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Crl.O.P.(MD)No.17652 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.17652 of 2022
and Crl.M.P.(MD)Nos.11991 and 11992 of 2022
and
M.P.(MD)No.2847 of 2020
in Crl.O.P.(MD)No.2478 of 2020
and
Cont.P(MD)No.419 of 2020

Crl.O.P.(MD)No.17652 of 2022

1.R.Saravana Kumar
2.R.Mathiraja
3.P.Elangovan

... Petitioner

Vs.

1.The Inspector of Police,
B-1, Karur Town Police Station,
Karur.

2.Marappan

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.49/2020 on the file of Judicial Magistrate-I, Karur and quash the same.



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For Petitioner : Mr.L.Infant Dinesh
For R1 : Mr.B.Thanga Aravindh
Government Advocate(Crl.side)
For R2 : Mr.G.Thalaimutharasu
for Mr.S.Gokulraj

Cont.P.(MD)No.419 of 2020

R.Saravana Kumar

... Petitioner

Vs.

S.S.I.Periyasamy
The Inspector of Police,
Karur Town Police Station,
Karur 630 001,
Tamil Nadu.

... Respondents

PRAYER: Contempt Petition is filed under Section 11 of the Contempt of Courts Act, 1971, to initiate contempt proceeding against the contemnor for willfully and deliberately making false statement before this Court in Crl.O.P.(MD)No.2478 of 2020 on 21.02.2020.

For Petitioner : Mr.L.Infant Dinesh
For R1 : Mr.B.Thanga Aravindh
Government Advocate (Crl.side)



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COMMON ORDER

Heard Mr.L.Infant Dinesh, learned counsel for the writ petitioner, Mr.Thalaimutharasu, learned counsel and Mr. B.Thanga Aravindh, learned Government Advocate(Crl.side), appearing for the respondents.

2. The petitioners in Crl.O.P.(MD)No.17652 of 2022 namely R.Saravanakumar, R.Mathiraja and P.Ilangovan figure as accused in Crime No.350 of 2019, registered on the file of Karur Town Police Station. The said Saravana Kumar is the defacto complainant in Crime No.495 of 2019 registered on the file of the very same police station. In the said case, advocates Nanmaran and Marappan are figuring as accused. Though Cr.No.350 of 2019 was registered on 29.05.2019 and Cr.No.495 of 2019 was registered on 14.08.2019, from a reading of the contents of both the First Information Reports, one can easily come to the conclusion that they constitute "case and counter case". Cr.No.350 of 2019 was investigated by the Sub-Inspector of Police namely Abdullah. Final report was filed on 20.02.2020. Cognizance was taken in C.C.No.



49 of 2020 on the file of the learned Judicial Magistrate No.I, Karur. To quash the same, Crl.O.P.(MD)No.17652 of 2022 has been filed.

3. The learned counsel appearing for Thiru. Marappan states that he has filed Crl.O.P.No.2714 of 2023 for quashing the FIR in Cr.No. 495 of 2019 on the file of the D1 Karur Town Police Station. The said Criminal Original Petition is not listed before this Court. The grievance of the accused in Cr.No.350 of 2019 is that when they filed Crl.O.P. (MD)No.2478 of 2020 for transfer of investigation and the case came up for hearing on 21.02.2020, a submission was made by the respondent police that final report had already been filed on 20.11.2019 itself. In view of the same, the Criminal Original Petition was closed with liberty to the petitioner to file protest petition. When protest petition was filed by Saravana Kumar before the Jurisdictional Magistrate Court in Cr.No. 495 of 2019, it was returned on the ground that final report was not filed. Contending that the jurisdictional police have made a misrepresentation, Contempt Petition in Cont.P(MD)No.419 of 2020, has been filed. P.S.O. 566(2)(3) read as follows:

*"(2) 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. He should place before the court a definite case which he asks it to accept. The investigating officer in such cases should not accept into one complaint and examine only witnesses who support it and gave no explanation at all for the injuries caused to the other side. 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. 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.

(3) 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-complainant as the case may be, should be advised about the disposal by a notice in Form No.90 and to seek remedy before the specified Magistrate, if he is aggrieved by the disposal of the case by the Police."



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4. It is obvious that the aforesaid procedure was not at all adopted in the case on hand. When Mathiraja filed Crl.O.P.(MD)No. 10137 of 2019, seeking bail, interim bail was originally granted and it was made absolute on 20.09.2019. While making the interim bail absolute, I had given the following directions:

"5. Taking note of the fact that the lawyers have been attacked, when after all they discharged the professional duties, the investigating officer is directed to file a final report within a period of two weeks from the date of receipt of a copy of this order. Since grievous injuries have been caused, it is expected that appropriate provisions of law will be incorporated in the final report. On such final report being filed, the jurisdictional Magistrate will immediately take cognizance of the offence, if the final report is otherwise in order. Thereafter, the trial shall also be concluded within a period of four months on merits and in accordance with law. It is made clear that there should not be undue delay in the matter.



6. With this direction, interim bail granted is made absolute. "

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A reading of the said order would indicate that the prosecution failed to bring to my notice about the registration of Cr.No.495 of 2019 on 14.08.2019. Had I been informed that a counter case has already been registered, I would not have given the said direction set out above. The police are to be faulted for having misled the Court. In these circumstances, the clock has to be necessarily put back. Investigation in both the cases will have to be conducted by one and the same officer in the manner and the procedure set out in the PSO 566, will have to be followed.

5. I therefore direct the learned Judicial Magistrate No.1, Karur, to return the final report to the investigation officer. C.C.No.49 of 2020 will stand terminated. Investigation in both the First Information Reports will be taken by one investigation officer. Thiru.Marappan is the Bar President. I do not cast any aspersion on his integrity. However, the learned counsel for the Saravana Kumar states that considering the status of Thiru. Marappan, the petitioner has genuine apprehension that if the jurisdictional police conducts the investigation, it may not be fair or impartial.



6. Without upholding or accepting the said contention, I direct

the Deputy Inspector General of police to entrust the investigation in the hands of any other investigation officer in the rank of Deputy Superintendent of Police. The officer to be entrusted to the investigation shall not be from Karur District. Such a proceeding will be issued by the Deputy Inspector General of Police within a period of three weeks from the date of receipt of a copy of this order. The investigation officer will bear in mind the mandate of PSO 566 and file the final reports.

7. The learned counsel appearing for Thiru.Marappan states that they would withdraw Crl.O.P.(MD)No.2714 of 2023.

8. The final report filed in Cr.No.495 of 2019 is scrapped. The final report filed in Cr.No.350 of 2019 is also scrapped. The Criminal Original Petition, Criminal miscellaneous petition and the Contempt petition are disposed of accordingly.

09.02.2023

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

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To

- 1.The Inspector of Police,
B-1, Karur Town Police Station,
Karur. 1.Director General of Police,
Chennai.
- 2.The Superintendent of Police in Karur
Karur District,
Karur- 639 007,
Tamil Nadu.
- 3.K.Periyasamy
The Inspector of Police,
Karur Town Police Station,
Karur 630 001,
Tamil Nadu.



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Crl.O.P.(MD)No.17652 of 2022

G.R.SWAMINATHAN, J.

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