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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24/03/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.OP(MD)Nos.4727 and 4822 of 2023
and
Cr1.MP(MD)Nos.3442 and 4160 of 2023

(1)Cr1.OP(MD)No.4727 of 2023:-

Sankar : Petitioner/Sole Accused

Vs.

1.State through
The Inspector of Police,
Kadupatty Police Station,
Madurai District. : R1/Complainant

2.Gukan : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in Crime No.17 of 2023, dated 12/02/2023 on the file of the 1st respondent and quash the same as illegal.



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For Petitioner : Mr.S.Srikanth
for M/s.APN Law Associates
For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

(2)Cr1.OP(MD)No.4822 of 2023:-

Sankar : Petitioner/Sole Accused

Vs.

- 1.The Superintendent of Police,
Madurai.
- 2.The Sub Inspector of Police,
Kadupatti Police Station,
Madurai District.
- 3.The Deputy Superintendent of Police,
CBCID,
Madurai.

4.Gukan : Respondents

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in Crime No.18 of 2023, dated 12/02/2023 on the file of the 2nd respondent and entrust further investigation either to the 3rd respondent or to be done under the direct supervision of the 1st respondent with a direction to conduct proper investigation in the manner to known to law within stipulated period.



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For Petitioner : Mr.S.Srikanth
for M/s.APN Law Associates

For R1 to R3 : Mr.B.Nambiselvan
Additional Public Prosecutor

COMMON ORDER

Crl.OP(MD)No.4727 of 2023 is filed seeking for quashment of the case in Crime No.17 of 2023 on the file of the 1st respondent, whereas Crl.OP(MD)No.4822 of 2023 has been filed seeking for direction to transfer the investigation and entrust the further investigation in respect of Crime No.18 of 2023 either to the 3rd respondent or to be done under the supervision of the 1st respondent with a direction to conduct proper investigation in the manner known to law.

2.The facts in brief in Crl.OP(MD)No.4727 of 2023:-

The de-facto complainant lodged a complaint stating that on 11/02/2023 at about 08.00 am in the



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morning, his mother stating that some one is claiming the terrace portion. The above said person was identified as the accused herein namely Sankar. He tried to escape from their catch and in the above said process, sustained injuries on both his legs, head and left hand. He was chased about 10 persons. He was caught in the place itself. Later lodged a complaint. Over the above said occurrence, a case in Crime No.17 of 2023 was registered against the petitioner under section 457, 380 and 511 IPC.

3. Seeking quashment of the same, Cr1.OP(MD)No. 4727 of 2023 has been filed.

4. Another petition in Cr1.OP(MD)No.4822 of 2023 is filed seeking transfer of the investigation in Crime No.18 of 2022, which was registered on the basis of the complaint given by the this petitioner. He has stated in the complaint that he is an auto driver by profession. On 11/02/2023 at about 07.30 pm, his neighbour namely Kannan informed him that his cattle was missing. They went to trace the above said



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cattle. At that time, A2 enquired him doubting that he came to his house for stealing. He refused and stated that he did not come to house. At about 09.00 pm in the night, the accused persons came to the shop and caused assault indiscriminately with weapons. He was also tied in a EP post and severely beaten and was also criminally intimidated. On hearing the above said noise, his mother namely Susila, wife Hemalatha, sister Subashini came to that place and taken him to the hospital. Based upon the statement, a case was registered in Crime No.18 of 2023 for the offences punishable under sections 147, 148, 294(b), 323, 324, 342 and 506(ii) IPC against the accused persons.

5. Seeking transfer of the investigation, he filed this petition namely CrI.OP(MD)No.4822 of 2023.

6. Heard both sides.

7. Since, the FIRs in Crime Nos.17 and 18 of 2023 are the continuous occurrence in the course of the very same transaction, both were taken up



together for passing a common order.

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8.The 2nd respondent in CrI.OP(MD)No.4822 of 2023 namely the Sub Inspector of Police, attached to Kadupatti Police Station, Madurai District is also present before this court. Entire CD files, in both matters, have been called for and perused.

9.As stated above, reading of the CD file in Crime No.17 of 2023 shows that this petitioner was apprehended by the neighbours as well as the de-facto complainant, when he attempted to climb the terrace portion of the de-facto complainant's house for committing theft.

10.According to the de-facto complainant, in the above said process of escape, he sustained injury. But this petitioner stated in Crime No.18 of 2023 that the de-facto complainant and another person caused assault suspecting his involvement for the theft occurrence. But reading of the CD files, in both matters, shows that this petitioner was apprehended by the de-facto complainant and other



12. Whether the petitioner sustained injuries in the course of escape from the place of occurrence or whether he was assaulted by the de-facto complainant and others, when he was in the shop of one Kannan on the particular date, is a matter for consideration by the Investigating Officer. But *prima facie* materials shows that attempt of theft was made by the petitioner. In that process, he was apprehended and assaulted by several persons. When *prima facie* materials are available in the form of statement of witnesses and other satisfactory materials, I am of the considered view that the case



13. It is also seen that several cases are registered against this petitioner before various police stations namely Kadupatty, Solavanthan, Ayyappankkanpatti, Nilakottai and Vadipatti. Most of them are theft cases, robbery, assault, criminal intimidation, apart from NDPS offences. So it is seen that the petitioner is a habitual offender. Such a person certainly is not entitled for any relief from this court. He has to face the investigation and trial. Filing of this petition is a clear abuse of process of court. So the petition file seeking quashment of the criminal prosecution deserves no consideration.

14.Regarding the transfer of investigation,
the learned counsel appearing for the petitioner
would submit that he was severely beaten and



sustained several injuries, such a person could not be attempted to commit any offence, as mentioned in Crime No.17 of 2023. Now according to him, he may not get any fair investigation at the hands of the second respondent police.

15.Perusal of the CD file in Crime No.17 of 2023, as mentioned earlier, *prima facie* materials have been collected against the petitioner to show that he attempted to commit theft. Absolutely, no bias can be attributed against the second respondent herein, who is the Investigating Officer.

16.Now the grievance of the petitioner is that no proper penal provision has been mentioned in the FIR.

17.In this matter, the investigation is in the preliminary stage. So no grievance can be expressed by this petitioner stating that no proper penal provision has been mentioned. Depending upon the



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materials collected, if any grievous offence is attracted, the second respondent police can file alternation report in time. Such sort of premature grievance without any basis cannot be entertained. More-over, transfer of investigation cannot be made as a routine and casual manner. It requires strong circumstances and basis for making a transfer. Absolutely, no case has been made out by the petitioner to transfer the investigation. Like that Cr1.OP(MD)No.4726 of 2023, this petition also deserves no consideration. It is a clear abuse of process of court.

18.In the result, both criminal original petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

24/03/2023

Index:Yes/No
Internet:Yes/No

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To,

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- 1.The Superintendent of Police,
Madurai.
- 2.The Sub Inspector of Police,
Kadupatti Police Station,
Madurai District.
- 3.The Deputy Superintendent of Police,
CBCID,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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Cr1.OP(MD)Nos.4727 and 4822 of 2023

24/03/2023



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21/06/2023