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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.22477 of 2023
and Crl.MP.Nos.15676 & 15677 of 2023

Mr.G.Venkateshan

...Petitioner/Petitioner

.Vs.

1.The State rep.by
The Inspector of Police
Keevalur Police Station
Nagapattinam.
(Crime No.258/2021)

2.S.Bagyalakshmi

.. Respondents/De facto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to charge sheet CC.No.257 of 2022, on the file of the learned District Munsif cum Judicial Magistrate, Kilvelur, Nagapattinam District and quash the same.

For Petitioner : Mr.C.Emalias

For respondents : Mr.A.Gopinath
Government Advocate (Crl.Side)
for R1

ORDER

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This petition has been filed seeking to quash the proceedings in C.C.No.257 of 2022, pending on the file of District Munsif cum Judicial Magistrate, Kilvelur, Nagapattinam District

2.The case of the prosecution is that the 2nd respondent was working as a Bailliff in the District Court, Nagapattinam. The petitioner's wife was working as a Headmistress in a Panchayat Union Middle School. The 2nd respondent had gone to the school on 2.4.2021 in order to serve a summon in E.P.No.15/2019. Since the school was closed, the 2nd respondent went to the house of the Headmistress and the Headmistress refused to receive the summon. The petitioner who was the husband of the Headmistress came down and questioned the authority of the 2nd respondent, who was attempting to take photo in order to prove the service of summons. The petitioner is said to have snatched the mobile phone and also abused and assaulted the 2nd respondent. Based on the complaint given by the 2nd respondent, an FIR came to be registered in Crime No.258 of 2021, by the 1st respondent. On completion of investigation, a final report came to be filed before the Court below which was taken on file in C.C.No.257 of 2022. The same has been put to challenge in the present petition.

3.Heard Mr.C.Emalias, learned counsel for the petitioner and Mr.A.Gopinath , learned Government Advocate (CrI.Side) for R1. The notice has been served on the



2nd respondent and the name has also been printed in the cause list and there is no representation either in person or through counsel.

4.The learned counsel for the petitioner submitted that the entire incident as described in the final report is improbable and that the mobile phone that is said to have been used in order to record the entire incident, was not even shown as a material object in this case. That itself shows that the case of the prosecution is unbelievable and the petitioner is being targeted for an incident which never took place.

5.Per contra, the learned Government Advocate (Crl.Side) submitted that the allegations made in this case are quite serious and the 2nd respondent has spoken about the entire incident and the doctor has also been examined for having given treatment to the 2nd respondent. Hence, a prima facie case has been made out against the petitioner and whatever defence the petitioner wants to take, can be done only before the Court below during the course of trial. The learned Government Advocate (Crl.Side) therefore submitted that the present criminal original petition is liable to be dismissed.

6.It is not necessary for this Court to go into the rival contentions raised by the learned counsel on either side.



7.It is seen that the Court below has taken rubber stamp cognizance of the final report without any application of mind. This practice has been deprecated repeatedly by this Court by following judgment of the Apex Court. Useful reference can be made to the judgment of this Court in **Shanmugam & others vs. The Inspector of Police & Another** reported in **2019 2 LW CrI.263**. The cognizance order passed by the Court below is liable to be interfered on this ground alone. In view of the same, there is no scope for this Court to go into the other rival contentions raised by the respective counsel.

8.In the light of the above discussion, the rubber stamp cognizance order passed by the Court below dated 28.8.2021, is hereby quashed. The matter is remanded back to the Court below and the Court below is directed to apply its mind on the available materials and the order shall be passed strictly in accordance with law. This process shall be completed by the Court below within a period of two weeks from the date of receipt of a copy of the order.

9.In the result, this criminal original petition is disposed of in the above terms. Consequently, connected miscellaneous petitions are closed.

11.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order
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To

1. The Inspector of Police
Keevalur Police Station
Nagapattinam.
2. District Munsif cum Judicial Magistrate
Kilvelur, Nagapattinam District.
3. The Public Prosecutor,
High Court of Madras,
Madras.



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N.ANAND VENKATESH.J.,

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