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CrI.O.P.(MD)No.18440 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13/10/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CrI.OP(MD)No.18440 of 2023

and

CrI.MP(MD)Nos.14574 and 14575 of 2023

Abdul Jaffar @
Mohamed Abdul Jappar : Petitioner/Sole Accused

Vs.

1.State rep. by
The Inspector of Police,
Thuckalay Police Station,
Kanniyakumari District.
(In Crime No.515 of 2017) : R1/Complainant

2.Sahul Hameed : R2/De-facto Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to CC No.52 of 2023 on the file of the Judicial Magistrate Court No.1, Padmanabhapuram, Kanniyakumari District and to quash the same as illegal.

For Petitioner : Mr.K.Sivabalan
for Mr.G.Aravinthan

For 1st Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal Side)



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O R D E R

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This criminal original petition has been filed seeking quashment of the case in CC No.52 of 2023 on the file of the Judicial Magistrate No.1, Padmanabhapuram, Kanniyakumari District.

2.The case of the prosecution in brief:-

The de-facto complainant is a member of APMA Jamath Jimma Palli. His son was the Secretary in the Jamath. Some years prior to the occurrence, one Kaleel Rahuman, Mohamed Saleem, Abdul Vakith, Mohamed Bamin and Abdul Jaffer were removed from the membership by the General Body. So the above said persons were inimical towards the de-facto complainant's family. On 22/09/2017 at about 12.30 noon, when he was observing prayer in the Mosque, the accused persons forcibly entered into the Mosque, picked up quarrel with him and caused assault. He sustained injuries and was taken to the hospital. In the above said occurrence, his son namely Sakkir Ali was also assaulted by the accused persons. When the neighbours gathered, the accused persons fled away from that place making criminal intimidation. On the basis of the complaint given by the de-facto complainant, a case was registered in Crime No.515 of 2017 for the offence under



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sections 147, 294(b), 323 and 506(i) IPC. After completing the investigation, final report was filed and it was taken cognizance in CC No.52 of 2023 by the Judicial Magistrate No.1, Padmanabhapuram

3.At the time of trial process, the case was split up against this petitioner from the parent case as CC No.52 of 2023 by the Judicial Magistrate No.1, Padmanabhapuram. The parent case was tried in CC No.189 of 2018. On the side of the prosecution, 7 witnesses were examined. A3 died pending trial. After completing the trial, the Judicial Magistrate No.1, Padmanabhapuram acquitted all the accused.

4.On that account, this petition is filed stating that in both the matters, the prosecution relied upon the very same witnesses or evidence as the case may be. No new or further investigation is required. So far as this petitioner is concerned, the benefit that was given to the co-accused namely Kaleel Rahuman, Mohamed Saleem, Abdul Vakith, Mohamed Bamin and Abdul Jaffer may be extended to him, since splitting up the trial process will be futile exercise.

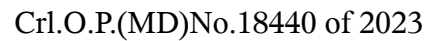
5.Heard both sides.



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6.It is admitted by the learned Government Advocate (Criminal Side) that in respect of Crime No.515 of 2017, five persons were arrayed as accused. On the side of the prosecution, 7 witnesses were examined and 6 documents were marked. At the conclusion of the trial, the trial court came to the conclusion that proper procedure was not followed by the Investigating Officer while investigating the case and counter case. Apart from that, the evidentiary value of PW1 and PW2 were disbelieved. So also the eye witness. On that ground, the prosecution was not successful in establishing the case of assault in an appropriate manner. A counter case has also been registered in Crime No.514 of 2017. It was also investigated and final report was also filed, taken cognizance in CC No.125 of 2019. PW1 during the course of evidence has admitted that the counter complaint given by the one Saleem against the de-facto complainant and others stating that he was assaulted by the de-facto complainant and others.

7.By pointing out this, it was observed by the trial court that proper procedure as set out in PSO-588A has not followed by the Investigating Officer. On that account, acquittal was rendered.

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