

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.5084 of 2015

P.R.Kavitha

... Petitioner

Vs.

1. State rep. By
The Inspector of Police
Azhagarpuram Police Station,
Salem Town,
Salem District

2. Ravi

.... Respondents

Prayer:- Petition has been filed under Section 482 of Cr.P.C. to call for the records relating to Crime No.1664 of 2009 on the file of the 1st respondent and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.R.C.Paul Kanakaraj for
Mr.W.M.Abdul Majeed

For Respondents : Mr.M.Mohamed Riyaz for R1
Government Advocate (Crl.Side)

सत्यमेव जयते
O R D E R

The petitioner has come forward with this petition to call for the records relating to Crime No.1664 of 2009 on the file of the 1st respondent and quash the same in so far as the petitioner is concerned.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the 1st respondent and perused the materials placed on record.

3. From the perusal of the materials available on record, it is seen that on the complaint given by one Ravi, the 1st respondent police has registered a case in Crime No.1664 of 2009 for offence

under Sections 147, 148, 452, 427, 323, 324, 307, 364(A) IPC and Section 25 (1)(b) of Arms Act, 1959 with regard to an incident that allegedly took place on 07.10.2009. In the said complaint, the defacto complainant has alleged that he was abducted by the accused and later he was let off and thereafter he was criminally intimidated. During the pendency of investigation, this petition has been filed by Kavitha (A2) seeking to quash the FIR as against her on the ground that she has entered into an amicable settlement with the defacto complainant.

4. Today, i.e., on 15.04.2015, the defacto complainant is present before this Court and he is identified by the 1st respondent police and he has also filed an affidavit before this Court wherein in Paragraph Nos. 2 and 3, he has stated as follows:-

"....2. I respectfully submit that I have given the above complaint for alleged offences under Sections 147, 148, 452, 427, 323, 324, 307, 364(A) IPC and Section 25(1-b)(A) Indian Arms Act 1959 for offences occurred on 07.10.2009. There was animosity between me and the petitioner. The petitioner and her husband were demanded to sale my property in their favour. But my property was already sold out infavour of my owner Mr.Muthusamy. Hence the land dispute was settled amicably. There is no animosity prevailing. I does not intend to pursue the above said complaint and wish to withdraw the same.

I, therefore humbly pray that this Hon'ble Court to permit me to withdraw the complaint and all the allegations contained therein against the petitioner herein in Cr.No.1664 of 2009 on the file of the respondent police."

5. The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case solely on the ground that she has been defending her husband against whom several cases were slapped by the respondent-Police and in this regard, the petitioner seems to have filed Writ Petition in W.P.No.24048 of 2009 before this Court praying for CBI to enquire into the case, which has been filed against her. The said petition, of course, was dismissed by this Court with a liberty to the petitioner to approach the concerned authorities under the Code of Criminal Procedure. The learned counsel for the petitioner brought to the notice of this Court that in the said Writ Petition he has canvassed an argument that the petitioner is always ready to subject herself for investigation before the CBI in order to prove her innocence.

6. The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court reported in (2014) 2 MLJ (CRL) 365 (SC) Narinder Singh and Others V. State of Punjab and Another wherein in Paragraph No.29.7, it is stated as follows:-

"....29.7. While deciding whether to exercise its

power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy state, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances / material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the state of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties, would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime....."

7. The learned counsel for the petitioner took me through the contents in the FIR and submitted that even in the FIR given by the defacto complainant, it is stated that the petitioner was present when her husband and others had abducted the defacto complainant and the overtact attributed against the petitioner is not very serious.

8. In order to satisfy myself, I questioned the defacto complainant in the open Court and he stated that he had come voluntarily before this Court to support the case of the petitioner for quashing the FIR as against her and he has also stated that he has amicably settled the matter with the petitioner. On further questioning, it appears to me that the defacto complainant may even turn hostile in the trial.

9. Admittedly, the police have not concluded the investigation till date and the investigation is pending on the ground that one of the accused is absconding. It is seen that the alleged incident

in this case has taken place on 07.10.2009 and till date, police has not filed any final report, the reason given by the prosecution that one of the accused is absconding, cannot be accepted. Absconding charge sheet could have been filed and had it been done, the trial court would have split up the case as against the absconding accused and proceeded with the trial against the petitioner and others, who are in attendance. The police have not done that and instead of that, they have kept the FIR pending since 2009 against the petitioner.

10. In view of the law laid down by the Hon'ble Supreme Court in the aforementioned judgment and taking note of the submission made by the defacto complainant before this Court that he had amicably settled the matter with the petitioner and further taking into consideration the fact that the police have not filed the final report till date for an incident that took place in 2009, this Court is of the view that it will not be a travesty of justice to quash the FIR in Crime No.1664 of 2009 as against the petitioner alone. Accordingly, the FIR in Crime No.1664 of 2009 as against the petitioner alone is quashed.

In the result, the Criminal Original Petition is ordered as prayed for.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Inspector of Police
Azhagarpuram Police Station,
Salem Town,
Salem District

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.W.M.Abdul Majeed, Advocate, S.R.No.20438

Cr1.O.P.No.5084 of 2015

KSJ(CO)
CA(27/04/2015)