

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.17886 of 2015 and
M.P.No.1 of 2015

Mrs.Gowri .. Petitioner/Accused.

Vs

State rep. By
Inspector of Police,
T-14, Mangadu Police Station,
Chennai - 600 122. ... Respondent/Complainant.

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to F.I.R., in Crime No.1191 of 2014 dated 17.10.2014 pending investigation on the file of the respondent police and quash the same.

For Petitioners :Mr.S.Suresh

For R.1 :Mr.C.Emalias,
Additional Public Prosecutor

ORDER

Seeking to quash the case in Crime No.1191 of 2014 dated 17.10.2014 pending investigation on the file of the respondent police, the petitioner has come up with this petition.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3.The facts of the case run as follows:-

On 17.10.2014, around 9.00 in the morning, when the Sub Inspector of Police, T.14 Mangadu Police Station, was on rounds, he found four persons standing in a road and creating obstruction to the free flow of traffic and despite warning by the Sub Inspector of Police, they did not disperse from the said place and therefore, they were apprehended by the said Sub Inspector of Police and brought to the police station. In this regard, a case in Crime No.1190 of 2014 for offence under Section 76 of the City Police Act r/w 7(1)(a) of Criminal Law Amendment Act, was registered by the respondent police against those four persons on 17.10.2014. While those four persons were kept in the Police Station, this petitioner along with her

husband came to the police station and tried to rescue the said four accused and in that process, they had abused the Sub Inspector of Police and threatened him. They also prevented the Sub Inspector of Police from discharging his official duties. Therefore, a case was registered in Crime No.1191 of 2014 on 17.10.2014 for offence under Sections 294(b), 353 and 506(i) I.P.C., against the petitioner and her husband.

4.Mr.S.Suresh, learned counsel for the petitioner submits that the petitioner is a social activist. Since the aforesaid accused are students and they were illegally arrested by the Police, she went to the Police Station. He also submitted that an offence under Section 353 I.P.C., is not attracted against her and the same can be fastened at the most only as against her husband.

5.On a reading of the complaint, it is clearly averred that this petitioner and her husband entered the Police Station and they tried to forcibly rescue the apprehended accused and had prevented the Sub Inspector of Police/public servant from discharging his official duties.

6.Though the F.I.R., does not refer to Section 34 I.P.C., on the facts and circumstances of the case, when this petitioner and her husband had gone to the Police Station with common intention, the ingredients of the complaint does attract Section 34 I.P.C., as against them.

7.As regards Sections 294(b) & 353 I.P.C., the learned counsel for the petitioner relied upon a judgement of this Court in S.Selvakumar v. State (2015(4) CTC 109) wherein, this Court has held that an emotional outburst would not attract the provisions of Sections 294(b) & 353 I.P.C. I have no quarrel with the proposition of the law laid down in the said judgment. In the facts and circumstances obtaining in that case, it is seen that the accused had threatened the defacto complainant as the latter was spreading mis-information that the accused was having relationship with another girl. In those circumstances, the said judgment was rendered by this Court.

8.In this case, the allegation against the petitioner is that she along with her husband entered into the Police Station for the purpose of rescuing four accused who were arrested earlier and thus, they have prevented the Sub Inspector of Police/public servant from discharging his official duties.

9.Section 353 speaks of "assault" which is defined in Section 351 I.P.C., which includes even making a gesture of using force. It is not necessary, one has to physically touch a person but, an attempt to prevent the public servant from discharging his official duties would definitely fall within the ambit of Section 353 I.P.C.

10.The learned counsel for the petitioner further submitted that though, the case in Crime No.1191 of 2014 was registered on 17.10.2014, the F.I.R., was sent by the police to the jurisdictional Magistrate only on 16.06.2015. Late sending of F.I.R., to the Court cannot be a ground to quash the F.I.R. When the investigation is at the stage of infancy, it is only an irregularity, the effect of which will have to be decided only in trial. The Criminal Original Petition is devoid of merits.

11.In the result, the Criminal Original Petition is dismissed. The Investigating Officer is directed to proceed with the investigation and expeditiously complete the same. Consequently, connected miscellaneous petition is closed.

jbm

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1.Inspector of Police,
T-14, Mangadu Police Station,
Chennai - 600 122.

2.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.S.Suresh, Advocate SR 37196

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