



Crl.O.P(MD).No.15220 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 14.03.2023

Delivered On : 01.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.15220 of 2021

and

Crl.M.P.(MD)Nos.8162 and 8163 of 2021

1.C.Panidyan

2.P.Kasthuri

3.Shanmuganathan

...Petitioners

Vs

1.State Rep. By,

The Inspector of Police,

Thalavaipuram Police Station,

Virudhunagar District.

Crime No.48 of 2020

2.Esakkimuthu

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pursuant to the proceedings C.C.No.287 of 2020 on the file of the learned Judicial Magistrate, Rajapalayam and quash the same against the petitioner.

For Petitioners

: Mr.Lakshmi Gopinathan

For M/s.Polax Legal Solutions

For 1st Respondent

: Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)

For 2nd Respondent

: Mr.R.L.Dhilipan Pandian



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ORDER

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This petition is filed to quash the proceedings in C.C.No.287 of 2020 on the file of the learned Judicial Magistrate, Rajapalayam.

2.The allegation against the petitioners is that there was a civil dispute between the petitioners and defacto complainant. On 23.02.2020, when the defacto complainant was returning from Thalavaipuram, the petitioners and others were standing in front of the house of the defacto complainant and they caused him injuries with iron axe and stones. A case in Crime No.48 of 2016 was registered against the petitioners. A final report was filed and was taken on file as C.C.No.287 of 2020 and the case is pending trial.

3.The case of the petitioners is that the defacto complainant threw stones in the land of the petitioners on 08.10.2019. The second petitioner immediately lodged a complaint through online in C.S.R.No.292 of 2019. No action was taken on the complainant. The defacto complainant was causing continuous troubles and that he lodged a false complaint against the petitioners and others. No material objects was recovered by the Investigating Officer from the scene of occurrence. The person who register the FIR has investigated the case and he filed a final report and the entire investigation is



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to be vitiated.

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4.On the side of the petitioners, it is stated that a judgment of the Hon'ble Supreme Court in the case of ***Mohan Lal v. State of Punjab*** reported in ***(2018) 17 SCC 627***, the Hon'ble Apex Court has made an observation that the person who registered the FIR cannot investigate the case and he cannot file a final report.

5.On the side of the petitioners, it it stated that there was 24 hour delay in lodging the FIR. The delay was not explained. No material object was recovered by the prosecution. No wound certificate was obtained. The offence under Sections 147 and 506(ii) of IPC are not made out against the petitioners 2 and 3 and prayed the case to be quashed.

6.On the side of the petitioners, it is stated that there is a civil dispute between the defacto complainant and the petitioners. Since no grievous weapon was seized from the accused, chargesheet was not filed under Section 324 of IPC. Except oral intimidation, no other overt act was attributed against the petitioners. The petitioners are A1, A6 and A9. A6 is the wife of A1. The petitioners herein have filed a counter complaint. No offence was made out against the petitioners.



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WEB COPY 7. On the side of the 1st respondent, it is stated that the prosecution received an intimation from the hospital regarding the medico legal case of the defacto complainant. The police received the complaint of the defacto complainant in the hospital. A3 is the brother of A1. A2 is the wife of A1. There is specific overt act against each of the petitioners and the case is fit for trial and prayed the petition is to be dismissed.

8. On the side of the 2nd respondent, it is stated that there is specific overt act against each of the petitioners. There is specific allegation against the petitioners, since they committed criminal intimidation. The allegation against A1 is serious in nature. A1 attacked the defacto complainant and the defacto complainant was admitted in Rajapalayam hospital and then he was shifted to Government Hospital, Tirunelveli and then he took treatment as 'inpatient' for a period of three days. Since the defacto complainant was taking treatment as 'inpatient', there was a delay in lodging the complaint. More than that at the time of occurrence, there was lock down and hence, the delay in lodging the FIR is not fatal.

9. On the side of the 2nd respondent, it is further stated that the judgment referred by the petitioners was already overruled by the larger bench



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of the Hon'ble Supreme Court and that an informant can be an investigating Officer and that the person who registered FIR is not the informant in this case.

10.The learned counsel for the 2nd respondent would rely upon a judgment of the Hon'ble Apex Court in the case of **Mukesh Singh v. State** reported in **MANU/SC/0660/2020**, wherein it is stated as follows:

“In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of Mohan Lal v. State of Punjab MANU/SC/0857/2018 : (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”



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11.On the side of the 2nd respondent, it is stated that a counter case was registered against the petitioners and the same was taken on file as C.C.No.244 of 2020 and it is pending trial.

12.The learned counsel for the 2nd respondent would rely upon a judgment of the Hon'ble Apex Court in the case of **Nathi Lal and Others v. State of UP and others** reported in **MANU/SC/0736/1988**, wherein it is stated as follows:

“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.”

13.It is seen that there is a civil dispute pending between the parties. There is a counter criminal case pending against the defacto complainant and others. In the 161 statement, some overt act was mentioned against the petitioners. The allegation against the first petitioner is serious in nature. The informant was not the person, who investigate the case. The judgment cited on



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the petitioners was already overruled by the Hon'ble Supreme Court. There is some prima facie materials available against the petitioners, which requires trial. The petition for quashing C.C.No.287 of 2020 is not maintainable.

14.For the above reasons, this Criminal Original Petition is3
dismissed. Consequently, connected miscellaneous petitions are closed.

01.06.2023

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

To

- 1.The Judicial Magistrate, Rajapalayam.
- 2.The Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R. THARANI,J.

Mrn

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