

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM

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

Crl.O.P. No.23699 of 2016
and Crl.M.P.Nos.11298 and 11299 of 2016

1.Saravanan
2.Kala @ Kalivani
3.Nandha Kumar

Petitioners

vs.

1.G.Ilavarasi
2.Muthu

3.The Inspector of Police
All Women Police Station
Thiruppathur.

Respondents

[R3 *suo motu* impleaded by this Court vide order dt. 03.11.2016]

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records in C.C.No.130 of 2015 on the file of the Judicial Magistrate II, Thiruppathur.

For petitioners
For R3

Mr.S.Veeraraghavan
Mr.C.Emalias
Additional Public Prosecutor

ORDER

This petition has been filed to call for the records in C.C.No.130 of 2015 on the file of the Judicial Magistrate II, Thiruppathur.

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the State.

3. It is seen that Ilavarasi got married to Muthu on 14.07.2013 and she has one child through the wedlock. It is stated by Ilavarasi that she was working as a teacher in the Government School and she has been diligently giving her monthly salary to her husband and in-laws, despite which they have been repeatedly demanding more and more money from her. Ilavarasi lodged a complaint with the All Women Police Station, Thiruppathur. Since no action was taken, she lodged a complaint before the Judicial Magistrate No.II, Thiruppathur, who referred the complaint u/s 156(3) Cr.P.C. to the respondent police, based on which the respondent police registered a case in Cr.No.7 of 2015 and after completing investigation, filed charge sheet in C.C.No.130 of 2015 before the Judicial Magistrate No.II, Thiruppathur u/s 294(b), 498-A and 506(ii) IPC against four accused, challenging which accused 2 to 4 are before this Court.

4. Learned counsel for the accused submitted that Ilavarasi has been sending threatening Whatsapp messages to her husband, which she has suppressed in the complaint. Learned counsel also submitted that in the 161 Cr.P.C. statement of Ilavarasi, she has categorically stated that she has not given any complaint to the All Women Police Station, whereas, in the FIR it is stated otherwise. Learned counsel also submitted that Nandha Kumar [A4] is not involved in the offence at all, as he is working elsewhere.

5. This Court gave its anxious consideration to the submissions made by the learned counsel for the accused.

6. On a reading of the complaint given by Ilavarasi, it is seen that she has categorically stated that all the accused were demanding more and more from her and unable to bear their thorns, she had no other option, but to approach the police, but to no avail. The contention of the petitioners that in the 161 Cr.P.C. statement of Ilavarasi it is stated that, she had not given any complaint to the police and therefore, she has come to the Court with unclean hands, cannot be countenanced. The 161 Cr.P.C. statement is an unsigned statement written by the police at the earliest point of time. In the complaint given by Ilavarasi to the Magistrate, she has stated that she had lodged a police complaint, but the police had not taken any action on her complaint. May be to save their skin, the police would have deliberately written in the 161 Cr.P.C. statement that she had not given any complaint to the police. In any event, Section 161 Cr.P.C. is not a substantive piece of evidence.

7. As regards the Whatsapp messages, these are disputed questions of fact, which cannot be looked into in a quash petition u/s 482 Cr.P.C. The Final Report filed by the police and the accompanying documents disclose sufficient materials for the trial Court to proceed with and therefore, the prosecution cannot be quashed at the threshold.

8. In the result, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petitions are closed. If the accused have not been released on bail or anticipatory bail, the trial Court is directed to obtain a bond from each of them for Rs.10,000/- without sureties u/s

88 Cr.P.C. The presence of A2 to A4 is dispensed with on condition that, they shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. They shall file an affidavit of undertaking before the Trial Court that they will not dispute their identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in ***Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Crl.) 288]***. If the petitioners adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in ***State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]***. If thereafter the petitioners abscond, the trial Court shall direct registration of an FIR against them u/s 229-A IPC.

9. It is seen that the quash petition has been filed even without impleading the Inspector of Police, All Women Police Station as a respondent. Therefore, this Court *suo motu* impleads the Inspector of Police, All Women Police Station, Thiruppathur as a respondent.

03.11.2016

gms

NOTE:

Registry is directed to carry out necessary amendment.

To

1.The Inspector of Police
All Women Police Station
Thiruppathur.

2. The Judicial Magistrate II,
Thiruppathur.

3.The Public Prosecutor,
High Court, Madras.

P.N. PRAKASH, J.

gms

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