot be two final reports giving contrary versions for the same incident.

Accordingly, this Criminal Original Petitions are allowed. Consequently, connected Criminal Miscellaneous Petitions closed.

05.06.2023

smv

Index : Yes/No

Speaking : Yes / No

Neutral Citation : Yes / No

To,

1.The Sub-Inspector of Police,
Bhuvanagiri Police Station,
Bhuvanagiri,
Cuddalore District.

2.The District Munsif Cum Judicial Magistrate, Bhuvanagiri.

3.The Public Prosecutor,
High Court of Madras.



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