

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 9-10-2015

CORAM:

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

Criminal Original Petition No.22750 of 2015
M.P.No.1 of 2015

K. Godawari .. Petitioner

Vs.

1. State by Inspector of Police,
Kannakuruchi Police Station,
Salem District,
(Cr.No.78/2015)

2. S. Suresh .. Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records in Crime No.78 of 2015 on the file of the respondent and quash the same.

For Petitioner : Mr.C.Murugendran

For 1st Respondent : Mr.C.Emalias,
Additional Public Prosecutor

Reserved on	Pronounced on
6-10-2015	9-10-2015

ORDER

On a complaint lodged by one Suresh, Manager, Akshaya Associates, the respondent/Police have registered a case in Cr.No.78 of 2015 on 19.3.2015 under Sections 114, 147, 323, 342, 148, 386, 420 and 506(ii) IPC against four persons viz., (1) Kathiravan, (2) Godawari, (3) Prabakaran, and (4) Thirunavukkarasu, challenging which Godawari (A-2) is before this Court.

2. It is the case of the defacto complainant that Kathiravan (A-1) had purchased building materials from Akshaya Associates on 13.5.2013 to the tune of Rs.2.50 lakhs and the cheque issued by the accused had also bounced. Whiles, on 16.2.2015, around 8.30 a.m., when Suresh/defacto complainant went to the house of the accused, they called him inside the house in the pretext of making payment and after locking him, had beaten him blue and had also obtained some pronotes and other documents from him.

3. Mr.C.Murugendran, learned Counsel appearing for Godawari/A-2 relied upon the judgment of this Court in Triven Garments Ltd. v. State ((2015) 3 MLJ (Cr1) 129) and contended that Suresh has no locus standi to lodge a complaint as the entire transaction is between the accused and the Company viz., Akshaya Associates.

4. In Triven Garments Ltd. case (supra) on facts this Court held as follows:

"2. A reading of the F.I.R. would disclose that three or more sets of offences alleged to have been committed by various accused at various point of time were clubbed in the said Crime Number. The defacto complainant/second respondent has no personal stake in the property in respect of which the alleged offences were said to have been committed by the accused. Nevertheless, as a probono public, having realised that fraud has been committed by the petitioners, he lodged a complaint which resulted in the registration of crime against the petitioners and 18 others."

The facts in that case is different from the facts obtaining in the case in hand. In this case, the grievance of Suresh/defacto complainant is not about the loan transaction and the bouncing of cheque, but about the incident in which he was called upon to the house and thrashed by the accused.

5. Mr.C.Murugendran, learned Counsel submitted that though the incident had taken place on 16.2.2015, the FIR was registered only on 19.3.2015 and therefore the proceedings should be quashed. Mere delay in lodging FIR cannot be a reason to quash the prosecution. The defacto complainant had explained that after he was thrashed by the accused, he got scared of them, because they warned him that they will burn him alive. His employer also did not support him. Only when Kathiravan (A-1) was arrested by the Police in connection with another case, Suresh/defacto complainant gathered courage to come and

lodge the present complaint. There is no artificiality in the explanation offered by the defacto complainant in the complaint itself, as to why he remained silent from 16.2.2015 onwards.

6. Mr.C.Murugendran, learned counsel submitted that Godawari (A-2) is working as Teacher in a Government School and she has obtained information under the RTI Act that she was in school on 16.2.2015 from 8.35 a.m onwards. In other words, the learned Counsel wants this Court to decide the defence plea of alibi in a quash proceedings by relying upon the information received under the RTI Act.

7. The Police have filed counter affidavit wherein after narrating the facts of the case it is stated as follows:

"Witnesses No.4 to 10 stated that on the date of occurrence, all the accused persons A1 to A8 assaulted the complainant.

4. It is submitted that I have arrested the following accused persons on various dates which are mentioned below:

On 19.3.2015 - Kathiravan (A1), Godawari (A2), Prabakaran (A3), and Suresh (A8) On 31.3.2015 - Kumar @ Jayakumar (A6) On 2.4.2015 - Karnan (A7) And recorded the confession statements of A1 to A3 and seized one knife, promissory note and green sheets obtained from the complainant and a Maruti 800 Car bearing Regn.No.TN-30-AJ-8455 in the presence of witnesses, namely, 1) Tr.Sivakumar and 2) Tr.Marimuthu. All the accused persons along with seized properties were produced before the Judicial Magistrate Court-IV, Salem and all are remanded to judicial custody."

From the above it is evident that after the arrest of the accused, incriminating materials like promissory notes and other documents, which were obtained from the defacto complainant, were recovered based on the disclosure statement of the accused.

8. As regards the information obtained under the RTI Act, the Police investigation reveals that Godawari (A-2) was on casual leave on 16.2.2015 and suddenly around 9.20 a.m. she came to the school and after the attendance register was closed, she has made an entry as if she had attended the School at 8.35 a.m. on 16.2.2015. From this it is clear that after the incident, in order to set up a defence of alibi, she has come to the School at 9.20 a.m. and signed the attendance register as if she came to the School at 8.35 a.m itself.

9. The learned Counsel relied upon the Judgment of the Supreme Court in Reshma Banu v. State of U.P., ((2008) 5 SCC 791) in support of his plea that the allegations in the FIR do not disclose commission of any offence. In the said case, the Hon'ble Supreme Court has given the following finding:

"3. In support of the appeal learned counsel for the appellant submitted that the only reference made to the appellant in the FIR reads as follows:

"Questioning from the sister of the boy, Smt.Reshma Bano, might be advantageous."

4. This does not indicate commission of any offence rather puts the appellant in the position of a witness. Even if it is conceded for the sake of arguments but not admitted that commission of any cognizable offence is made out against others, so far as the appellant is concerned, there is not even a scrap of material and not even allegation of overt act."

In the case in hand, the FIR clearly discloses how the accused had invited the defacto complainant inside the house and after locking him up, had thrashed him and obtained pronotes and signatures, which documents were subsequently recovered by the Police from the Maruthi Car belonging to the accused. Therefore, the aforesaid Judgment does not help the case of the petitioner in any way.

10. In the result, this petition is devoid of merits and consequently this petition stands dismissed. Connected miscellaneous petition is also dismissed.

vr

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police, Kannakuruchi Police Station, Salem District, (Cr.No.78/2015)

2. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.G.Murugendran, Advocate SR 55218

lrs(co)
prk16/10

Cr1.O.P.No.22750 of 2015



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