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Court : Chennai Madurai

Decided On : Aug-29-2016

Judge : The Honourable Dr. (Mrs.) Justice S. Vimala

Appeal No. : Crl.O.P.(MD) No. 13177 of 2016 & Crl.M.P.(MD) Nos. 6262 & 6263 of 2016

Appellant : Prasath

Respondent : The Inspector of Police, Madurai and Another

Advocate for Pet/Ap. : Mr. V. Sairam

Judgement :

(Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in P.R.C.No.27 of 2014 on the same pending before the learned Judicial Magistrate No.VI, Madurai and to quash the same in so far as the petitioner alone.)

1. This petition has been filed seeking to quash P.R.C.No.27 of 2014 pending on the file of the Judicial Magistrate Court No.VI, Madurai, in which, the petitioner is the fifth accused, who has to face trial in respect of offences under Sections 147, 341, 294(b), 307 r/w 149 IPC.

Brief Facts:-

2. The petitioner is the successful candidate selected by the Staff Selection Commission (Southern Region) in the written examination for the post of Constable in CRPF. He was invited to undergo medical examination on 16.05.2016 and it is alleged that the petitioner has successfully completed the same and he has been found fit. The employer wanted the petitioner to produce No Objection Certificate from the local police station and the local police did not provide the certificate because of the pendency of this criminal case. The petitioner would have joined the services of CRPF, but for the pendency of this frivolous litigation, he is unable to join the services of CRPF.

3.The learned counsel for the petitioner seeks quashing of proceedings on the following grounds:-

(i) There is no prima facie case made out (as against the petitioner) in the First Information Report as well as in the charge sheet.

(ii) This petitioner had preferred the complaint against the defacto complainant herein and his relatives and this case is a counter blast to that earlier case.

(iii) There is no material to show that there had been common object as mentioned in the First Information Report or in the statement of witnesses.

4. The defacto complainant is one Jenitha, aged 21, D/o.Murugan and W/o.Manimaran, residing at Door No.6A, Yadavar Street, Avaniapuram. The marriage between Jenitha and her husband Manimaran is an inter-caste marriage, in respect of which, there had been dispute between people residing at Yadavar street and Kanakupillai street. On 30.09.2012, one K.Subramani (L.W.1) gave a statement to the Inspector of Police, Avaniapuram, in which, he has stated as follows:-

There had been prior dispute in respect of inter-caste marriage of Manimaran and Jenitha. While so, on 30.09.2012, at about 7.30 p.m., when Subramanian was talking with Appu Dinesh and other friends, the accused persons (numbering about 15) came and intercepted them and indiscriminately attacked them using stones and weapons, saying that they would perform the marriage only like that

and if it is opposed, they would not leave them alive. In the said incident, the complainant Subramani, his mother, sister and one Balaji suffered silent injuries and seeking action against them, complaint was laid, which was registered in Crime No.653 of 2012 under Sections 147, 341, 294(b) and 307 IPC against (1)Sembattaiyan Ravi, S/o.Arumugam (2)Vinoth, S/o.Sivakumar (3)Sri Ram, S/o.Sivakumar (4)Gowtham, S/o.Pandi (5) Prasath, S/o.Pandi (6)Kasi, S/o.Ganesan (7)Kumar, S/o.Chinnu @ Krishnan (8)Karuppu, S/o.Amavasi (9)Kannan, S/o.Vayitru Murugan (10)Suresh, S/o.Vayitru Murugan (11)Manimaran, S/o.Gunasekaran (12)Lakshmi, W/o.Alagar (13)Poongodi, W/o.Ramar (14)Muthumari, W/o.Pandi (15)Karuppayee, W/o.Raja.

5. Except as against Manimaran against rest of them, charge sheet has been filed, which is sought to be proved by the examination of the following witnesses:-

Sl.No.	Name of the Witnesses	Purpose of Examination
1.	Subramani	To speak about the injuries to him, Appu Dinesh and Vijayendran as well as previous enmity.
2.	Appu Dinesh	Eye witness to the occurrence
3.	Vijayendran	-do-
4.	Kannan	-do-
5.	Muthukonar	-do-
6.	Prasanna	-do-
7.	Muthuraman	-do-
8.	Balaji	-do-

9.	Siva @ Sivaraman	-do-
10.	Rajapandi @ Pattani	-do-
11.	Anandavalli	-do-
12.	Susila	-do-
13.	Vijaya	-do-
14.	Kuttakamal	-do-
15.	Rajangam	Observation Mahazar
16.	Murugan	-do-
17.	Soundarapandian	Eye Witness
18.	Ravichandran	-do-
19.	Murugesan	-do-
20.	Jenitha	To speak about previous motive.
21.	Paraman	To speak about lighting in the place of occurrence.
22.	Saravanakumar	To speak about the fact that Manimaran and Jenitha were at their house, at the time of occurrence.
23.	Marimuthu	-do-

24.	Murugan, Head Constable	To speak about receipt of petition from Jenitha and about issuance of receipt in No.310/12.
25.	Gunaseelan, Special Sub-Inspector	To speak about registration of FIR
26.	K.Murugeswari, Inspector	To speak about investigation and filing of charge sheet.

6. On the same day, at about 8.00 p.m., complaint has been laid by one Gowtham, S/o.Pandi in which, the allegations are as under:-

6.1. The said Gowtham was a B.Com., degree holder. In respect of intercaste marriage, there had been a previous dispute between the villagers belonging to two different streets. Keeping that in mind, the accused persons belonging to Yadava street, viz., (1)Appu Dinesh, S/o.Murugan (2)Vijayendran, S/o.Palani (3)Subramani, S/o.Kantha (4)Kannan, S/o.Ponnangi (5)Muthukonar, S/o.Ponnangi (6)Prasanna, S/o.Kannan (7)Muthuraman, S/o.Ayyavu (8)Balaji, S/o.Ayyvu (9)Siva, S/o.Sethu (10)Rajapandi @ Pattani, S/o.Rajendran (11)Anandavalli, W/o.Kanthan (12)Susila, W/o.Ayyavu (13)Vijaya, W/o.Murugan and (14) Kuttakamal, came with stones in their hands and intercepted the defacto complainant and his friends, telling them that 'what kind of courage they have to love and to get her married' and so saying, threw away stones at them. The defaco complainant sustained injuries in the right forehead and back of the head. Others

suffered silent injuries. This case has been registered at 9.30 hours in the night in Crime No.654 of 2012.

7. What is a result of the case registered in Crime No.654 of 2012? This question assumes importance, because of the statement made by the defacto complainant in Crime No.653 of 2012, wherein he would state that when they were pelted with stones, they retorted the attack by pelting with stones in the same manner. Thus, it is clear that though two cases have been registered, as if, it is two different occurrence at two different time, the statement recorded under 161 Cr.P.C. would clearly show that the cases in Crime No.653 of 2012 and 654 of 2012 are one and the same occurrence and it can be called as cross cases or cases in counter.

8. If that be so, what is the mode of investigation contemplated under the Police Standing Orders? and what is the mode adopted by the Investigating Agency in this case?, is the crucial question.

9. Investigation is defined in Section 2(h) of the Cr PC to include all the proceedings under it for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Chapter XII deals with investigation of a cognizable offence. Section 156 states under Clause (1) that Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

10. Indian Law has conferred vast discretionary powers to the police. The language in the Code of Criminal Procedure is so structured that it has delegated considerable scope for discretion to the police in matters of arrest, search, seizure, and other functions that form part of the investigation of an offence.

11. When the Police enjoys such wide powers, with wide discretion, does it mean that the discretion can be used to prosecute persons according to the whims and fancies of the defacto complainant and leave the other case, without being investigated. Certainly, such discretion is not contemplated.

12. So far as this case is concerned, the charge sheet in Crime No.653 of 2012 does not mention anything about the result of investigation in Crime No. 654 of 2012. In fact, it is nowhere stated in the counter affidavit also, as to the result of investigation in Crime No.654 of 2012. The counter affidavit peculiarly says institution of counter case will in no way be construed as no prima facie case is made out.

13. The counter affidavit proposes a new theory that recording of 161 statements from witnesses would prima facie establish the offence. This implies that mere recording of statement without ascertaining the truthfulness or otherwise of the statement is sufficient. If this proposition is accepted, then, there is no necessity for any investigation and the word investigation would lose all its meaning.

14. What is the procedure contemplated, when there are two complaints in respect of the same incident, each complaining against the other.

15. It is relevant to focus attention on Rule 588-A of the Madras Police Standing Order, which stipulates as under:

"In a complaint and counter complaint arising out of a same transaction, the investigation Officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the countercomplainant, as the case may be, should be advised about the disposal by a notice in Form-96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the police."

16. It is the settled law that both the cases in counter have to be tried together so as to find out the real aggressor.

17. The investigating Officer should have taken up the investigation in both the cases together and the investigation is to be held side by side so as to find out the

truth attached to both the complaints by rival parties, particularly in view of the fact that the parties are one and the same and the causes of action alleged are also either same or similar.

18.The Hon'ble Supreme Court has held that the provisions of P.S.O. 145 is administrative in nature and therefore, it has no force of Law. However, it would be relevant to point out that so far as P.S.O.588A is concerned, it was an outcome of the Judgment rendered in the case of Thota Ramakrishnayya v. State reported in (1954 MWN Cr 9), wherein P. N. Ramaswami,J. thought it fit to make certain observations as to how a complaint made and a counter complaint made, have to be dealt with by the Investigating Agency. At that time, P.S.O. 588A was not available.

18.1. Mr. V. Sairam, learned counsel for petitioners in Cri M.P.No. 3861/1989, represents that P.S.O. 588A was the outcome of the decision in Ramakrishnayya's case. The learned Judge observed, that it is improper for the police to prosecute at the same time two counter cases in regard to the same occurrence, one of which must be false. The Police cannot charge both cross-cases and must either find out the truth and charge that version which is true, or if they are unable to do so to throw out both the cases or charge one version leaving it open to the aggrieved party to resort to his own remedies. If he finds out that the choice of either course is difficult, he should seek the opinion of the Public Prosecutor of the District and act accordingly. A Magistrate before whom such a case is charged by the police and a private complaint from the party whose case had been referred should hear both the cases together and commit both of them to the Sessions, even if only one of them is exclusively triable by a Court of Sessions. The procedure suggested is salutary and may help the Investigating Agency when they are confronted with two complaints in respect of the same occurrence.

19. There is no provision in Cr.P.C. or in the Evidence Act dealing exclusively with trial of cross cases. The judiciary has evolved a procedure to fill this gap. In Nathi Lal and ors. vs. State of U.P., the procedure to be followed in such a situation has been succinctly described by the Supreme Court thus:

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

20. In State of M.P vs Mishrilal, both the parties lodged an FIR against each other in respect of the same incident. The Supreme Court while giving guidance as to the procedure to be adopted in such cases has observed as follows:-

It would have been just fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathilal's case (supra). The cross- cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments.

21. Though the Judgments were rendered in the context of the Court trying those cases, the fundamental principle applies to the investigation also.

22. In the case of State of MP vs Mishri lal the Supreme Court has emphasized the point by observing that,

....In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either of them must be false. In such a situation, legal obligation is cast upon the investigating officer to

make an endeavour to find out the truth and to cull out the truth from the falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.

23. This grave miscarriage of justice has exactly happened in this case also on account of the faulty procedure adopted by the Investigating Agency. The Investigating Agency has shown extra interest in omitting the name of Manimaran, who, in the facts and circumstances of the case, must be the main accused. The Investigating Agency has also did not use the discretion in a lawful way and it did not even think it as a duty to disclose the Court as to what is the result of the complaint given by one of the accused.

24. It is the case, where case has been registered under Section 307, where the alleged victims did not even go to the hospital and did not suffer any injury at all. Though the injuries described as silent injuries, there is no explanation as to how the indiscriminate throwing away of stones by a mob would not cause any injury to all the three victims.

25. It is not as if that the Investigating Agency did not know the consequences of registering a case under Section 307 IPC. Therefore, the Investigating Agency should have exhibited some responsibility in registering the case under Section 307 IPC, when there had been no intention revealed to commit murder of the defacto complainant.

26. It is a common experience that some people are either tolerant and they do not make an issue out of even serious violations of Law or file false cases when nothing has happened out of ulterior motives. The pendency of this case is likely to result in deprivation of opportunity to the petitioner to serve in Police Force. It is unfortunate that this injustice is to happen on account of bias exhibited by the Investigating Police officials.

27. There is no motive or intention for the petitioner to commit murder of those prosecution witnesses. The defacto complainant has mentioned about the name of Manimaran in the complaint stating that he is one among the group to have beaten the defacto complainant and others. It is only on account of his marriage with

Jenitha, the problem has emanated in the village. Therefore, it cannot be said that he did not play a role at all either directly or indirectly in the incident. In the 161 statement of the defacto complainant, it is stated that he thought that Manimaran would have played a role. When the complaint speaks about the direct participation by Manimaran and that when 161 statement states that it was out of the imagination of the defacto complainant, it is not known how the Investigating Agency left out the complaint given by the other side without even any investigation.

28. When the origin of occurrence itself is doubtful and when the manner of occurrence and the number of persons involved and the motive for occurrence are not established, it will not be in the interest of justice to allow the prosecution to continue. It is dangerous to allow the prosecution of the accused persons, especially when a case registered under Section 307 IPC is without any material. Under the said circumstances, the proceedings as against the accused are ordered to be quashed.

29. In the result, this Criminal Original Petition is allowed and the entireproceeding in P.R.C.No.27 of 2014 pending on the file of the learned JudicialMagistrate No.VI, Madurai as against the petitioner alone is hereby quashed.Consequently, connected Miscellaneous Petitions are closed.

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