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Crl.O.P.No.33253 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.33253 of 2019

and

Crl.M.P.Nos.18348 & 18349 of 2019

Dhanapal

...Petitioner

-Vs-

1.The State rep. by

The Inspector of Police (L & O),
R-4, Soundarapandiyan Angadi Police Station,
Chennai – 600 017.
(Crime No.75 of 2018)

2.Dayalan

... Respondents

Prayer: 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.808 of 2019 pending on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai and to quash the same insofar as the petitioner herein.

For Petitioner

: Mr.R.Ganesh Kumar

For Mr.V.Sudalai Selvan



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For R1

: Mr.A.Damodaran,
Additional Public Prosecutor

For R2

: Mr.G.Mohana Krishnan

ORDER

This Criminal Original Petition has been filed to quash the final report in C.C.No.808 of 2019 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, filed for the alleged offences under Sections 341, 323, 506(i) and 34 of IPC.

2.It is alleged that, when the 2nd respondent was standing near the tea shop on 02.02.2018, the 1st accused had assaulted him and committed the alleged offence of wrongful restraint. Besides that, he had also threatened the de-facto complainant with dire consequences. It is further alleged that the petitioner had prior motive against the de-facto complainant and only at his instance, the alleged occurrence had taken place.

3.The learned counsel for the petitioner would submit that even if the allegations in the final report are accepted to be true no offence is



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made out against the petitioner. He would further submit that the statements of witnesses also show that all the witnesses have stated that they presume that the alleged occurrence took place only because of the petitioner's instigation on account of his prior enmity with the 2nd respondent. Apart from the vague allegations against the petitioner, there is no material to substantiate the alleged offences.

4.Mr.G.Mohana Krishnan, learned counsel for the 2nd respondent would submit that the 1st accused had no motive as against the 2nd respondent. It is only the petitioner who had prior enmity and it is a fact that only on his instigation, the alleged occurrence took place. The learned counsel would further submit that there are many cases against the petitioner of similar nature and submitted that the points raised by the petitioner can only be adjudicated during the course of trial.

5.The learned Additional Public Prosecutor reiterated the submissions of the learned counsel 2nd respondent and submitted that the contentions raised in the Criminal Original Petition have to be adjudicated only during the course of trial.



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6.This Court, on a perusal of the impugned final report and the allegations, which are extracted above, finds that, there is no material to connect the petitioner with the alleged offences under Sections 341, 323 and 506(i) r/w 34 of IPC. The materials relied upon by the prosecution are the statements of the victim and other eye witnesses. The victim had stated that the alleged occurrence might have taken place on the instigation of the petitioner. His statement reads as follows:

“ஆகியோரது துண்டுதலின் பேரிலேயே இந்த
தாக்குதல் நடைபெற்றுள்ளதாக தான் எண்ணி கிறேன்”

7.Apart from this vague statement there is nothing to connect the petitioner with the alleged offences committed by the other accused. There is no other material in the impugned final report to show that it was at the instigation of the petitioner / A2, the 1st accused attacked the 2nd respondent. There cannot be a prosecution on surmises and conjectures.



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8. Therefore, this Court is of the view that the final report as against the petitioner / A2 is an abuse of process of law and deserves to be quashed. This Criminal Original Petition is allowed. Consequently, connected Criminal Original Petitions are closed.

29.03.2023

smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

To,

1. The Inspector of Police (L & O),
R-4, Soundarapandiyan Angadi Police Station,
Chennai – 600 017.
2. The Public Prosecutor,
High Court of Madras.
3. The XVII Metropolitan Magistrate, Saidapet, Chennai.



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SUNDER MOHAN,J.

smv

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