

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.09.2023

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THE HON'BLE MR.JUSTICE P.DHANABAL

CrI.R.C.(MD)No.428 of 2019

Ilampiraiyan

... Petitioner

Vs.

- 1.Mr.Pethi @ Thirumalai Raja
- 2.Mr.Ayyappan
- 3.Mr.Arun @ Arunkumar
- 4.Mr.M.Moventhan
- 5.Mr.Marbijohn
- 6.Mr.Selvakumar
- 7.Mr.Baskaran
- 8.Mr.Mariyappan

... Respondents

PRAYER : Criminal Original Petition filed under Section 397 r/w 401 of Cr.P.C., to set aside the order made in Cr.M.P.No.1708 of 2016, on the file of the learned Judicial Magistrate Court, Rajapalayam dated 08.04.2019 and allow this revision petition.

For Petitioner : Mr.R.Karunanidhi

For R1 to R8 : No appearance



ORDER

WEB COPY This Criminal Revision Case has been filed to set aside the order made in Cr.M.P.No.1708 of 2016, on the file of the Judicial Magistrate Court, Rajapalayam, dated 08.04.2019.

2. The case of the petitioner is that on 26.08.2018 at about 12.00 p.m., the petitioner was on the way to his house from Rajapalayam Town with his friend one Rajesh and at that time, one Pethi @ Thirumalai Raja the Sub-Inspector of Police, who is the first respondent herein and one Ayyappan, who were in vehicle check up in I.N.T.U.C.Nagar bus stop, Rajapalayam and at the time, the said Rajesh who dropped the petitioner had gone to his village. Thereafter, while the petitioner was walking on the way to his house, the second respondent intercepted the petitioner and seeking to call his friend namely Rajesh. For that, the petitioner replied that he could not call to his friend because he had no cell phone with him. Thereafter, the first respondent asked about the petitioner's village, name and caste. The first respondent scolded the petitioner with filthy language and abused his caste name and assaulted in the right side ear and vehemently pushed the face of the petitioner. When the same



was questioned by the petitioner, the respondents 1 & 2 illegally taken the petitioner to the police station and physically assaulted and thereby, he sustained injuries and there was a bleeding in the ear, nose and eyes of the petitioner. After the custodial torture, the respondents 1 & 2 had severely humiliated the petitioner in the custody with derogatory words. Thereafter, a false case was registered against the petitioner in Cr.No.519 of 2018 for the offences under Sections 294(b), 353, 506(i) of IPC. Thereafter, the petitioner was taken to the 7th respondent hospital. At the time, the doctor, without seeing or providing any treatment to the petitioner, has given a medical certificate for remanding him in the said false case. Therefore, the petitioner filed a private complaint under Section 200 Cr.P.C., in Cr.M.P.No.1708 of 2019 before the learned Judicial Magistrate, Rajapalayam. The learned Magistrate has dismissed the said application on 08.04.2019 by holding that there are contradictions between the statement of the witnesses. The learned Magistrate has not perused the documents filed by the petitioner with regard to the injuries sustained by him and stated that there are minor discrepancies in the statement of witnesses.

3. The respondents have not filed any counter affidavit.



4. No representation for the respondent. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The learned counsel appearing for the petitioner would contend that the respondents 1 to 6 assaulted the petitioner in the name of enquiry and thereafter, filed the false case against the petitioner. The 7th respondent, who is the doctor, has given a false certificate without examining the petitioner and therefore, he filed a private complaint in Cr.M.P.No.1708 of 2019 before the learned Judicial Magistrate, Rajapalayam and the same was dismissed by the learned Magistrate on the ground that there are certain contradictions between the statement of witnesses. Those contradictions are minor contradictions. At the time of taking cognizance, the learned Magistrate need not look into the veracity of the witnesses. Already the police has foisted the false case against the petitioner and the same was also pending. The respondents have committed the serious offence and therefore, the petitioner has filed a private complaint before the learned Magistrate and the learned Magistrate without perusing the records and without analyzing the evidence and documents adduced by the petitioner, wrongly dismissed



the petition. Hence, the order of the learned Magistrate is liable to be dismissed.

6. Heard the petitioner side and perused the materials available on record.

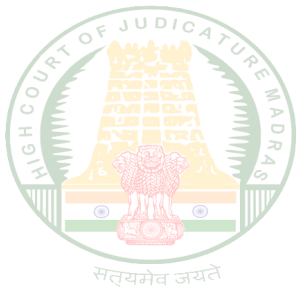
7. The petitioner has filed a private complaint as against the respondents herein and therefore, the statement of witnesses was recorded. After recording the statement, the learned Magistrate dismissed the application by holding that there are major contradictions between the statement of witnesses. It is seen from the statement given by the petitioner that there are somany allegations as against the respondent and prima facie materials are available to take the cognizance and the learned Magistrate has failed to consider the statement of the petitioner and merely dismissed the application by holding that there are contradictions between the statement of witnesses. At the stage of taking cognizance, the learned Magistrate cannot peruse the veracity of the witnesses and the duty of the Magistrate is whether any primacy facie material available to constitute the offence or not. As per the statement of



witnesses, some offences are made out and thereby without considering the same, the learned Magistrate has dismissed the private complaint and not even discussed about the documents filed by the petitioner and the injuries sustained by the petitioner. Therefore, the order of the magistrate is liable to be set aside.

7. At this juncture, it is relevant to rely the judgment of this Court in *2005(3) CTC 531 Mukesh Jain S/o.Prem Chand vs. Balachander*, wherein in Para No.5 this Court held that:-

“5. The complainant has to be read along with the sworn statement of the complainant recorded under Section 200 of Criminal Procedure Code and they should not be read disjunctively, since they supplement and complement each other. The scheme and purport of Sections 200, 203 and 204 of the Code are not sufficient to show that the averments in the complaint are not to be looked into for the purpose of taking a decision either to dismiss a Complaint under Section 203 or to issue process under Section 203 to the words “if any” occurring after the words “Statement on oath of the complainant””. This makes it clear that Complaint is also, at any rate, one of the records to be looked into for the purpose of taking a decision under



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Section 203 or 204 of the Code. It cannot be said that Court can look into sworn statement only and not the Complaint itself.”

8. Therefore from the said judgment it is clear that at the time of taking cognizance the Magistrate has to look into the complaint and other documents along with the sworn statement recorded by him. In the case on hand, the learned Magistrate has looked into the sworn statement above and failed to consider the complaint averments and documents. Therefore, in view of the said judgment and as discussed supra, this Court is of the opinion that the order passed by the learned Judicial Magistrate, Rajapalayam in Cr.M.P.No.1708 of 2019, dated 08.01.2019 is liable to be set aside.

9. Accordingly, the order passed by the learned Judicial Magistrate, Rajapalayam made in Cr.M.P.No.1708 of 2019, dated 08.01.2019 is set aside and the matter is remanded back to the learned Magistrate, Rajapalayam for fresh consideration and the learned Magistrate is directed to pass orders after perusing the complaint and all the records and statement of witnesses.



WEB COPY 10. With this observations, this Criminal Original Petition is allowed.

26.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

The Judicial Magistrate,
Rajapalayam.



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VERDICTUM.IN



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P. DHANABAL,J.

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