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CrI.O.P.No.26846 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.26846 of 2024
& CrI.M.P.Nos.14901 & 14903 of 2024

1. K.Rajendran,
2. Madhubalan,
3. Gunasekaran,
4. Jaishankar,
5. Lakshmanan,
6. Parimala

... Petitioners/Accused 1 to 6
/versus/

1. The State Represented by,
The Sub Inspector of Police,
Ethappur Police Station,
Salem District.
(Crime No.58 of 2024).

... 1st Respondent/Complainant

2. Sathya.

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition has been filed under Section 528 BNSS, pleaded to call for records in C.C.No.236 of 2024 on the file of the Learned Judicial Magistrate No.I, Attur, Salem and quash the same.

For Petitioners : Mr.V.Krishnamoorthy.

For R1 : Mr.S.Udaya Kumar.
Government Advocate (CrI.Side)

ORDER



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The petitioner herein is an accused in C.C.No.236 of 2024 investigated by the Sub Inspector, Ethappur Police Station, Salem in Crime No.58/2023.

2. The present petition is filed to quash the final report on the ground that on the same transaction, the complaint against (i) K.Rajendran, (ii) Madhubalan, (iii) Gunasekaran, (iv) Jaishankar, (v) Lakshmanan, (vi) Parimala was registered in Crime No.58 of 2023.

3. The Learned Counsel appearing for the petitioner submits that being case and case in counter, arising out of same transaction, the Investigating Officer ought to have ascertain who is the aggressor and should have filed final report only against the aggressor and should have dropped action against the other party following Police Standing Officer 566. Whereas, in this case, both the complaints were investigated and final report filed without reference to the other complaint. Hence following the decision of the full bench of this Court in ***T.Balaji and others vs. The State Rep. by, The Inspector of Police, New Washermenpet Police Station, Chennai*** (Crl.O.P.No.4587 of 2023, dated 08.08.2024), the final report has to be quashed.

4. The Learned Government Advocate (Crl.Side) appearing for the



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1st respondent submits that, accused in case and case in counter, both are found to be aggressors and therefore, two separate final report filed and pending before the Judicial Magistrate No.I, Attur in C.C.No.236 of 2024 and C.C.No.371 of 2024. The omission to refer about the counter case will not led to quash of the case. However, by following the guidelines issued by this Court in *T.Balaji case cited supra*, the Magistrate shall follow the procedure prescribed in *Ekambaram v. Sundaramurthy and State reported in 1988 LW (Cri) 127* in case of this nature. The relevant portion of the full bench judgment is extracted below:-

56. In *Ekambaram v. Sundaramurthy and State, 1988 LW (Cri) 127*, David Annoussamy, J had laid down the following procedure for trial of a case and case in counter:

“In some rare cases where he finds himself to be in such a predicament, what he should do is, to try those cases separately, but immediately one after the other. When the first case is over, he should not pronounce judgment till the trial of the other case is completed. He cannot legally use the evidence of one case in the other case if it is not on record in the other case. But, if any relevant evidence comes to his notice in one case, which may be used in the other, he has the power to bring it on record in the proper manner in the other case also. The Magistrate can, at any time of the proceeding till the



judgment is delivered, gather further evidence in the case. The Court has vast powers to this effect under Section 311 of the Code of Criminal Procedure and Section 165 of the Indian Evidence Act. In that way, one case will not be artificially isolated from the other and thus lead to injustice. The Court can come to the right conclusion in taking all the facts and circumstances of the transaction. The judgments should be pronounced in both the cases at the same time.”

Guidelines:

(b) Post Cognizance and Trial in a case and case in counter:

i. If the Magistrate finds that the two final reports are rival versions of the same incident, but both parties are found to have engaged in acts of aggression etc., he may take cognizance of both final reports. In such cases, the Magistrate shall follow the procedure prescribed in Ekambaram v. Sundaramurthy and State, 1988 LW (Cri) 127, which we have extracted in paragraph 56, supra.

ii. If one case is exclusively triable by a Court of Session and the other case is triable by a Magistrate, the Magistrate shall commit both the case and counter case to the Court of Session for trial as prescribed by Section 362 BNSS 2023 (Section 323 Cr.P.C), who shall thereafter proceed in accordance with the directions contained in paragraph 56 supra.



59. In the light of the above discussion, the following are our answers to the questions referred to us vide order dated 21.03.2024:

a. The police are required to mandatorily follow the procedure prescribed in PSO 566 while investigating a case and case in counter ie., rival versions of the same incident.

b. The consequences of non-compliance with PSO 566 would depend upon the stage at which such an objection is raised. It is the duty of the Magistrate to screen out final reports which are filed in inconsistent rival versions of the same incident ie., where one rival version is true the other must be necessarily false, by returning with a direction to follow PSO 566. Where the Magistrate inadvertently takes cognizance, the error may be set right by the High Court under Section 528 BNSS, 2023 if the same is raised at an early stage. If, however, the trial in such cases is allowed to go on and has reached an advanced stage, a plea of non-compliance with the PSO will not ipso facto vitiate trial unless and until a demonstrable case of prejudice or miscarriage is made out.

c. The police will take note of and scrupulously follow the guidelines set out in paragraph 58-A, supra.

d. Trial of a case and counter case shall be held



simultaneously before the same Court and the guidelines set out in paragraph 58-B, supra, shall be followed.

5. The Learned Counsel appearing for the petitioner submitted that since the final report against the petitioner does not whisper about the counter complaint, case has to be quashed. However, this Court finds that such an argument is sustainable only when the Investigating Officer has totally suppressed the counter complaint and not proceeded with the counter complaint and screened the fact of counter complaint from the knowledge of the Court in the final report. Whereas, when two final reports are filed for the same transaction with the rival version, the procedure to be adopted been prescribed by this Court long back by *Justice David Annoussamy*, in ***Ekambaram case*** cited *supra*, relevant portion in paragraph No.56 is cited *supra*.

6. Therefore, in this case both final reports are pending in respect of same transaction and apparently both are aggressors and had caused grievous hurt to each other. The procedure to be adopted is what *Justice David Annoussamy* has said in ***Ekambaram case*** cited *supra*.

7. Hence, this Criminal Original Petition is disposed of with a



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direction to the Judicial Magistrate No.I, Attur, Salem to follow the procedure laid in *Ekambaram case cited supra* referred in paragraph No.56 of Full Bench judgment in respect of C.C.No.236 of 2024 and C.C.No.371 of 2024 and proceed in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

8. The learned Counsel appearing for the petitioner submits that C.C.No.236 of 2024 was taken cognizance by the Magistrate at earlier point of time, if so, the examination of witness must commence from C.C.No.236 of 2024 and then followed by C.C.No.371 of 2024. If any application is filed for dispense the personal appearance of the petitioner, same may be considered based on the facts and circumstances of the case.

28.10.2024

Index : Yes/No.
Neutral Citation : Yes/No.
bsm

To,

- 1.The Judicial Magistrate No.I, Attur, Salem.
2. The Sub Inspector of Police, Ethappur Police Station, Salem District.
- 3.The Public Prosecutor, High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

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