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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

**CRL.OP.No.14041 of 2024
and
CRL.MP.Nos. 8551 & 4154 of 2024**

Sureshkumar

... Petitioner

Vs.

1. The State Rep by its
Inspector of Police
Keelaiyur Police Station,
Nagapattinam
(Cr.No.36/2023)

2.V. Kalimuthu

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned PRC.No.31/2023 filed before the learned Munsif cum Judicial Magistrate, Kilvelur by the 1st respondent and to quash the same.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.S.Udaya Kumar for R1

Government Advocate (Crl.Side)

ORDER

The petition is filed to call for the records in PRC.No.31 of 2023 on the file of Munsif-cum-Judicial Magistrate, Kilvelur and quash the same.



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2. Learned counsel appearing for the petitioner submitted that on suspicion in connection with the death of one Anbazhagan, his brother-in-law, who is the petitioner herein, been arrayed as an accused and on completion of investigation, final report filed. The statement of witnesses and documents relied by the prosecution even if taken as gospel truth, the petitioner cannot be prosecuted by the death of the said Anbazhagan since there is no direct evidence or circumstantial evidence to frame charges and proceed against him. Relying upon the analysis report indicates that the Post Mortem Certificate indicating that the physician has found positive for Ethel alcohol. The counsel submitted that the person was found dead and fully drunken, two days after the alleged occurrence of physical altercation between the petitioner and the deceased when otherwise, the said altercation was in exercise of private defence and on sudden provocation, when the mother of the petitioner was attacked by the deceased. Therefore, invoking the exceptional provision under IPC, seeks for quashing the final report.

3. Learned Government Advocate (Crl.Side) appearing for the respondent, per contra, submitted on completion of investigation, the final report filed before the Judicial Magistrate been committed to the



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court of Sessions, Nagapattinam. The Principal District Judge, Nagapattinam, has taken cognizance of the case and assigned SC.No.20 of 2024. After framing of charges, the matter is adjourned to 20.06.2024 for fixing the date for trial. He further submitted that the right of private defence or sudden provocation are factual aspects which are to be tested during trial and cannot be scrutinized in the quash petition.

4. This Court, agree with the above submission of learned Government Advocate (Crl.Side) appearing for the respondent. Factual aspects such as private defence and sudden provocation are a pleas which has to be tested by the trial court after examination of witnesses. Hence, the petition to quash is dismissed. The trial court is directed to complete the examination of witnesses as early as possible, preferably, within period of four months from today. Consequently, connected miscellaneous petitions are closed.

18.06.2024

Index: Yes/No
Speaking / Non-speaking Order
gv



To

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