



Crl.R.C.No.1230 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2024
PRONOUNCED ON : 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1230 of 2023 and
Crl.M.P.Nos.9615 & 9616 of 2023

1.Paramasivam
2.Vadivel
3.Sadasivam

... Petitioners

Vs.

1.S.R.Raja
2.The Inspector of Police,
Mohanur Police Station,
Namakkal District.

... Respondents

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in order dated 09.01.2023 made in C.M.P.No.2461 of 2022 in C.C.No.249 of 2022 on the file of learned Judicial Magistrate No.II, Namakkal and set aside the same.

For Petitioner	:	Mr.K.Selvakumar
For R1	:	Mr.K.Kalimuthu
For R2	:	Mr.R.Kishore Kumar, Government Advocate (Crl. Side)

ORDER



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The petitioners are named accused (A1 to A3) in FIR in Crime No.47 of 2022, dated 20.02.2022 on the file of the 2nd respondent Police along with three other accused (A4 to A6). On completion of investigation, the 2nd respondent filed charge sheet only against Gnanaprakash, Logeswaran and Manoharan as A1 to A3 originally A4 to A6 in FIR deleting the petitioners' names. Aggrieved over the same, the 1st respondent/defacto complainant filed objection petition in C.M.P.No.2461 of 2022 in C.C.No.249 of 2022 before the learned Judicial Magistrate No.II, Namakkal (trial Court) against deletion of petitioners' names. The trial Court *vide* impugned order, dated 09.01.2023 accepted objection petition of the 1st respondent and allowed the same. Challenging the same, the present criminal revision case is filed by the petitioners (A1 to A3).

2.The learned counsel for the petitioner submitted that the impugned order passed by the trial Court is against the decision of the Hon'ble Apex Court in the case of “***Vishnu Kumar Tiwari v. State of Uttar Pradesh*** reported in ***(2019) 8 Supreme Court Cases 27***” wherein it had held that '*the Magistrate could not be compelled to treat the protest petition as a*



complaint, the remedy of the complainant would be to file a fresh complaint

and invite the Magistrate to follow the procedure under Section 200 read

*with 202 of Code'. The learned counsel further submitted that eye witnesses projected in this case (LW2 to LW7) clearly stated that petitioners standing in the crowd and nothing more, it is the named accused in the charge sheet who assaulted the 1st respondent which the trial Court failed to consider. Placing reliance on the two documents viz., FIR and medical report, the trial Court came to wrong conclusion that *prima facie* case made out against the petitioners. Added to it, the 1st respondent had motive against the petitioners, not considered. Since the 1st and 2nd petitioners are Government employees, to brook vengeance their names included in the complaint. The allegation against the petitioners is that the 1st petitioner punched the 1st respondent on his face and caused fracture on the nose, the 2nd petitioner kicked on the back of his shoulder and the 3rd petitioner slapped on his buttocks with hands. When the ocular evidence and medical report are otherwise and when there is no corresponding injury to the allegations made against the petitioners found, the trial Court failed to consider these aspects and gave a wrong finding. The Investigation Officer/2nd respondent conducted detailed enquiry and found false implication of the petitioners and*



deleted their names while filing charge sheet. Thus, the impugned order of the trial Court is not sustainable. Hence, prays for setting aside the impugned order.

3.The learned counsel for the 1st respondent/defacto complainant submitted that the 1st respondent is an LIC Agent and also in the real estate business. On 19.02.2022 after casting his vote, he met Nithya, wife of 1st petitioner and they were speaking for some time and thereafter, the 1st respondent went to his office. At that time, Gnanaprakasam/A4, relative of 1st petitioner questioned the 1st respondent speaking to Nithya and picked up quarrel with him. On the next day, i.e., 20.02.2022, at about 10.45 a.m., when the 1st respondent was near Dhroupathy Amman Temple, Mohanur, the villagers came for a talk. During that time, the petitioners (A1 to A3) and three other named accused in the charge sheet (A4 to A6) used abusive words and questioned the 1st respondent talking with Nithya and forced the 1st respondent to withdraw earlier case. Thereafter, the 1st petitioner punched the 1st respondent on his face, the 3rd petitioner hit him on his buttocks and the 2nd petitioner kicked him on the back of his shoulder. A4 and A5 punched the 1st respondent on his head and A6 punched on his lips. On the



intervention of others, the 1st respondent was let off. Ambulance called and the 1st respondent was taken to the Government Hospital, Namakkal where first aid given. The 1st respondent was taken to C.M Best Hospital, Namakkal where he took treatment as inpatient from 23.02.2022 to 03.03.2022 for more than ten days. The Doctor (LW8) examined the 1st respondent, issued wound certificate opining that injury No.2 is grievous in nature and injury Nos.1, 3 & 4 are simple in nature. CT scan was taken on brain, skull, facial bone and chest. Due to sustained treatment, the 1st respondent could recover and later got discharged.

4.He further submitted that the discharge was only on 03.03.2022, even before collecting wound certificate, the 2nd respondent Police in a hurried manner, with an intention to delete the petitioners' from the case, recorded the statement of the witnesses (LW2 to LW7) as though the petitioners were only bystanders in the crowd. This statement is only to extricate and delete the petitioners from the above case. Thereafter, deletion report/alteration report filed before the trial Court on 20.05.2022. On coming to know about the same, the 1st respondent sent representation to the Superintendent of Police and Deputy Superintendent of Police, Namakkal.



Despite the same, no action taken, hence, he filed objection petition before the trial Court. The trial Court considering the 1st respondent's objection, rightly found *prima facie* case made out against the petitioners and rejected extrication of the petitioners and included them in the final report which is proper.

5.To substantiate his arguments, the learned counsel for the 1st respondent relied on the decision of the Hon'ble Apex Court in the case of “*Vinay Tyagi v. Irshad Ali alias Deepak and Others* reported in (2013) 5 *Supreme Court Cases 762*” and submitted that '*if it is dissatisfied on any important aspect of investigation already conducted and in its considered opinion, it is just, proper and necessary in the interest of justice to direct “further investigation”*'. Making the above submissions and relying upon the decision, the learned counsel submitted that proper actions to be taken against the petitioners and prays for dismissal of the revision.

6.The learned Government Advocate (Crl. Side) appearing for the 2nd respondent Police submitted that on the complaint of the 1st respondent, a case in Crime No.47 of 2022 for offence under Sections 147, 294(b), 323



and 506(i) of IPC registered against six persons, in which, the petitioners shown as A1 to A3. LW9 is the Sub Inspector of Police who registered FIR and conducted investigation in this case. On registration of FIR, he visited scene of occurrence in presence of LW6 and LW7, prepared Observation Mahazar and Rough Sketch. The Doctor/LW8 from C.M Best Hospital examined the 1st respondent, his statement also recorded. LW2, LW3, LW4 and LW5 are eye witnesses to the occurrence, their statements recorded. LW2 to LW7 stated about assault committed by three of the accused who are A4 to A6 in FIR and their statements further confirmed that the petitioners (A1 to A3) standing in the crowd and not committed any assault on the 1st respondent. Thereafter only, their names extricated and deleted from the final report. He further submitted that the 1st respondent had motive against the petitioners herein. Since the petitioners 1 and 2 are Government employees, to cause harassment and spite vengeance they were included in the complaint. The investigation conducted in an independent manner. On conclusion of the same, charge sheet filed against three persons A4 to A6 for offence under Sections 294(b), 323, 506(i) and 325 of IPC.

7.Considering the submissions and on perusal of the materials, it is



seen that in this case, the 1st respondent is an injured victim who lodged a complaint to the 2nd respondent Police on 20.02.2022 on the assault committed by the six persons. The petitioners herein are shown as A1 to A3 in the FIR. The injuries sustained by the petitioners clearly recorded in the wound certificate issued by the Doctor/LW8 attached to C.M Best Hospital, Namakkal that injury No.2 is grievous in nature and injury Nos.1, 3 & 4 are simple in nature. CT scan was taken on brain, skull, facial bone and chest. The injuries attributed against the presently named accused in the charge sheet does not corroborate with the wound certificate. The specific complaint is that the 1st petitioner/A1 in this case caused nasal fracture which is grievous in nature. It is to be seen that the 1st respondent took treatment as inpatient from 23.02.2022 to 03.03.2022. The statement of witnesses to the occurrence (LW2 to LW7) recorded on 20.02.2022 when the 1st respondent was under the treatment. The statements recorded confirms presence of petitioners when the 1st respondent was assaulted but it is further recorded to show though the petitioners present in the scene of occurrence, they were only witnessing the assault and it is the named accused in the charge sheet (A4 to A6 in FIR) said to have attacked the 1st respondent. The complaint itself is that the 1st petitioner's wife and the 1st



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respondent were found talking with each other which was objected by the sister's son/A4 of the 1st petitioner. On the next day, panchayat held, the 1st respondent was questioned about earlier incident. In this case, when the 1st respondent was in the hospital extricating and deleting the names of the petitioners in a hurried manner even before the treatment could be completed is of concern.

8.Thus, the trial Court rightly considered the 1st respondent's objection petition in detail and thereafter only, rejected the deletion report, as a result, the named accused in the FIR (A1 to A3) included in the final report.

9.In view of the above, this Court finds no reason to interfere with the impugned order, dated 09.01.2023 in C.M.P.No.2461 of 2022 in C.C.No.249 of 2022 passed by the learned Judicial Magistrate No.II, Namakkal and the same is hereby confirmed. Accordingly, this criminal revision case stands dismissed. Consequently, connected criminal miscellaneous petitions are closed.

04.06.2024

Neutral Citation : Yes/No



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Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes

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To

1.The Judicial Magistrate No.II,
Namakkal.

2.The Inspector of Police,
Mohanur Police Station,
Namakkal District.

3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
Crl.R.C.No.1230 of 2023

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