

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 1-9-2015

Pronounced on : 7-9-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.21912 of 2015
M.P.Nos.1 and 2 of 2015

V. Sivachidambaram ...Petitioner/Petitioner/
Defacto Complainant

Vs.

1. Viji @ Vijayaraj
2. Bala Murugan
3. Kolanji ...Respondents 1 to 3/Respondents 1 to 3/
Accused 1 to 3
4. Station House Officer,
Kadampuliyur P.S.,
rep.by its
Public Prosecutor ...4th Respondent/4th Respondent/
Complainant

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records pertaining to the order dated 16.3.2015 passed in CrI.R.P.No.5 of 2014 by the Principal Sessions Judge, Cuddalore by confirming the order dated 31.1.2014 passed in CrI.M.P.No.2255 of 2007 by Judicial Magistrate No.2, Panrutti and set aside the same.

For Petitioner : Mr.P.G.Thiyagu

O R D E R

On a complaint lodged by V.Sivachidambaram/defacto complainant/petitioner herein, respondent Police registered a case in Cr.No.376 of 2001 under Sections 294, 452, 323, 307 and 379 IPC and

after completing the investigation, filed final report in C.C.No.144 of 2003 against Viji @ Vijayaraj (A1), Balamurugan (A2) and Kolanji (A3) for offences under Sections 294, 452, 323 and 324 IPC before the learned Judicial Magistrate No.II, Panrutti.

2. Charges were framed for the aforesaid offences against the three accused and trial commenced on 14.3.2007 with the examination of V.Sivachidambaram (defacto complainant) as PW-1 and Krishnamurthy as PW-2. On 29.3.2007 the learned Additional Public Prosecutor filed a memo praying for alteration of the charges to include Section 307 r/w 34 IPC against the accused. The trial Court by a well considered order dismissed the petition in Crl.M.P.No.2255 of 2007 on 31.1.2014, challenging which V.Sivachidambaram invoked the criminal revisional jurisdiction of the Sessions Court in Crl.R.P.No.5 of 2014. The learned Principal District and Sessions Judge, Cuddalore dismissed Crl.R.P.No.5 of 2014 on 16.3.2015, challenging which V.Sivachidambaram (defacto complainant) is before this Court under Section 482 Cr.P.C.

3. The revisional jurisdiction of the Sessions Court is concurrent with that of this Court and under Section 397 Cr.P.C., a person who has approached the Sessions Court cannot file second revision before this Court. However, a petition under Section 482 is maintainable where it is shown that there has been violation of legal provisions, resulting in gross miscarriage of justice. In this case, it has to be seen as to whether there is any gross miscarriage of justice.

4. Mr.P.G.Thiyagu, learned counsel contended that the Sessions Court has rejected Crl.R.P.No.5 of 2014 on the ground that a petition under Section 216 Cr.P.C. should have been filed by the Prosecutor and not merely a memo. The learned counsel also submitted that for the fault of the Additional Public Prosecutor filing only memo for alteration of charges and not a petition, the case should not suffer.

5. At the first blush, his argument did sound convincing. But, on a closer scrutiny of the orders passed by the two Courts below, other reasons have also been given for rejecting the petition filed to alter the charges.

6. Mr.P.G.Thiyagu, learned Counsel took me through the FIR in this case given by V.Sivachidambaram (defacto complainant). On reading of the FIR it appears that on 11.9.2001 at 4.45 a quarrel ensued between one Ezhumalai and Murugan in connection with buying of cattle. On seeing this, V.Sivachidambaram's brother Krishnamurthy

(PW-2) interceded and separated them. On the same day evening, it is alleged that one accused came to the house of V.Sivachidambaram and assaulted him and his brother with knife, and that he suffered injuries in his hands. It may be relevant to state here that V.Sivachidambaram is a practising Lawyer in that area. Based on his complaint, the Police initially registered a case under Section 307 IPC against the accused and during the course of investigation it was found that V.Sivachidambaram suffered only simple injuries, and that, there was no intention to cause death of anyone. Therefore, a final report was filed in the year 2001 under Sections 294, 452, 323 and 324 IPC against the accused herein. At that time V.Sivachidambaram did not protest at all. In the year 2007 he got into the witness box and gave evidence as if the accused attempted to kill him. After giving evidence, the Additional Public Prosecutor filed a memo for altering the charge to one under section 307 IPC, and thereafter what happened has been narrated above.

7. This petition filed under Section 482 Cr.P.C. deserves to be dismissed on the very short ground that this is not a case where the inherent jurisdiction under Section 482 Cr.P.C. is to be invoked after the petitioner had failed before the Sessions Court. That apart, on reading of the materials on record, it is obvious that V.Sivachidambaram suffered only simple injuries and there was no pre-meditation or intention on the part of the accused to commit the murder of either V.Sivachidambaram or his brother Krishnamurthy. The accused are ordinary rustic villagers and for a simple quarrel that ensued in the year 2001, they are still suffering till 2015. Fortunately, the Courts below were not overawed by the fact that the defacto complainant is a practising Lawyer and implicitly alter the offence to one under Section 307 IPC.

8. In the result, this petition is devoid of merits and accordingly the same is dismissed. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

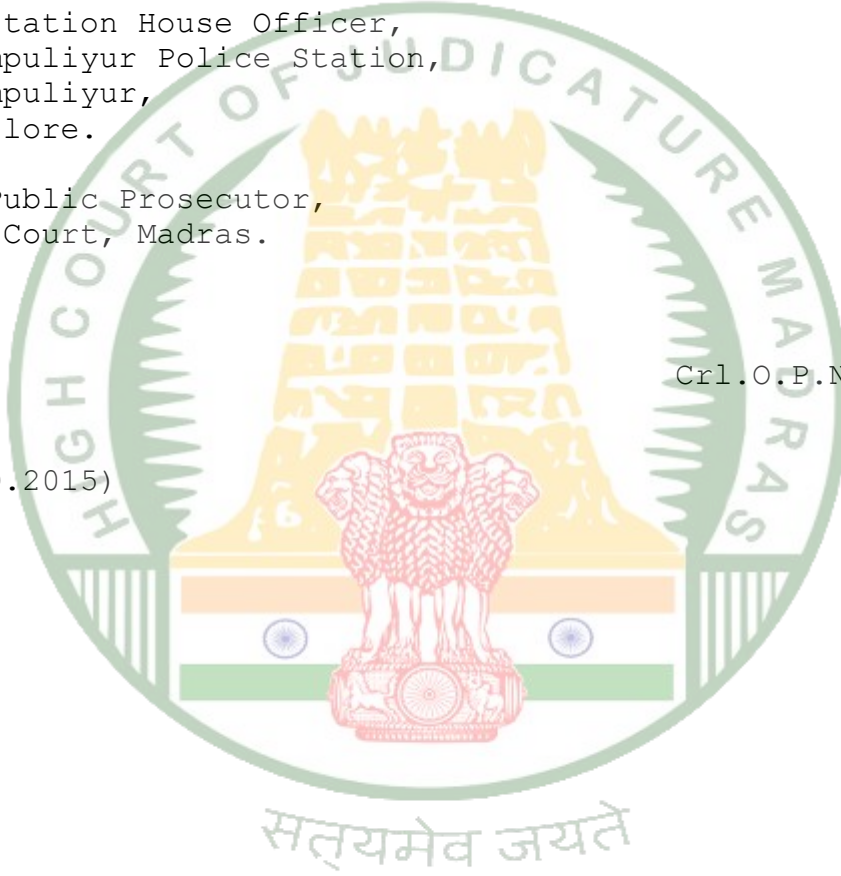
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To

1. The Principal Sessions Judge,
Cuddalore District.
2. The Judicial Magistrate No.2,
Panruti.
3. -Do- Through The Chief Judicial Magistrate,
Cuddalore.
4. The Station House Officer,
Kadampuliyur Police Station,
Kadampuliyur,
Cudallore.
5. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.21912 of 2015

GR (CO)
PSI (21.09.2015)



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