



Crl.O.P.(MD).No.11398 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No.11398 of 2020

and

Crl.M.P(MD) Nos.5205 and 5206 of 2020

1. Mohanraj

2. Sutharshan

3. Mariyammal

... Petitioners

Vs.

1. The Inspector of Police
Thogamalai Police Station
Karur District

2. Shanmugam

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C.No.55 of 2020 on the file of the learned Judicial Magistrate No.I, Kulithalai, Karur District

For Petitioners : Mr.R.Murugappan

For R.1 : Mr.M.Sakthikumar
Government Advocate(Crl.Side)

For R-2 : Mr.S.Deenadhayalan



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.55 of 2020 on the file of the learned Judicial Magistrate No.I, Kulithalai, Karur District.

2. According to the petitioners the second respondent herein has lodged complaint before the first respondent alleging that these petitioners and others due to civil dispute regarding pathway on 23.12.2019 at about 08.30 hrs abused the defacto complainant in filthy language and the second petitioner punched on the second respondent chest with hands and legs and also caused criminal intimidation. Based on the above said complaint First Information Report has been registered in Crime No.282 of 2019 for the offences under Sections 294(b),323 and 506(i) of IPC. Thereafter the first respondent investigated the case and filed final report and the same was taken on file by the learned Judicial Magistrate No.I, Kulithalai in C.C.No.55 of 2020 and the same is pending for trial. The cognizance taken by the learned Magistrate is against law and there is a counter case registered in First Information Report in Crime No.283 of 2019 for the offences under Sections 294(b),324 and 506(ii) of IPC against the second respondent and his wife. On the same day this complaint was lodged and case has been registered. After investigation both the cases have been charge sheeted in C.C. No.54 of 2020 and C.C.No.55 of 2020 and taken on file by the learned Judicial



Magistrate No.I, Kulithalai. The first respondent has not followed the Police Standing Order 588A and failed to find out the aggressor. Without following the procedure filed final report in both cases. The alleged occurrence took place in the private land and thereby the offence under Section 294(b) of IPC would not attract. The alleged occurrence was on 23.12.2019 but the First Information Report was registered on 25.12.2019. Therefore there is no material available as against these petitioners and hence the charge sheet is liable to be quashed.

3. No counter was filed by the respondents.

4. The learned counsel appearing for the petitioners would contend that the second respondent had given a false complainant as against these petitioners and the First Information Report has been registered in Crime No.282 of 2019 for the offences under Sections 294(b), 323 and 506(i) of IPC. As per Police Standing Order 588 A the investigation officer has to find out the real aggressor but without following the procedure filed final report in both cases which is against the Police Standing Order 588 A. Further no offence is made out as against these petitioners and without conducting proper investigation the first respondent filed final report, hence the charge sheet is liable to be quashed. He also relied on the judgment of the Hon'ble Apex Court in the case of ***Sunil Kumar .vs. State of U.P and another in Criminal***



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Appeal No.2255 of 2023 and the order of this Court in the case of ***Kumar and others .vs. The Inspector of Police, Rasipuram Police Station, Namakkal District in Crl.O.P(MD) No.12203 of 2017***

5. The learned counsel appearing for the second respondent would contend that on the date of occurrence itself these petitioners assaulted the second respondent, used abusive words and thereby he lodged complaint. The petitioners have also given complaint against the second respondent and the same has been registered in Crime No.282 of 2019 for the offences under Sections 294(b),323 and 506(i)of IPC. Thereafter investigation was conducted and final report was filed in both cases. The learned counsel appearing for the second respondent relied on the Judgment of this Court in the case of ***R.Velladurai and others .vs. The Inspector of Police*** reported in **2016 1 LW(Cri.518)** and ***Nathilal and others .vs State of U.P and another*** reported in **1990 (Supp) SCC 145** and seeks dismissal of the petition.

6. The learned Government Advocate(Crl.Side) appearing for the first respondent would contend that these petitioners and the second respondent both had given separate complaints and as against each others and First Information Reports have been registered in Crime Nos. 282 and 283 of 2019. Crime No.282 of 2019 pertaining to the second respondent and Crime No.283 of 2019 pertaining to these petitioners.



After conducting investigation in both cases charge sheets have been filed. Already the Hon'ble Supreme Court and this Court ordered that police officer can file charge sheet in both cases if unable to find out the aggressor. In this case also the investigating officer could not find out the real aggressor and thereby after following the procedure only the first respondent filed report and cases are pending for examination of witnesses and at this stage this Court may dismiss the petition. There are *prima facie* materials available as per the investigation done by the second respondent, thereby the petition is liable to be dismissed.

7. Heard both sides and perused the materials available on record.

8. It is admitted that two First Information Reports have been registered in Crime No. 282 of 2019 and 283 of 2019 as against these petitioners and second respondent respectively. Thereafter investigation was done by the first respondent and final reports were filed in both cases. The main contention of the petitioners is that the first respondent has not followed the procedures under 588 A of the Police Standing Order and to support his contention he relied on the order of this Court in the case of ***Kumar and others .vs. The Inspector of Police, Rasipuram Police Station, Namakkal District in Crl.O.P(MD) No.12203 of 2017***, wherein it is held as follows:



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“10. Useful reference can be made to the judgment of this Court in Vellapandy Thevar and Others .Vs. State rep.by the Inspector of Police, Alangulam Police Station, Tirunelveli Dt., reported in [1984 LW (Crl.) 257]. The relevant portions of the judgment is extracted hereunder:

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 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



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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 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 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



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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 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 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. It is clear from the above judgment that the respondent Police can file only one Final Report in a case of this nature and there cannot be two Final Reports for the same incident more particularly since the second respondent and his wife have been found to be the aggressor and a Final Report as already been filed and pending in SC.No.104 of 2014 and also discussed in para. 10 and then quashed the criminal proceedings.

10. The learned counsel appearing for the second respondent relied on the judgment of the Hon'ble Supreme Court in the case of ***Nathi Lal and other Vs. State of U.P and another*** reported in ***1990 (Supp) SCC 145*** , wherein it is held 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 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”



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11. Further the Hon'ble Division Bench of this Court in the case of ***R.Velladurai and ors .vs. The Inspector of Police*** reported in **2016 1 LW(Cri.518)** after relying the judgement of the Hon'ble Supreme Court has held as follows:

"17. Finally, it came up before Justice Arunachalam sitting single in V.Karthikeyan and others v. State by S.I. of Police and others, 1992 Crl.L.J. 2948. After having a thorough survey of all the above judgments including the judgement of the Hon'ble Supreme Court cited supra, the learned Judge in para 17 & 18 has held as follows:- "17. Once this conclusion is arrived at, the judgment of the apex Court steps in and there could be no difference then between P.S.O. 145 and P.S.O. 588A Chapter II of the Code of Criminal Procedure invests the police with the statutory rights to receive and record information of the commission of a cognisable crime and carry on investigation, before a prosecution is launched. Police Standing Orders cannot override the provision of the Code of Criminal Procedure. In State of Punjab v. Rajkumar, after considering the nature and purpose of R. 16.38 of the Punjab Police Rules, the Supreme Court held : "The rules were not intended to replace and cannot certainly override the provisions of the Criminal 22 Procedure Code. In State of Punjab v. Charan Singh, 1981 SCC Cri 407 : (1981 Cri LJ 712) it was declared that R. 16.38 cannot govern criminal prosecution, against the members of the police as it could not override the provisions of the Code of Criminal Procedure. The Punjab Police Act, under S. 12, made a provision for the Inspector General of Police, subject to the approval of the State Government to frame such orders and rules, as stated in the said section, and the Punjab Police Rules were framed in the exercise of the powers conferred under S. 1 and S. 7 which dealt with the appointment, dismissal, etc. of inferior officers. This provision appears akin to S. 9 of the Madras District Police Act. The net result is that P.S.O. 588A will have to be held as only directory and not mandatory. P.S.O. 588A is nothing more than administrative instructions and it cannot have



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the force of law. The nonfollowing of the procedure prescribed under P.S.O. 588A will not constitute an illegality to quash the impugned prosecutions. The law laid down by the Supreme Court, coupled with the lack of power under S. 9 of the Tamil Nadu District Police Act to issue P.S.O. 588A as a statutory mandate, would answer the question involved and here reference to a Division Bench, does not arise. 18. Administrative instructions in P.S.O. 588A issued on the basis of the decision of P. N. Ramaswami, J. in Ramakrishnayya's case, commend observance, but merely because the 23 provisions of the order have not been followed in a particular case by the Investigating Agency, that would not constitute illegality to quash the prosecutions launched. The decisions rendered by P. N. Ramaswami, J. in Ramakrishnayya v. State, 1954 MWN Cr 9; David Annoussamy, J. in Ekambaram v. Sundaramurthy, 1989 (1) Crimes 458 and S. T. Ramalingam, J. in Pandurangan v. State by Inspector of Police, Thirukazhukundaram, 1987 LW Cri 400 have dealt with the procedure to be followed in cases and counter, taken on file either on the basis of two final reports or one final report and not her private complaint."

18. From the above Judgments, the law now remains well settled that it is not an illegality to file final report in both the case and the counter case. What is to be tested is only the question of prejudice for the accused."

12. Further the Hon'ble Division Bench of this Court in the case of ***Sankar @ Jeyasankar @ Sivasankaran .vs. The Inspector of Police, Udiyalipatti Police Station, Pudukottai*** has held that

"16. In yet another case in Ekambaram v. Sundarmurthy, 1989 (1) Crimes 458, the same question came up for consideration before yet another Judge of this Court. In that case, the learned Judge took a contrary view.

17. Finally, it came up before Justice Arunachalam sitting single in V.Karthikeyan and others v. State by S.I. of Police and others,



1992 Crl.L.J. 2948. After having a thorough survey of all the above judgments including the judgement of the Hon'ble Supreme Court cited supra, the learned Judge in para 17 & 18 has held as follows:-

"17. Once this conclusion is arrived at, the judgment of the Apex Court steps in and there could be no difference then between P.S.O. 145 and P.S.O. 588A. Chapter II of the Code of Criminal Procedure invests the police with the statutory rights to receive and record information of the commission of a cognisable crime and carry on investigation, before a prosecution is launched. Police Standing Orders cannot override the provision of the Code of Criminal Procedure. In *State of Punjab v. Rajkumar*, after considering the nature and purpose of Rule 16.38 of the Punjab Police Rules, the Supreme Court held:

"The rules were not intended to replace and cannot certainly override the provisions of the Criminal Procedure Code. In *State Of Punjab v. Charan Singh .*, 1981 SCC Cri 407 : (1981 Cri LJ 712) it was declared that Rule 16.38 cannot govern criminal prosecution, against the members of the police as it could not override the provisions of the Code of Criminal Procedure. The Punjab Police Act, under Section 12, made a provision for the Inspector General of Police, subject to the approval of the State Government to frame such Orders and Rules, as stated in the said section, and the Punjab Police Rules were framed in the exercise of the powers conferred under Section 1 and Section 7, which dealt with the appointment, dismissal, etc. of inferior officers. This provision appears akin to Section 9 of the Madras District Police Act. The net result is that P.S.O. 588A will have to be held as only directory and not mandatory. P.S.O. 588A is nothing more than administrative instructions and it cannot have the force of law. The nonfollowing of the procedure prescribed under P.S.O. 588A will not constitute an illegality to quash the impugned prosecutions. The law laid down by the Supreme Court, coupled with the lack of power under Section 9 of the Tamil Nadu District Police Act to issue P.S.O. 588A as a statutory mandate, would answer the question involved and here reference to a Division Bench, does not arise.

18. Administrative instructions in P.S.O. 588A issued on the basis of the decision of P. N. Ramaswami, J. in Ramakrishnayya's case, commend observance, but merely because the provisions of the order have not been followed in a particular case by the Investigating Agency,



that would not constitute illegality to quash the prosecutions launched. The decisions rendered by P. N. Ramaswami, J. in Ramakrishnayya v. State, 1954 MWN Cr 9; David Annoussamy, J. in Ekambaram v. Sundaramurthy, 1989 (1) Crimes 458 and S. T. Ramalingam, J. in Pandurangan v. State by Inspector of Police, Thirukazhukundaram, 1987 LW Cri 400 have dealt with the procedure to be followed in cases and counter, taken on file either on the basis of two final reports or one final report and not her private complaint."

18. From the above Judgments, the law now remains well settled that it is not an illegality to file final report in both the case and the counter case. What is to be tested is only the question of prejudice for the accused."

13. Therefore as per the dictum laid down in the case of ***Nathi Lal and other Vs. State of U.P and another*** reported in ***1990 (Supp) SCC 145*** and also the Division Bench of this Court in ***R.Velladurai and ors .vs. The Inspector of Police*** reported in ***2016 1 LW(Cri.518)*** , the law now remains settled that it is not an illegality to file final report in both cases and the counter cases. Further as per the dictum laid down by the Hon'ble Division Bench of this Court ***Sankar @ Jeyasankar @ Sivasankaran .vs. The Inspector of Police, Udiyalipatti Police Station, Pudukottai*** , Police Standing Order 588-A is nothing more that administrative instructions and it cannot have a force of law and non following of procedures prescribed under Police Standing Order 588-A will not be constitute an illegality to quash the proceedings. In the case referred by the learned counsel appearing for the petitioner in ***Kumar and others .vs. The Inspector of Police, Rasipuram Police Station,***



Namakkal District in Crl.O.P(MD) No.12203 of 2017, the case laws of **Nathi Lal and other Vs. State of U.P and another** reported in **1990 (Supp) SCC 145, R.Velladurai and ors .vs. The Inspector of Police** reported in **2016 1 LW(Cri.518)** and **Sankar @ Jeyasankar @ Sivasankaran .vs. The Inspector of Police, Udiyalipatti Police Station, Pudukottai** were not placed before this Court and thereby the said case law relied on by the petitioner will be applicable to the present facts of the case.

14. As far as judgment of the Hon'ble Apex Court in the case of **Sunil Kumar .vs. State of U.P and another in Criminal Appeal No. 2255 of 2023**, wherein it is held as follows:

“5. Having regard to the submissions made by the learned counsel for the parties and to the documents on record particularly from the cross complaints filed by the appellant and the respondent no. 2 against each other, it appears that the alleged incident had taken place on 11.09.2014 in the office of the appellant, and the chargesheet was filed in the Court of Chief Judicial Magistrate, Fatehpur (U.P.) against the appellant in respect of the complaint filed by the respondent no. 2. The said case is pending without trial since 2015 in the said court.

6. Considering the nature of allegations against the appellant which are of very trivial nature and considering the fact that there is no progress made in the proceedings since the charge sheet was filed against the appellant in the year 2015, the Court is of the opinion that continuing the proceedings would be a persecution and harassment to the appellant. As such a petty incident which took place in their office should have been resolved by the parties on that day itself, instead of stretching it so far”



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15. On a careful reading of the above judgment it will not be applicable to the present facts of the case and it is pertaining to the offences which are trivial in nature but in this case already final report filed and as per the final report *prima facie* materials available as against these petitioners.

16. In this case the Investigation Officer after following the procedures filed final report as against both parties in both cases. In view of the above said judgments and in view of the above discussions there is no merits in this petition and it deserves to be dismissed.

17. Accordingly this Criminal Original Petition stands dismissed and the trial Court is directed to follow the procedures as per the dictum laid down in the case of ***Nathi Lal and other Vs. State of U.P and another*** reported in ***1990 (Supp) SCC 145*** and dispose of the cases as early as possible preferably within a period of six months from the date of receipt of a copy of this order. Consequently connected miscellaneous petitions are closed.

22.08.2023

Index : Yes / No
Internet : Yes / No
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To
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1. The Judicial Magistrate No.I, Kulithalai, Karur District
2. The Inspector of Police
Thogamalai Police Station
Karur Distric
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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