



WEB COPY



CRL O.P. No.14110 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.10.2024

Pronounced on : 25.11.2024

CORAM

The Hon'ble Mr.Justice P.DHANABAL

**Crl OP.No.14110 of 2022**

**and Crl.M.P.No.7703 of 2022**

1. Krishnakumar  
S/o Sornappan

2. M.Porpatham  
S/o Munusamy

... Petitioners/Accused

Vs

S. Saravanan

... Respondent/Complainant

**PRAYER: -** The Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, 1973, to quash the private complaint pending on the file of the learned Judicial Magistrate-II at Poonamallee in C.C.No.117 of 2021 and grant relief.

For Petitioners : Mr. D.Vijayan

For Respondent : Mr.R.C.Poul Kanagaraj

For Mr.G.Pugazhenth



CRL O.P. No.14110 of 2022

WEB COPY

## **ORDER**

This Criminal Original Petition has been filed by the petitioners to quash the private complaint pending on the file of learned Judicial Magistrate-II, Poonamallee in C.C.No.117 of 2021.

### **The short facts necessary to dispose of the petition are as follows:-**

2. The petitioners are Police Officials and the respondent is a practicing advocate and the complaint was lodged by the respondent before the learned Judicial Magistrate-II, Poonamallee under Section 200 of Cr.P.C and taken on file by the learned Judicial Magistrate for the offence in CC.No.117 of 2021 under Sections 352, 341, 342, 325 and 506 (ii) of IPC.

3. As per the complaint, the allegations are that the respondent along with one Nixon Raj, who is also an Advocate went to the Thiruverkadu Police Station on 27.02.2015 at about 8.00 p.m on instruction from his client one Mr.Sundaram in respect of C.S.R.No.124



*CRL O.P. No.14110 of 2022*

of 2015. At that time, the complainant, who is the respondent herein explained to the accused, who are the petitioners herein that the matter pertains to a civil dispute and O.S.No.788 of 2005 is pending before the Additional District Munsif Court, Poonamallee. But the 2<sup>nd</sup> accused in an arrogant manner, had uttered that the police officer can bend the law in his favour and can solve the civil dispute. Thereafter, on the same day, at about 10.00 p.m., when the complainant was at his house, the police constables from Thiruverkadu Police Station came and informed that, the 2<sup>nd</sup> accused was expecting some clarification and compelled him to accompany with them. Thereafter, he along with Nixon Raj went to the police station, at that time, they dragged both of them into police station, assaulted and also forced them to sign in a blank papers. Thereafter, he along with another person, Nixon Raj were remanded in judicial custody in a false case and not even allowed to take treatment in the hospital. After released on bail, they took treatment as out-patient, and they got grievous injuries. In this regard, the complainant has lodged a complaint before the Commissioner of Police, Chennai dated 06.03.2015, but no action was taken. Therefore, he filed a private



*CRL O.P. No.14110 of 2022*

complaint and based on the private complaint, the learned Magistrate has taken cognizance for the offence under Section 352, 341, 342, 325 and 506 (ii) IPC. Now, the petitioners challenging the said cognizance taken by the learned Magistrate through this petition.

4. The learned counsel appearing for the petitioners would submit that the respondent being an Advocate appeared before the Thiruverkadu Police Station while the petitioners working as Police Officials in the said station in respect of the complaint lodged by one Saravanan son of Punniyakodi in C.S.R.No.124 of 2015. At that time, the respondent along with another person namely Nixon Raj came to the police station and asked the 2<sup>nd</sup> petitioner about the complaint lodged by Saravanan son of Punniyakodi, for which the C.S.R number had been given. Immediately, the respondent shouted in a drunken mood by saying that civil suit is pending, then how did you register and entertain the complaint and abused in a filthy language for the issuance of C.S.R for the complaint lodged by Saravanan and also manhandled with hands and thereby, he sustained injuries on his left hand finger and immediately,



*CRL O.P. No.14110 of 2022*

he lodged a complaint. Based on the complaint, the case in Crime No.438 of 2015 under Sections 341, 294(b), 332, 323 and 506(i) of IPC was registered and both the persons, the respondent and Nixon Raj were sent for judicial custody. In order to take vengeance, the present complaint is filed. Already, the respondent filed a complaint before the Human Rights Commission and the same was dismissed. Only because the respondent was arrested and remanded in judicial custody, he filed this false complaint against the petitioners. The petitioners have done their lawful duty, therefore, the present complaint was lodged only to take vengeance. Even as per the complaint, there are only vague allegations and there is no any medical records produced for the alleged injuries sustained by him. They were subjected for medical examination while sending for judicial custody in the main case and they were under the influence of alcohol. Therefore, only as a counter blast to the previous case lodged against the respondent, the present complaint is lodged. The pending complaint against the petitioners is abuse of process of law and the same is liable to be quashed. The petitioners are police officials, while exercising their duty, the alleged occurrence was



CRL O.P. No.14110 of 2022

happened. Therefore, prior sanction to prosecute against the petitioners is necessary.

5. In support of his contention, the learned counsel appearing for the petitioners has relied upon the following judgments:-

***(i). A.Sreenivasa Reddy Vs. Rakesh Sharma and another [Crl.A.No.2339 of 2023 on the file of the Supreme Court dated 08.08.2023]***

***(ii)Amod Kumar Kanth Vs. Association of Victim of Uphaar Tragedy and another [Crl.A.No.1359 of 2017 dated 20.04.2023]***

***(iii)Rajesh Das Vs.Tamil Nadu State Human Rights Commission, Chennai & others reported in CDJ 2010 MHC 5043***

***(iv)R.Gunavharman Vs. K.Babu [Crl.O.P.No.12057 of 2020 on the file of Madras High Court dated 22.06.2022].***

6. The learned counsel appearing for the respondent would contend that the respondent, who is an Advocate by profession and the petitioners are the accused / respondents in the C.C.No.117 of 2021



*CRL O.P. No.14110 of 2022*

pending on the file of the learned Judicial Magistrate Court – II , Poonamallee. On 27.02.2015, at about 8.00 p.m, the complainant on the instruction from his client Sundaram and others went to Thiruverkadu Police Station in respect of C.S.R.No.124 of 2015. At that time, he explained about the pendency of the civil suit in O.S.No.788 of 2005 on the file of learned Additional District Munsif, Poonamallee. At that time, the 2<sup>nd</sup> accused, explicated his arrogance and uttered that, he as the police officer can bend the law in his favour and can solve the civil dispute. Thereafter, when the respondent / complainant was at his house, at about 10.00 p.m, the police constables from Thiruverkadu Police Station came to his house and asked him to come to the police station for enquiry. The complaint was accompanied by Nixon Raj and after reached the police station, they snatched their mobile phones and taken into the police station and assaulted in a black and blue manner.

6.1. Further contended that on 28.02.2015, at about 3.50 a.m., the complainant and Nixon Raj were produced before the learned Judicial Magistrate-II, Poonamallee and remanded into Judicial custody for the



*CRL O.P. No.14110 of 2022*

offences under Section 341, 294(b), 332, 323, 506(i) of IPC in Crime No.438 of 2015. At the time of remand, they also informed before the learned Magistrate about the Human rights violations as against the petitioners. While the petitioners have taken him to Central Prison, Puzhal, the police officials assaulted them for disclosing about the violation of human rights. After released on bail, the respondent took treatment as an out-patient in the institute of Oto-Rhino Laryngology at the Madras Medical College / Rajiv Gandhi Government Hospital on 26.05.2015 and he sustained grievous injury. For that, he lodged a complaint before the Commissioner of Police, Chennai, but no action was taken and thereby, he lodged a complaint before the learned Judicial Magistrate No.1, Ponneri and cognizance was taken and the same is pending in C.C.No.44 of 2019. The pending case against the petitioners in C.C.No.117 of 2021 and the case against the respondent in C.C.No.5 of 2019 are pending in the same Court. This is the case of case in counter and both cases have to be tried together. Therefore, the present case is liable to be dismissed.



*CRL O.P. No.14110 of 2022*

WEB COPY

7. This Court heard both sides and perused the materials available on record.

8. In this case, it is an admitted fact that the respondent, who is the defacto complainant in the private complaint and one Nixon raj were arrayed as accused in another case in Crime No.438 of 2015 for the offence under Section 341, 294(b), 332, 323 and 506 (i) of IPC. The allegations levelled against the petitioners are that after FIR was registered in Crime No. 438 of 2015, the defacto complainant, who is the respondent herein, the police asked him to come to the police station and he along his friend Nixon Raj went to the police station. At that time, they manhandled the defacto complainant and his friend Nixon Raj. It is also an admitted fact that in that case, both the complainant and his friend were remanded in judicial custody for the offence. Thereafter, the petitioners assaulted and caused injuries to the respondent. These are all the allegations.



*CRL O.P. No.14110 of 2022*

WEB COPY

9. As far as the case in counter is concerned, the previous case was registered on 27.02.2015 at about 20.00 hours and the present private complaint for the offence took place at 10.00 pm after the arrest of the accused in that case. Therefore, both are not connected with the same occurrence and thereby, both are not counter cases.

10. As far as the allegations levelled against the petitioners in the present case are concerned, the Trial Court has taken cognizance for the offence under Sections 352, 341, 342, 325 and 506(ii) of IPC. It is an admitted fact that, already FIR has been registered and based on the FIR only, these petitioners arrested the accused. Therefore, the question of offence under Sections 352, 341 and 342 of IPC would not attract. As far as offence under Section 325 of IPC is concerned, the complainant has not produced any document and no complaint made by the complainant before the learned Magistrate at the time of remand about the injuries caused to him, no treatment was taken in the prison hospital



*CRL O.P. No.14110 of 2022*

for the alleged injury sustained by him and no records produced by the complainant to take cognizance under Section 325 of IPC. As far as 506 (ii) IPC is concerned, there are no specific allegations regarding criminal intimidation and causing fear in the minds of the complainant.

11. On a careful perusal of the complaint lodged by the complainant would show that there are exaggerations and this complaint was lodged only as a counter blast to the case filed against the complainant in Crime No.438 of 2015. These petitioners are being the police officials had done their duty and arrested the petitioners based on the case registered against the accused and remanded to judicial custody. Already, the same complainant lodged a complaint before the Human Rights commission and the same was thoroughly enquired and dismissed on merits and no appeal is filed against the dismissal of the complaint. Moreover, on a careful perusal of the complaint and records shows that there are no specific allegations against the petitioners and the allegations are vague, general and omnibus allegations and only in order to take vengeance for the earlier case registered against the complainant,



CRL O.P. No.14110 of 2022

there cannot be a criminal proceedings against the police officials and thereby, the present complaint is an abuse of process of law and the same is liable to be quashed. The learned magistrate has also not considered the exaggerations made in the complaint, vague and omnibus allegations and also non-availability of materials to constitute the offences.

12. As far as the arguments of the learned counsel for the petitioners in respect of prior sanction under Section 197 of Cr.P.C is concerned, this Court already in ***Felix Suresh Peter Vs. J.Samuel Ponnusamy reported in 2024 (2) LW CrL. 298*** after referring the Hon'ble Supreme Court Judgment in ***Fakhruzamma Vs. State of Jharkhand and Another*** that, from constable to inspector of police, there is no sanction is necessary to prosecute since they are removable from service by the Inspector General (Police) concerned as dismissal order or removal of service is not by the State Government and hence, prior sanction for prosecution is not necessary. Therefore, the arguments of the petitioner in respect of prosecution sanction is not acceptable.



WEB COPY



CRL O.P. No.14110 of 2022

13. Further, the learned counsel for the petitioners has also relied upon the judgments namely *(i) A.Sreenivasa Reddy Vs. Rakesh Sharma and another [Crl.A.No.2339 of 2023 on the file of the Supreme Court dated 08.08.2023]*, *(ii) Amod Kumar Kanth Vs. Association of Victim of Uphaar Tragedy and another [Crl.A.No.1359 of 2017 dated 20.04.2023]*, *(iii) Rajesh Das Vs.Tamil Nadu State Human Rights Commission, Chennai & others reported in CDJ 2010 MHC 5043 and (iv)R.Gunavharman Vs. K.Babu [Crl.O.P.No.12057 of 2020 on the file of Madras High Court dated 22.06.2022]*. On a careful perusal of the above judgments, they are not applicable to the present facts of the case since the facts of the cases are different. However, in this case, as discussed supra, the complaint itself shows the intention of the complainant to take vengeance for the case registered against him in the previous case and the allegations are vague, bald and general, omnibus allegations. On that ground, this complaint is liable to be quashed.



CRL O.P. No.14110 of 2022

WEB COPY

14. In the result, this Criminal Original Petition is allowed and the proceedings pending against the petitioners in C.C.No.117 of 2021 on the file of the Judicial Magistrate No.II, Poonamallee are quashed. No costs. Consequently, connected Criminal Miscellaneous Petition is closed.

25.11.2024

index: Yes/No  
Internet: Yes/No  
Speaking/Non Speaking order  
*mac*

To

1. The Judicial Magistrate No.2, Poonamallee
2. The Public Prosecutor, High Court, Madras.



WEB COPY



*CRL O.P. No.14110 of 2022*

**P.DHANABAL,J**

*mac*

Pre-Delivery Judgment made in  
**Crl OP.No.14110 of 2022**  
**and Crl.M.P.No.7703 of 2022**

25.11.2024