



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2015

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

CRL.RC.(MD)No.21 of 2015

WEB COPY

R.Hema

: Petitioner

Vs.

The Deputy Superintendent of Police,
CBCID Department,
Organized Crime Unit,
Tirunelveli.

: Respondent

PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the order passed in Crl.M.P.No.809 of 2014 in Crime No.376 of 2012, on the file of the learned Judicial Magistrate No.I, Nagercoil, dated 28.02.2014, set aside the same and allow the petition filed by the petitioner.

For Petitioner : Mr.C.Rajakumar

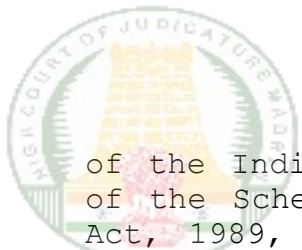
For Respondent : Mr.P.Kandasamy
Government Advocate [Criminal Side]**O R D E R**

The petitioner herein is the *de facto* complainant in Crime No.376 of 2012, on the file of the Suchindrum Police Station, Tirunelveli.

2. It is the case of the petitioner that on 18.08.2011, at about 03.00 PM, the police personnel, namely, the Inspector of Police, Suchindrum Police Station - Peter Pauldurai, Thavasi Mani, Special Branch Head Constable - Chandrasekar Pandian, Thangaraj and Rathinaraj armed with sticks came in a Government Vehicle bearing Registration No.TN-74-G-0372 and barged into her house and abused her by casting and also made an attempt to attack. The petitioner would further state that in order to save her life, she left the house. However, the above said police personnel followed her and took away a sum of Rs.1,50,000/-, which was towards sale of a lorry and they also took away a lorry.

3. The husband of the petitioner filed a Writ Petition in W.P.[MD]. No.376 of 2012, which was ordered on 19.01.2012. In spite of the order of this Court, the vehicle was not returned to her.

4. According to the petitioner, the above said illegal acts of the police personnel amounts to commission of offences under Sections 109, 147, 148, 294(b), 379 and 387 of the Indian Penal Code r/w Sections 3(i) (v), 3(1)(viii) and 3(1)(ix) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioner made a complaint on 19.08.2011, through post. But, no action was action and therefore, she was constrained to approach this Court by filing Crl.OP.[MD].No.3503 of 2012. The petitioner also filed a complaint with the registration of case. As per the order of this Court dated 30.03.2012, a case in Crime No.376 of 2012 was registered for the commission of offences under Sections 147, 148, 452, 379[NP] and 506(ii)



of the Indian Penal Code r/w Sections 3(i)(v), 3(1)(viii) and 3(1)(ix) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on 30.04.2012 and thereafter, no further action was taken. Therefore, the petitioner, once again, approached this Court by filing CrI.OP[MD].No.12804 of 2012 for transfer of the investigation to the CBCID. In pursuant to the order of this Court, dated 03.10.2012, the investigation was transferred to the file of the Inspector of Police CBCID, Kanyakumari District. During the course of investigation, 46 witnesses were examined and ten documents were collected and ultimately, filed a final report.

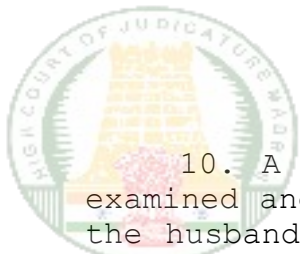
5. In the said final report, it has been stated that a case in Crime No.722 of 2011, on the file of the Suchindrum Police Station, Tirunelveli, was registered as against the husband of the petitioner for the commission of offences under Sections 147, 148, 341, 294(b) and 307 of the Indian Penal Code and the police personnel went to the house of the petitioner in connection with the said case and to enquire into the matter and they were not aware that the husband of the petitioner belongs to Scheduled Caste Community and in order to help her husband to escape from the clutches of law, the above said complaint came to be lodged by the petitioner and accordingly, the case was closed as "mistake of fact".

6. Challenging the closure of her complaint and for ordering further investigation, the petitioner filed CrI.M.P.No.809 of 2014, which was dismissed by the learned Judicial Magistrate No.I, Nagercoil, vide impugned order dated 28.02.2014. Aggrieved by the said order, the *de facto* complainant has filed the present Criminal Revision Petition.

7. The learned counsel appearing for the petitioner has drawn the attention of this Court to the contents of the complaint, as well as the impugned order and would contend that though the investigation was transferred to the respondent/CBCID, pursuant to the order passed by this Court, dated 03.10.2012, made in CrI.OP[MD].No.12804 of 2012, the investigation was not done in a proper manner. The learned counsel would further contend that though the complaint of the petitioner has made out a cognizable offence, the learned Judicial Magistrate has simply dismissed the petition, without granting liberty to file a private complaint and only in the event of ordering further investigation, real truth will come out.

8. Per contra, Mr.P.Kandasamy, learned Government Advocate [Criminal Side], has invited the attention of this Court to the final report filed by the respondent/CBCID and would contend that the CBCID, which is a Specialized Investigation Agency, has done a proper investigation. He would further contend that the husband of the petitioner is facing criminal prosecution and in order to help her husband to escape from the clutches of law, the petitioner has chosen to file the said complaint and therefore, there is nothing to order further investigation.

9. This Court has carefully considered the rival submissions made by the learned counsel on either side and perused the materials placed before this Court.



10. A perusal of the report would indicate that 46 witnesses were examined and ten documents were collected and it has been concluded that the husband of the petitioner is facing criminal prosecution in respect of the case in Crime No.722 of 2011 registered by the Suchindrum Police Station, Tirunelveli, for the commission of offences under Sections 147, 148, 341, 294(b) and 307 of the Indian Penal Code and only in order to escape her husband from the clutches of law, by way of dilatory tactics, the petitioner has chosen to file such a complaint. The police personnel went to the house of the petitioner in connection with the said case and they were not aware that the husband of the petitioner belongs to Scheduled Caste Community and finally, the CBCID concluded that the case should be referred to as "mistake of fact".

11. This Court, on going through the typed set of documents, is of the considered view that there is no infirmity in the final report filed by the respondent/CBCID in closing the case as "mistake of fact", which was rightly affirmed by the learned Judicial Magistrate No.I, Nagercoil.

12. In the result, the Criminal Revision Petition fails and the same is dismissed. However, liberty is granted to the petitioner to work out her further remedy, which includes the filing of private complaint, if so advised.

Sd/-

Assistant Registrar(T&P)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,Nagercoil.

2.The Deputy Superintendent of Police,
CBCID Department,
Organized Crime Unit, Tirunelveli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.C.Rajakumar,Advocate, SR.No.3041

ORDER MADE IN
CRL.RC.(MD)No.21 of 2015
DATED - 22.01.2015

NB

PA/14.02.15/3P/5C