



Crl.O.P(MD).No.17947 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 18.07.2023

Delivered On : 14.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.17947 of 2019

and

Crl.M.P.(MD)Nos.5288, 10549 and 10550 of 2019

1.K.Jeyabalan
2.N.Murugan

...Petitioners

Vs

Kandavel

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to the case in S.T.C.No.494 of 2018 on the file of the learned Judicial Magistrate No.II, Ramanathapuram, and quash the same as illegal in so far as the petitioners are concerned.

For Petitioners
For Respondent

: Mr.M.Kannan
: Mr.K.Kanthavel, Party-in-Person

ORDER

This petition is filed to quash the charge sheet in S.T.C.No.494 of 2018, pending on the file of the learned Judicial Magistrate No.II, Ramanathapuram.



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2. According to the petitioners, the respondent has filed a complaint under Section 200 r/w. 156 of Cr.P.C., against the petitioners herein and other accused before the learned Judicial Magistrate No.II, Ramanathapuram in S.T.C.No.494 of 2018 for the offences under Sections 294(b), 506(i) and 166 r/w. 109 of IPC and Section 12 of the Human Rights Protection Act. The gist of the complaint is that on 04.11.2013, the neighbor of the respondent, one Sethuraman, son of Ganapathy had damaged the mirror of the two wheeler parked in front of the house and that he had preferred a complaint to the first petitioner, who was the Sub Inspector of Police, Kenikkarai Police Station. The first petitioner did not take any action on the complaint of the respondent and upon questioning, he abused the respondent with filthy language and the respondent preferred the complaint before the Superintendent of Police, Ramanathapuram District and the Inspector in the office of the Superintendent of Police informed the first petitioner through phone to take proper action. Thereafter, the respondent had gone to Kenikkarai Police Station at about 07.00 p.m., along with two witnesses. At that time, the first petitioner got angered and asked the third petitioner in S.T.C.No.494 of 2018 to prepare a complaint against the respondent herein. Immediately the FIR was registered as against the respondent by the Police personal and taken the respondent to learned Judicial Magistrate and he developed chest pain, as if the police assaulted him. Thereafter he was taken to house of the learned Judicial



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Magistrate and then he was taken to Government hospital and thereafter, he was lodged in the District prison, Ramanathapuram on 12.11.2013. Thereafter, he had given a private complaint.

3.In fact, the entire allegation made in the private complaint is false. The petitioners did not involve in any offence as alleged in the private complaint. On 11.11.2013, one Sethuraman, son of Ganapathi lodged a complaint before the Kenikarai Police Station. Based on the complaint, a criminal case was registered in Crime No.478 of 2013 for the offences under Sections 294(b) and 506(i) of IPC on 11.11.2013. After registration of the said FIR, the respondent assaulted the petitioners and thus the petitioners arrested the respondent and remanded in judicial custody. After he came out of bail, the respondent sent a complaint to the Superintendent of Police, Ramanathapuram dated 29.11.2013 alleging that false case has been foisted against the respondent and the petitioners also assaulted the respondent. Further the respondent has lodged a complaint before the State Human Rights Commission as against four officials and the same also pending.

4.The first petitioner being Sub Inspector of Police based on the complaint registered FIR in Crime No.478 of 2013 arrested the accused and produced before the learned Judicial Magistrate No.II, Ramnathapuram for



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judicial custody. In order to escape from the remand, he stated that he was having chest pain and then he was taken to Government hospital and he did not allow the doctor to take ECG. After sometime, the doctors after thorough examination certified that the respondent is not having chest pain and thereafter, he was remanded into judicial custody. The petitioners as the police officials are duty bound to take action in the complaint and they never violated any human rights as alleged in the complaint.

5.No counter was filed on the side of the respondent.

6.The learned counsel appearing for the petitioners would contend that the respondent has given complaint before the learned Judicial Magistrate alleging that the petitioners have foisted a false case against him and violated Human Rights and assaulted the defacto complainant. Based on the said complaint, the learned Judicial Magistrate No.II, Ramanathapuram had taken cognizance in S.T.C.No.494 of 2018. In fact the petitioners have not committed any offence and they registered a case based on the complaint given by the neighbour of the defacto complainant and they registered a case in Crime No.478 of 2013 on the file of the Kenikarai Police Station and thereafter, they remanded the respondent in judicial custody. At the time of remand, he acted as if he was suffering from chest pain and thereafter, he was



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taken to hospital. In the hospital also, he quarreled with the doctor and the doctor also examined him and stated that he has no chest pain. Thereafter, he was remanded to judicial custody. In order to wreck vengeance for arresting the respondent, he has filed a private complaint before the learned Judicial Magistrate No.II, Ramanathapuram with false allegations and thereafter the respondent has filed a complaint before the Human Rights Commission and the same was also dismissed with costs. No any offence was made out even as per the complaint. The above complaint is false. Hence, the charge sheet is liable to be quashed.

7.The respondent appeared in person before this Court and he stated that he gave a complaint before the police against his neighbor for the damages caused to his vehicle and the police have not given any receipt for the complaint given by the complainant. Thereafter, he gave a complaint before the Deputy Superintendent of Police. Thereafter, the police had taken him to police station and he was suffering chest pain. The petitioners foisted a false case against him and they arrested and remanded to custody. After arresting the petitioner, the police i.e., all the accused in the private complaint assaulted the complainant and he got chest pain. Without considering the same, they have obtained thumb impression of the respondent and admitted in the Central prison. At the time of remanding in prison, he sustained injuries



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and the same was also revealed in the information obtained from the concerned jail authorities under the RTI Act. As per information obtained from the RTI Act from the jail authorities, it is confirmed that the respondent sustained injuries at the time of remand into judicial custody. The complainant gave a complaint before the learned Judicial Magistrate No.II, Ramanathapuram and taken cognizance in S.T.C.No.494 of 2018. Therefore, since *prima facie* materials available as against the petitioners, the learned Magistrate had taken cognizance and the petitioners have to face trial before the concerned Court. Therefore, the petition is liable to be dismissed. Further this respondent also filed vacate the stay granted by this Court and the same also may be allowed in favour of the respondent.

8.This Court heard both sides and perused the materials available on record.

9.On perusal of records, it is observed that the respondent has preferred a complaint before the learned Judicial Magistrate No.II, Ramanathapuram under Section 200 of Cr.P.C., and the same was taken on file in S.T.C.No.494 of 2018. As per complaint, the alleged occurrence took place on 11.11.2013 at Kenikkarai police station. According to the complaint, on 04.11.2013, the neighbors of the defacto complainant damaged the mirror of his two wheeler.



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Thereby he went to the police station and gave a complaint. But the said complaint was not enquired and no action was taken. In the meantime on 10.11.2013, the complainant asked about his status of complaint for that A1 gave evasive reply. When the same was questioned by the defacto complainant, A1 abused him in obscene words and hence, he gave a complaint before the Superintendent of Police. The Inspector in the office of the Superintendent of Police informed the first petitioner over phone to take proper action. On 11.11.2013, when he approached the police, they abused him in filthy language and prepared the false complaint and registered FIR under Section 294(b) and 506(i) of IPC. Thereafter he was taken to learned Magistrate by A1 to A4.

10. Due to assault made by the accused, he sustained injuries on his left cheek, left leg last finger, abrasion in right leg feet and little scratches in back side of left leg and he suffered with chest pain and thereafter, he was taken to hospital, then he was remanded to judicial custody. Thereafter, the respondent herein filed a private complaint before the learned Judicial Magistrate No.II, Ramanathapuram and sworn statement of witnesses were recorded. The learned Magistrate passed an order dated 12.03.2015, that complainant absent and petition under Section 256 of Cr.P.C., filed and allowed and records and sworn statement are perused and that *prima facie* case is made out to proceed



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against the accused and hence, issued summons to all accused. There is no specific order passed by the learned Magistrate for which offences the cognizance was taken.

11. But on perusal of summons issued to the petitioners, it reveals that offences mentioned as under Sections 200 r/w. 156 of Cr.P.C., and there is no specific order passed by the learned Magistrate stating that what kind of offences committed by the petitioners and for what offence cognizance was taken. According to the complaint, the petitioners committed offence under Section Sections 294(b), 506(i) and 166 r/w. 109 of IPC and Section 12 of the Protection of Human Rights Act and the said offences are mentioned in the typed complaint. When the matter is pertaining to Human Rights Act, it has to be committed to the concerned Special Court otherwise the learned Judicial Magistrate shall take cognizance, for other IPC offence excluding the violation of human rights. No clarity on the cognizance taken by the learned Magistrate. If there is any human rights violation, then the learned Magistrate ought to have committed the case to Special Court. If there is no violation of human rights, then the Magistrate Court took cognizance for other IPC offences. But no specific order passed by the learned Magistrate for taking cognizance. But passed order stating that “records and sworn statements are perused and that *prima facie* case is made out to proceed against the accused



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and hence, issued summon to all accused”.

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12. Without mentioning for what offence, the cognizance is taken, simply issued summons to the accused. Therefore, the order of taking cognizance itself is not in accordance with law. On the ground of procedural irregularity, the cognizance is liable to be quashed. Further according to the complaint, there are human rights violations and he sustained injuries in the police station and the petitioners also produced a copy of the physical examination of the medical practitioners. On perusal of those documents, they reveals that even as per the medical report, he was admitted for chest pain and aggressive behavior, while taking ECG did not allow to take ECG and manhandled the police officials and thereafter, the doctor given a certificate that no evidence of chest pain and he can be discharged. Even at the time of admitting in the hospital, there is no mention about the alleged assaults made by the police.

13. As per sworn statement of complainant, the A1 Jeyapaul assaulted him and also kicked and A2 and A3 handcuffed him and then taken to the learned Magistrate and he narrated the same before the learned Magistrate. But during remand, the learned Magistrate has not made any remarks in the remand report. Had the respondent sustained injuries he would have informed



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to the doctor at the time of admission. As per sworn statement in the hospital, police outpost room, the accused assaulted the complainant. Due to that assault, he sustained injuries. The hospital out post is situated in busy area and the complainant could raised alarm and the hospital official would have noticed the occurrence, but none of the hospital officials were examined as witnesses by the complainant. Further the petitioner was not admitted in the hospital for the injury sustained by him.

14.As per the information received from the jail authorities under RTI Act, he sustained some injuries on the left cheek, left leg last finger, abrasion in right leg feet and little scratches in back side of left leg but no medical evidence produced by the complainant to establish the said injuries and mere production of RTI reply is not sufficient to take cognizance by the learned Magistrate. According to the defacto complainant, these injuries were sustained due to assault made in the hospital outpost. Even according to the sworn statement of complainant after assault he was taken to jail but the jail authorities refused to admit in the prison due to injuries and then again he was taken to Government hospital, Ramanathapuram. In the hospital also, he was handcuffed in the stretcher and admitted in the M.S.Ward and thereafter, the accused influenced the doctor and then he was discharged. Thereafter, the jail authorities noted the injuries and registered in the register. Then he obtained



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copies through RTI from jail. The said medical record dated 12.11.2013 were perused by this Court and they reveals the chest pain but not revealed the injuries sustained by the complainant. The RTI reply is not sufficient to take cognizance for the alleged injuries sustained by the complaint. There is no chance to make such assault since the hospital is busy area. On the face of complaint itself shows that the exaggerates made by the complaint. Further the respondent herein already filed a complaint before the Human Rights Commission for the same incident and the same was also dismissed by the Human Rights Commission. It is admitted by the respondent that the police have registered a case in Crime No.478 of 2013 as against him and he was arrested in the case and at that time only, the alleged occurrence was happened. According to the respondent, the said case was false case while so why the complaint in that case has not been added in this case as accused.

15.Even according to Section 46(2) of Cr.P.C., the Police Officer may use all means necessary to effect the arrest. However, in this case, the attitude of the respondent from the beginning of arrest till reaching of jail shows his intention.

16.The learned counsel appearing for the petitioner relied upon the judgment of this Court in the case of *Satya v. Kanagavalli, in Crl.O.P.No.*



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21518 of 2017, wherein this Court in paragraph no.5 held as follows:-

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“5.In view of the above submissions made by both learned counsel, this Court is of the view that the State Human Rights Commission is a fact finding body and it has examined both the defacto complainant and the petitioner, for which, the defacto complainant has also produced the evidence before the State Human Rights Commission as against the present petitioner. On careful consideration, the State Human Rights Commission vide order dated 16.03.2020 has dismissed the complaint holding that the complainant has not established her allegation. It is to be noted that before the State Human Rights Commission, the defacto complainant has filed 14 documents which were marked as Exs.P1 to P14 apart from the oral evidence. Further, the petitioner have also filed 8 documents and the same were marked as Exs.R1 to R8. After analysing the oral and documentary evidence, the State Human Rights Commission has recorded that the complaint is false and dismissed stating that the allegation of the complainant against the petitioner was not proved by the defacto complainant and also failed to establish the fact that the petitioner had violated the human rights of the defacto complainant .”

17.In this case also, the same petitioner has given same complaint before the Human Rights Commission and the same was also dismissed with costs. On careful perusal of records and the complaint itself shows the ill intention of the respondent and the allegations against the petitioners are



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general and omnibus and it is clear abuse of process of law.

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18.In view of the above judgment and as discussed supra and also considering the facts and circumstances of the case, it is appropriate to quash the proceedings by allowing this petition. Therefore as discussed above, this Criminal Original Petition is allowed and the impugned charge sheet in C.C.No.494 of 2018 pending on the file of the learned Judicial Magistrate No.II, Ramanathapuram is hereby quashed. Consequently, connected miscellaneous petitions are closed.

14.08.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

1.The Judicial Magistrate No.II, Ramanathapuram.



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P. DHANABAL,J.

Mrn

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