

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.5085 of 2015

P.R.Kavitha

... Petitioner/Accused No.8

Vs.

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

2. Manivannan ... Respondents/Complainant/
defacto Complainant

Prayer:- Petition has been filed under Section 482 of Cr.P.C. to call for the records relating to Crime No.1960 of 2009 on the file of the 1st respondent and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.C.Paul Kanakaraj for
Mr.W.M.Abdul Majeed
For Respondent-1 : Mr.M.Mohamed Riyaz
Government Advocate (Crl.Side)

O R D E R

The petitioner has come forward with this petition to call for the records relating to Crime No.1960 of 2009 on the file of the 1st respondent and quash the same insofar as the petitioner is concerned.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) 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 lodged by one Manivannan (defacto complainant), the 1st respondent police has registered a case in Crime No.1960 of 2009 for the offences punishable under Sections 147, 148, 427, and 506(ii) IPC against eight persons. This petitioner has been arrayed as 8th accused. Investigation of the case is pending and charge sheet has not been filed till date.

4. The learned Government Advocate (Crl.side) submits that two of the accused are absconding and therefore the police were not able to file charge sheet.

5. The first respondent police has filed a counter affidavit, very strongly objecting to the quashment of the FIR as against this petitioner as prayed for by the learned counsel for the petitioner. It is seen from the counter affidavit filed by the first respondent that this petitioner has been shown as history sheeted rowdy in H.S.No.124 of 2009 on the file of Karumalaikoodal Police Station. There are also six cases pending against her and the descriptions have been given in the counter.

6. The learned counsel for the petitioner placed reliance on the recent judgement of the Supreme Court in Narinder Singh and Others V. State of Punjab and Another reported in (2014) 6 SCC 466 wherein the Hon'ble Supreme Court in Paragraph No.29.7, has 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....." (emphasis supplied)"

7. In this case, today the defacto complainant is present before this Court and he has also filed an affidavit before this Court stating that he has voluntarily come forward and has entered into a compromise with the petitioner/accused No.8 and that he does

not want to further proceed with the case as against the petitioner herein. In the affidavit, 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, 427, 506(ii) for offences occurred on 07.10.2009. The complaint was due to personal animosity which was their (sic) between me and the accused herein as well as with her husband. The said animosity and difference of opinion does not subsist between us and has come to an end. We have reached a compromise between us and does not intend to pursue the above said complaint. I wish to withdraw the present complaint and all the allegations levelled against the petitioner/accused herein by me.

I, therefore humbly pray that this Hon'ble Court may be pleased to permit me to withdraw the complaint and all the allegations contained therein against the petitioner herein in Cr.No.1960 of 2009 on the file of the respondent police."

8. The defacto complainant was identified by the first respondent police, who is present before this Court. It is represented that the petitioner is a practising advocate and that she is desirous of starting a new life.

9. It is seen that the incident had taken place in the year 2009 and till date the police have not filed the final report. The reason given by the police that two of the accused have absconded and therefore they did not file the charge sheet, cannot be accepted. This Court is of the view that it is for the police to file even absconding charge sheet, which has not been done. The police cannot keep the FIR pending and keep the Damocles' sword hanging over the accused.

10. Under such circumstances, relying upon the judgment of the Supreme Court in the case cited above, this Court is of the opinion that it is a fit case to quash FIR in Crime No.1960 of 2009 as against the petitioner/8th accused alone. Accordingly, FIR registered in Crime No.1960/2009 as against the petitioner/8th accused is quashed.

11. In the result, the Criminal Original Petition is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ajr

To

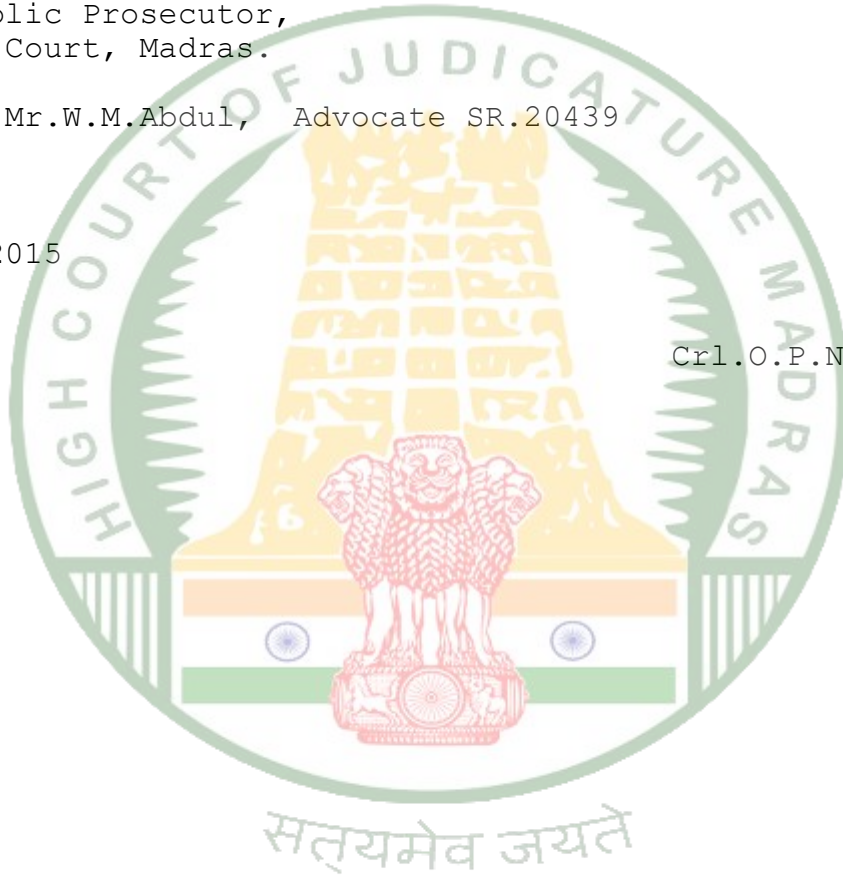
1. The Inspector of Police
Pallipatti Police Station,
Salem Town,
Salem District

2. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.W.M.Abdul, Advocate SR.20439

RJ(CO)
EU 22.04.2015

Cr1.O.P.No.5085 of 2015



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