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Crl.O.P.(MD)No.4363 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: **17.03.2023**

Delivered on : **13.04.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

Crl.O.P.(MD) No.4363 of 2020
and
Crl.M.P.(MD)Nos.2441 & 2442 of 2020

1.Esther

2.Sabeena

3.Nirmala Kumari

4.Pichu Mani

5.Kosalai

6.Jerlin Jibi

7.R.Jenibha

... Petitioners / A2 to A7

Vs.

1.State rep. by its

The Inspector of Police,

Kulasekaram Police Station,

Kanyakumari District.

(Crime No.76 of 2019)

... 1st respondent / complainant

2.Lathies Jainet

... 2nd respondent /defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.577 of 2019, on the file of the Judicial Magistrate No.II, Padmanabhapuram, Kanyakumari District and to quash the same.



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For Petitioners : Mr.N.Dilipkumar

For Respondents : Mr.M.Sakthikumar
Government Advocate (Crl.Side) for R1

: No appearance for R2

ORDER

This petition is filed to quash the proceedings in C.C.No.577 of 2019, on the file of the Judicial Magistrate No.II, Padmanabhapuram, Kanyakumari District.

2. The case against the petitioner is that on 21.04.2019, the first petitioner -A1 abused the defacto complainant in filthy language and assaulted her with hands and also criminally intimidated her and the petitioners2 to 5 abused the defacto complainant in filthy language and criminally intimidated her.

3.1. On the side of the petitioners, it is stated that before the registration of the Sabai, Pastor Lazer, Jesudhas and others conducted a prayer meetings in the house of one Chinnakan from the year 1969 to 1972. Thereafter, they constructed a small shed in the land of



Marthandam and conducted the prayer meeting there till the year 1975.

Subsequently, on 17.07.1975, they purchased 8.25.0 cents of land in the name of Jehovah Ikkiya Sabai. A Church was constructed and was dedicated to the Sabai, on 04.03.1982.

3.2. The first petitioner and her sisters joined Sabai on 14.02.1984, 2 cents of land was purchased and a residential house was constructed therein. The first petitioner stayed there and she was doing service in the Church. In the year 2010, sister Alice passed away. After the demise of pastor Jesudhas, the said Jehovah Ikkiya Sabai was administered by Pastor Selvaraj, S/o. Pastor Jesudhas. Due to some problem, the fourth petitioner / A4 filed a suit in O.S.No.94 of 2015 against the Sabai. After the said Pastor Selvaraj passed away, his LR's were impleaded as additional respondents in the suit and the suit is still pending.

3.3.The defacto complainant is having some vengeance against the petitioners. Due to rivalry and with a motive, they filed a false complaint. The first petitioner is a Nun, the second and third petitioners are house wives, the fourth petitioner is the sole bread winner



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of his family, the fifth petitioner is a Senior Citizen, sixth petitioner is a Student and the seventh petitioner is Nurse working in Karur and prayed the case in C.C.No.577 of 2019 is to be quashed.

4. On the side of the petitioners, it is stated that the petition against the petitioners 6 & 7/ A6 & A7 is not pressed, since their names were already deleted from the charge sheet. There is a counter case against the defacto complainant and others. The first petitioner gave a complaint in Crime No. 75 of 2019 against the defacto complainant and two others. Both the occurrence took place in the same place of occurrence and the same time of occurrence, when there was two different versions, only one can be the truth. As per Section 566 of the Police Standing Orders, the police has to enquire the matter and can file charge sheet against the aggressor and either they can file charge sheet against in both the cases. It is the duty of the police to disclose the counter case and relevant materials while filing a charge sheet. In this case the police suppressed the counter case and the materials available in the counter case.



5. On the side of the petitioners, a judgment of the Hon'ble

Supreme Court reported in **1990-(Supp) Supreme Court Cases – 145**

(Nathilal and others V. State of U.P.) is cited, wherein, it is stated as follows:-

“We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.” ”



6. On the side of the petitioners, another judgment of the

Hon'ble Supreme Court reported in **2001-2-SCC-688 (Sudhir and others**

V. State of M.P) is cited, wherein, it is stated as follows:-

“It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter case" by some High Courts and "cross cases" by some other High Courts. Way back in nineteen hundred and twenties a Division Bench of the Madras High Court (Waller, and Cornish, JJ) made a suggestion (In Re Goriparthi Krishtamma - 1929 Madras Weekly Notes 881) that "a case and counter case arising out of the same affair should always, if practicable, be tried by the same court, and each party would represent themselves as having been the innocent victims of the aggression of the other." ”

7. On the side of the petitioners, a judgment of the Hon'ble

Supreme Court reported in **2003-9-SCC-426 (State of M.P V. Mishrilal**

(dead)), is cited, wherein, it is stated as follows:-

“8.....The cross- cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments



over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments.”

8. On the side of the petitioners, another judgment of this Court reported in **2005-M.L.J.(CrI.)-191 (Moorthy V. State rep. by Inspector of Police)**, is cited, wherein, it is stated as follows:-

“22. Whatever it may be, the settled law is that when the counter complaint is given by the accused for the injuries sustained by him in the course of the same transaction at the hands of the deceased party, the Investigation Officer has to investigate both the complaints and then only file final report and place all the materials before the Court. “

9. On the side of the petitioners, another judgment of this Court reported in **2011-3-MWN(Cr.)-474 (Paul Raj V. State by the Inspector of Police)**, is cited, wherein, it is stated as follows:

“8. This Court is to inform that the respondent has fallen into error in submitting charge sheets informing commission of offences in both, the present case as well as the counter case. As indicated in Police Standing Order 588(A) and as repeatedly held by this Court in a case of 'case and counter', the procedure to be adopted is to



register both cases, conduct investigation thereon and file a positive charge sheet upon one and referred charge sheet in the other. Further, in an appropriate circumstance, a charge sheet may be filed in one and a charge of exceeding the right of private defence may be made in the other. The reasons therefor is that it is only then, the Court would be in a position to appreciate who or which party was the aggressor in a case of case and counter.”

10. On the side of the prosecution, it is stated that A1 to A5 have participated in the occurrence, charge sheet was filed and on the complaint made by the petitioners, another case was registered against the defacto complainant and others. The investigation was done in the proper manner. Both the cases are placed before the Court and it is for the Court to decide the issue. As per the Police Standing Orders, both the cases are fairly investigated and there is no bar in registering cases against both the parties.

11. It is seen that the first petitioner filed a complaint against the defacto complainant and others and a case in Crime No.75 of 2015 was filed and charge sheet was also filed in the case. The defacto



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complainant lodged this case against the petitioners. If at all the police registered charge sheet in only one of the complaint as per the Police Standing Order, they have to file particulars regarding the counter case. But, in this case, the respondent police registered two cases, without the trial, it cannot be decided which party is the aggressor.

12. In the above circumstances, if this case is quashed, the trial in the other counter case will be affected. Hence, this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Ls

13.04.2023

To

1. The Judicial Magistrate No.II,
Padmanabhapuram,
Kanyakumari District.
- 2.The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.



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R.THARANI. J.

Ls

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.O.P.(MD)No.4363 of 2020

13.04.2023