

R.Balasingam vs The Deputy Superintendent Of Police

Author: Sathi Kumar Sukumara Kurup

Bench: Sathi Kumar Sukumara Kurup

CRL.OP.(MD)No.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.11.2022

DELIVERED ON : 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.17056 of 2022

and

CRL.MP(MD).Nos.11458 of 11459 2022

R.Balasingam

: Petitioner/Accused

Vs.

1. The Deputy Superintendent of Police
Land Grabbing Special Wing,
Villupuram District.

: Respondents/Compla

2. State through
Inspector of Police,
Ulunthur Pettai Police Station,
Villupuram District.

3. J.Saranraj

:Respondent/De-facto Co

4. K.Sathya

:Respondent/Injured

PRAYER: Criminal Original Petition filed under Section 482 of Crimi
Procedure Code, to call for the records in S.C.No.46/2021 pending b
the learned Chief Judicial Magistrate, Trichy and quash the same.

For Petitioner

: Mr.KA.Ramakrishnan

For Respondents

: Mr.R.Meenakshi Sundaram

Additional Public Prosecutor for

: Mr.V.Sebastinal Preethi for R3 &

ORDER

<https://www.mhc.tn.gov.in/judis> This Criminal Original Petition has been filed to quash the case in S.C.No.46/2021 pending on the file of the learned Chief Judicial Magistrate, Trichy.

2. The learned Counsel for the Petitioner would submit that the Petitioner was serving as Sub Inspector of Police on the alleged date of occurrence. It is the further submission of the learned Counsel for the Petitioner that third Respondent in this petition is a practising lawyer and a Politician. For the offence alleged against the Respondents 3 and 4 by their neighbour a case was registered. The third and fourth Respondents also preferred complaint. Therefore it is a case and counter.

3. The learned Counsel for the Petitioner invited the attention of this Court to the complaint preferred by the second Respondent against police officials after release from Prison. After giving such complaint, when there was no response he filed private complaint before Court of the learned Judicial Magistrate concerned. Based on the sworn statement before the learned Judicial Magistrate, the learned Magistrate had taken the complaint and issued direction to the police officials to register the First Information Report and investigate the case. Thereafter the case was registered and the <https://www.mhc.tn.gov.in/judis> case was investigated. Final report laid before the learned Chief Judicial Magistrate, Trichy. He also invited the attention of this Court to the statement of witnesses in the typed set of papers furnished by him also the departmental enquiry ordered by the higher officials. In the domestic enquiry allegations against the Petitioner was not accepted by the Investigating Officer stating that there is no proof that the Petitioner is alleged to have indulged in the offence lodged in the complaint against the Petitioner.

4. The learned Counsel for the Petitioner also invited the attention of this Court to the remand request and custody taken. After the learned Magistrate had passed orders remanding the Respondents 3 and 4 to detain in which the endorsement of Ramachandran and Sasidharan were obtained. As per the records, endorsement was made in the report as “ifjpa[k; thuz;lL ; k; bgw;Wf;bfhz;nLhk;”. While so, the investigation was completed and final report laid before the learned Judicial Magistrate and subsequently the case was transferred to the file of the learned Chief Judicial Magistrate, Trichy and taken cognizance in S.C.No.46 of 2021. In support of his contention, the learned Counsel for the Petitioner relied on the order of the learned Single Judge of this Court in Crl.O.P(MD) Nos. <https://www.mhc.tn.gov.in/judis> 1560 and 8532 of 2021 wherein the First Information Report against escort police and the Constable were quashed by this Court on 22.07.2022. He would also submit that when the charge sheet was quashed against the escort police and the Head Constable, and their presence were found as per the statement recorded under Section 161(3) of Cr.P.C and as per the statement, the Petitioner was not at all present in the occurrence place, he seeks to quash the proceedings in S.C. No. 46 of 2021 on the file of the learned Chief Judicial Magistrate, Trichy as against this petitioner in the light of the order passed by the learned Single Judge of this Court in Crl.O.P(MD) Nos.1560 of 2021 and 8532 of 2021.

5. The learned Additional Public Prosecutor objected to quash the proceedings stating the provisions under Sections 114 and 202 of IPC. The Petitioner is serving as Sub Inspector of Police. As per the statement of witnesses and as per charge sheet he was available in the police station. The Inspector of Police alleged to have brutally attacked the third Respondent and the Petitioner herein who was serving as Sub Inspector of Police in the same station, he ought to have prevented the attack of the Inspector of police. When he had not at all prevented the attack by the Inspector of Police then he is presumed to have abetted or taken part in the attack by the <https://www.mhc.tn.gov.in/judis>

Inspector of Police. He would further submit that the case stands posted on 16.11.2022. He would also submit that the petition is not maintainable and seeks to dismiss the same.

6. On consideration of the rival submissions, it is found that Saranraj s/o. Jeyashankar is the Complainant. As per the Complaint, he is a practising Lawyer and his paternal uncle/Sathya aged about 40 years was attacked by three persons. On 30.06.2015 by around 6 O' clock, he had accompanied his paternal uncle/Sathya to Ulunthur Pettai Police Station, at that time, the Petitioner herein/Balasingam informed the Complainant/Saranraj that a case had been registered in Ulunthur Pettai Police Station in Cr.No.273 of 2016 under Sections 294(b), 355 and 506(ii) of IPC and informed him that both Saranraj and his paternal uncle has to be arrested and produced before the Court of the learned Judicial Magistrate, Ulunthur Pettai. The Petitioner and the Police Constable viz., Suseendran had escorted the Accused to the office of the learned Judicial Magistrate and obtained a remand order. After obtaining the order of remand, they had to be proceeded to Prison. Instead, they were escorted the Accused back to the Police Station where the Inspector of Police viz., Palani attacked them with Latti. Therefore, the contention of the learned Counsel for the <https://www.mhc.tn.gov.in/judis> Petitioner that the Petitioner's name is not found in the FIR or in the Complaint and he was only a witness to the occurrence, cannot at all be accepted by this Court. After registering the case against them under Sections 294 (b), 353, 506 (ii) of IPC, they had gone to the Police Station to lodge a Complaint against the persons who was alleged to have attacked the Complainant and the paternal uncle. The Petitioner, as Sub Inspector of Police of Ulunthur Pettai Police Station, had taken the practising Advocate/Saranraj and his paternal uncle/Sathya to Prison. When they were in Court, instead of taking the Complaint and registering the case, the Petitioner is alleged to have foisted a case against the Complainant and escorted the Complainant/Advocate and his paternal uncle to the Court of the learned Judicial Magistrate, Ulunthur Pettai. After obtaining the order of remand, they are presumed to be under Judicial custody from the moment the learned Judicial Magistrate, Ulunthur Pettai had granted the Order of remand. After obtaining the order of remand, the Petitioner herein, as Sub Inspector of Police, Ulunthur Pettai along with Police Constable had escorted the Complainant/Advocate and his paternal uncle back to the Police Station where both were attacked by the Inspector of Police, Ulunthur Pettai Police Station viz., Palani. Based on which, the practising lawyer/Complainant had given a Complaint to the learned Judicial <https://www.mhc.tn.gov.in/judis> Magistrate which was forwarded to the Superintendent of Police. Based on which, FIR in Cr.No.280 of 2015 was registered by another Inspector of Police viz., Jagathesan who is the Inspector of Police, Thirunavalur and he was holding Full Additional Charge of Ulunthur Pettai Police Station. Therefore, the contention of the learned Counsel for the Petitioner that there is no averment or allegation attracting the offences against the Petitioner which had resulted in filing of the final report before the Court of the learned Chief Judicial Magistrate which was subsequently transferred by the Order of the High Court to the file of the learned Judicial Magistrate at Trichy and that was taken on file by the learned Judicial Magistrate and committed to the Court of the learned Principal District and Sessions Judge which was numbered as S.C.No.46 of 2022 and the case was made over to the file of the learned Chief Judicial Magistrate, Trichy which is pending on the file of the learned Chief Judicial Magistrate as S.C.No.46 of 2022.

7. The contention of the learned Counsel for the Petitioner that there is no mention of the Petitioner having accompanied the Accused before the Court or attacked the Complainant and his paternal

uncle does not hold water. The Complaint is clear that the Petitioner is either an abettor or does not prevent the Inspector of Police from attacking the Complainant and his paternal uncle. It is a clear case that the Petitioner, as Sub Inspector of Police, had registered the case in Cr.No.273/2015 under Sections 294 (b), 355, 506 (ii) of IPC. When they had gone to the Police Station to register the case against the attackers of the paternal uncle, the Petitioner had escorted the Complainant and his paternal uncle to the Court of the learned Magistrate. After getting Order of remand, the Petitioner/Balasingam who was the then Sub Inspector of Police, Ulunthur Pettai Police Station by violating the procedure. After getting the order of remand from the learned Magistrate, the Prisoner is presumed to be under Judicial custody whereas the Petitioner herein as Sub Inspector of Police, Ulunthur Pettai Police Station had taken the Prisoner back to the Police Station wherein he had suffered the attack by the Inspector of Police, Ulunthur Pettai Police Station. Therefore, the Petitioner is hand in gloves with the Inspector of Police for inflicting the torture on the Prisoner in judicial custody. Also, he had violated the procedure of remand. After obtaining the Order of remand by the learned Judicial Magistrate, when the remand Prisoner is supposed to be under Judicial Custody, the Complainant and his paternal uncle, in violation of the principle of remand and judicial custody, were taken to the Police Station and attacked resulting in their suffering injuries at the hands of the Inspector of Police. Therefore, the Petitioner, as Sub Inspector of <https://www.mhc.tn.gov.in/judis> Police, had clearly colluded with the Inspector of Police, Ulunthur Pettai Police Station/Palani for causing injuries on the Complainant and his paternal uncle. It is not a case of mute spectator. It is a case of conspiracy, abatement. All these are attracted from the ingredients in the FIR in Cr.No. 280 of 2015 for the offence under Sections 166, 294 (b), 323, 506(ii) and 307 of IPC. It is not a fit case for quashment. It is the contention of the learned Counsel for the Petitioner that the FIR against the co-accused in this case had been quashed by this Court in the earlier Crl.O.P. It does not hold good for the Petitioner herein.

In the light of the above, this Criminal Original Petition is dismissed. The Petitioner is directed to co-operate with the pending trial. The learned Chief Judicial Magistrate, Trichy is directed to dispose of the case in S.C.No.46 of 2022 within a period of three months from the date of receipt of a copy of this Order. If the Accused in the case in S.C.No.46 of 2022 does not cooperate with the Court of the learned Chief Judicial Magistrate, Trichy, the learned Chief Judicial Magistrate, Trichy shall issue Warrant. As per the reported ruling of the Hon'ble Supreme Court in the case of P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560], the learned Chief Judicial Magistrate shall cancel the bail and remand the Accused to <https://www.mhc.tn.gov.in/judis> Prison till the case is disposed of. Consequently, connected Miscellaneous Petitions are closed.

11.08.2023 Index: Yes/No Internet: Yes/No Speaking Order/Non-speaking Order dh To

1. The Chief Judicial Magistrate, Trichy.
2. The Deputy Superintendent of Police Land Grabbing Special Wing, Villupuram District.
3. The Inspector of Police, Ulunthur Pettai Police Station, Villupuram District.

4. The Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

<https://www.mhc.tn.gov.in/judis> SATHI KUMAR SUKUMARA KURUP, J.

dh Order made in 11.08.2023 <https://www.mhc.tn.gov.in/judis>