

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2015

Delivered on : 13.07.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.13910 of 2015

P.Senthilkumar

... Petitioner

Versus

State Rep by
Revenue Divisional Officer,
Sub Divisional Magistrate,
Dharapuram,
Tiruppur District.

.. Respondent

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the entire records in respect of PRC.No.3 of 2015 on the file of learned Judicial Magistrate, Dharapuram and quash the same.

For Petitioner : Mr.D.Rajagopal

For Respondent : Mr.C.Emalias, Addl. Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in PRC.No.3 of 2015 on the file of the learned Judicial Magistrate, Dharapuram.

2. Heard the learned counsel for the petitioner; the learned Additional Public Prosecutor appearing for the respondent and perused the materials placed on record.

3. The facts of this case makes interesting reading. Rajeswari's husband Mysamy is the brother of one Chinnasamy and Chellamuthu. The deceased Rasathi is the wife of Chinnasamy. They are all farmers and they have their houses in and around their lands. Rajeswari and her husband Mysamy used to quarrel very frequently, and the subject matter of their quarrel would mostly revolve upon Swaminathan the brother of Rajeswari.

4. On 22.01.2007, Rajeswari and Mysamy quarrelled and Chinnasamy intervened to pacify the spouses. It is alleged by Rajeswari that Chinnasamy assaulted her and the counter allegation is Rajeswari's son pelted stones at Chinnasamy. In this regard, Rajeswari informed her brother Swaminathan who seems to have contacted Kundadam Police Station and requested for police intervention. Two police constables Shankaran [PC1216] and Rajagopal [HC1554] came to Chinnasamy's house and left message in the house asking him to come over to the police station.

5. On 23.01.2007, Swaminathan, Rajeswari and her son went to the police station and complained to the Sub Inspector and they were asked to come in the evening at 5'o clock. In the meantime, Rajeswari was treated in

the local hospital for the injuries sustained by her.

6. On the instructions of the Inspector of Police, Kundadam [the petitioner herein], two constables Shankar [HC7216] and Rajagopal [HC1554] were deputed to bring Mysamy, Chinnasamy and Rasathi to the police station for enquiry, in connection with the complaint orally given by Rajeswari. Rajeswari seems to have accompanied these two constables. When the police party came to the house of Chinnasamy, they found Rasathi in the land but did not find Chinnasamy. They asked Rasathi to accompany them and she also got into the car brought by the police party. In the car, Rajeswari and Rasathi started quarrelling. The police party went in search of Chinnasamy and Mysamy and unable to find them, they decided to drop back Rasathi at Singarathoppu.

7. The driver of the car found tender coconuts hanging from a dwarf coconut tree and the party decided to drink tender coconut water. Therefore, all of them got down from the car and when they were partaking tender coconut water, Rasathi jumped into a nearby well and committed suicide. The police party panicked and they did not know what to do. Thereafter, the tables turned against Rajeswari and Swaminathan.

8. A case in Crime No.36 of 2007 under Section 174 Cr.P.C was registered in connection with the suicide of Rasathi and investigation was

taken up. The Executive Magistrate was informed for initiating proceedings against the police men, since the death had taken place whilst Rasathi was in their custody. Departmental enquiry was initiated against the police men including this petitioner. Mohideen Peer [A2] and Shankaran [A3], two police men, in order to save their skin, seem to have manipulated the station records to make it look as if Rajeswari had given a complaint against Mysamy, Chinnasamy and Rasathi and that they had gone to fetch the accused only for the purpose of investigation of the case.

9. Since Rasathi had died while she was in the custody of police, the Executive Magistrate conducted enquiry under the Police Standing Orders. Ultimately after getting sanction from the Government, the Revenue Divisional Officer, Dharmapuri has filed a private complaint against six accused for various offences which has been taken on file as PRC.No.3 of 2015 by the learned Judicial Magistrate, Dharmapuri challenging which, P.Senthilkumar [A1] is before this Court for quashing the proceedings. The Revenue Divisional Officer has filed a counter, wherein, in paragraph No.6,7 and 8, it is stated as follows:

"6.The respondent respectfully submitted that indirectly this petitioner/accused had abetted the commission of suicide by the deceased Rajathi by not handling the case diligently and allowing the accused No.3 and 4 to handle the case miserably and against the law. The enquiry conducted by

the Sub-Divisional Magistrate has clearly established with acceptable evidence that this petitioner/accused is mainly responsible for the suicide of Rajathi. It is further submitted that abetment and instigation to commit suicide need not necessarily be direct and tangible one always. So that it is wrong to state that ingredients of Sec.306 and 109 of IPC are not made out against the petitioner/accused.

7.The respondent respectfully submitted that in ground No.'d' the petitioner/accused denied the ingredient of Sec.348 of IPC i.e. Confinement of the deceased. It is admitted fact by accused No.3,4 and 5 that said Rajathi was confined by the accused No.3 and 4 to get information regarding the whereabouts of the husband Chinnasamy. This petitioner/respondent had alone parked the way of this illegal confinement of the said Rajathi due to his failure of discharging assigned duties miserably and delinquently. So that he has punishable u/s 348 of IPC also.

8.The respondent respectfully submits that this petitioner/accused had not only failed to discharge his assigned duties but also attempted to create false records and made forged evidence to safeguard his own interest. It is highly in just and improper to claim that he did not make insertions and intervening false entries in the General Diary of Kundadam

Police Station. Despite of his presence at Police Station on 23.01.2007, the Petitioner/accused has created false records and 'Alibe' defense as if he was present at Judicial Court Dharapuram on 23.01.2007 which was denied by other Police officials during the enquiry by the Sub Divisional Magistrate."

10. Learned counsel appearing for the petitioner submitted that on a complete reading of the complaint, there is no iota of evidence against Senthilkumar or against anyone else for the offence under Section 306 IPC.

11. This Court gave its anxious consideration to the facts of the case and meticulously scrutinized the records. It is seen that on the complaint given by Rajeswari, two police men went in search of Mysamy, Chinnasamy and Rasathi and found that they were not in their houses. Police took Rasathi who told him that her husband and brother-in-law may be available in the farm of one Rathnasamy. The party went to Rathnasamy's farm and found that Mysamy and Chinnasamy were not there. They were returning to drop back Rasathi from the place where she was picked. It is true that in the car, the two women quarrelled.

12. When the driver and the police party were drinking tender coconut, Rasathi jumped into a nearby well and committed suicide. For sustaining a charge under Section 306 IPC, the accused should have

committed any of the overtacts adumbrated in Section 107 IPC. Section 306 and 107 IPC reads as follows:

"306. Abetment of suicide

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

107. Abetment of a thing

A person abets the doing of a thing, who -

First - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing."

From a bare reading of the above provisions, it is clear that to sustain a charge under Section 306 IPC, the accused should have either instigated the person or engaged in a conspiracy or aided the person for committing suicide. Here, even going by the averments in the complaint, it is clear that in a fret of emotion, Rasathi got down from the car after quarrelling with Rajeswari and she went and jumped into a nearby well. There is no material to show that any of the accused had done anything as required under Section 107 IPC for abetting the suicide of Rasathi.

13. This Court may incidental refer to the following remarks made by the Additional Director General of Police, while dealing with the appeal filed by the petitioner in the departmental enquiry.

"This is a classic case as to how risky the police job is; the appellants have sent a team of police officers to the village of a woman petitioner to examine two counter petitioners and in the process the wife of a petitioner committed suicide by jumping into a well. But the mitigating factor is that there is no iota of evidence in the PR to suggest that the appellants had indulged in wrong-doings to harass or torture the woman victims. No mala fide intention has been attributed to the appellants for the unfortunate suicide committed by her. Considering this mitigating aspect, I take a lenient view and modify the punishment as 'Reduction in time scale of pay by one stage for one year without cumulative effect.'"

Of course, the finding the departmental enquiry has no relevance to the instant criminal prosecution.

14. But, this Court is just quoting the passage, in order to concur with the observation that police job is fraught with great risks. Rajeswari/A5 and Swaminathan/A6 are charged for an offence under Section 306 IPC. That apart, this petitioner is charged for an offence under Section 348 IPC. It is nobody's case that Rasathi was detained for the purpose of extorting confession or for compelling the restoration of any property. She was picked up by the police constables, in order to find out the whereabouts of her husband and brother-in-law and thereafter, she was dropped back.

15. Though Swaminathan and Rajeswari have not filed any quash application, this Court finds that they cannot be prosecuted for any of the offence in the facts and circumstances of this case. There are no allegations against Rajeswari and Swaminathan for the offence under Section 468, 471, 201 IPC for the manipulation of Station House records. There are sufficient allegations in the complaint against this petitioner for tampering Station House records and hence the entire prosecution against this petitioner cannot be quashed.

16. In the result, this petition is partly allowed and the prosecution of the petitioner P.Senthilkumar/A1 is quashed only for the offence under Section 306 and 348 IPC. The entire prosecution against Rajeswari/A5 and Swaminathan/A6 are quashed.

13.07.2015

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To
1.The Revenue Divisional Officer,
Sub Divisional Magistrate,
Dharapuram,
Tiruppur District.

2.The Public Prosecutor,
High Court, Madras.

P.N.PRAKASH, J.,
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Order made in
CRL.O.P.No.13910 of 2015

13.07.2015

P.N.PRAKASH, J.,

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Pre-Delivery Order

in

CRL.O.P.No.31428 of 2014

.07.2015