

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Cr1.R.C.No.736 of 2015

and

M.P.No.1 of 2015

1.K.S.M.Karthikeya
S/o.K.S.Sivasenathipathi

2.K.S.Aravind Nallathambi
S/o.K.S.Sivasenathipathi ... Petitioners/Respondent

vs

T.Aathiswaran
S/o.Thambanan Kounder ... Respondent/Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the order of learned Judicial Magistrate, Kangeyam, passed in C.M.P.No.2917 of 2014 on 12.06.2015.

For Petitioners: Mr.R.Vivekananthan
For Respondent : Mr.M.Guruprasad

O R D E R

This revision arises against the order of learned Judicial Magistrate, Kangeyam, passed in C.M.P.No.2917 of 2014 on 12.06.2015.

2. The present is a case where there has been much dispute between husband and wife and both have seen proceedings up to the Supreme Court which was pleased to order stay of proceedings and thereafter, pursuant to an agreement between them, all related proceedings were quashed in exercise of powers u/s.482

Cr.P.C. under orders of this Court in CrI.O.P.Nos.27298 and 27076 of 2015 dated 06.01.2016. Thereafter, the respondent, who is a relative of the wife, has preferred a further complaint in which following the orders stands passed:

"Petitioner present. Heard the learned counsel for the complainant. Records perused. The Inspector of Police is directed to register a case on the strength of this complaint and he is at liberty to register FIR with regard to what are all the offences made out in the complaint. It is informed that the complainants counsel has not pressed the offence under section 3(1) of TNPPDL Act, 1992. The Inspector of Police is further direct to investigate into the matter and file his final report."

Challenging such order, the present revision has been filed.

3. Heard learned counsel for petitioners and learned counsel for respondent.

4. The order of the Magistrate was passed on 12.06.2015. The Magistrate has recorded that the respondent is not pursuing the case for offence u/s.3(1) of TNPPDL Act. The offences which remain are u/s.120(b), 447 and 506(ii) IPC. In the decision in Priyanka Srivastava and another v. State of Uttar Pradesh and others [2015 (6) SCC 287], the Supreme Court had informed that in seeking the relief of direction u/s.156(3) Cr.P.C., it was necessary for a complainant to seek the same swearing to facts by way of an affidavit. Though learned counsel for respondent would seek to impress upon this Court that the respondent initially had preferred the complaint before Kangeyam Police Station and upon no action thereon, a petition u/s.156(3) Cr.P.C. has been filed, this Court is of the view that when the judgment of the Apex Court dated 19.03.2015 had been made prior to the passing of orders by the Magistrate i.e., on 12.06.2015, non-compliance of the stipulated requirement would render the direction not in keeping with law and hence, is to be set aside.

This Criminal Revision shall stand allowed. The order of learned Judicial Magistrate, Kangeyam, passed in C.M.P.No.2917 of 2014 on 12.06.2015 shall stand set aside. Once the order under challenge is set aside, the consequential action of the police in registering the case thereupon would also fail. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

To

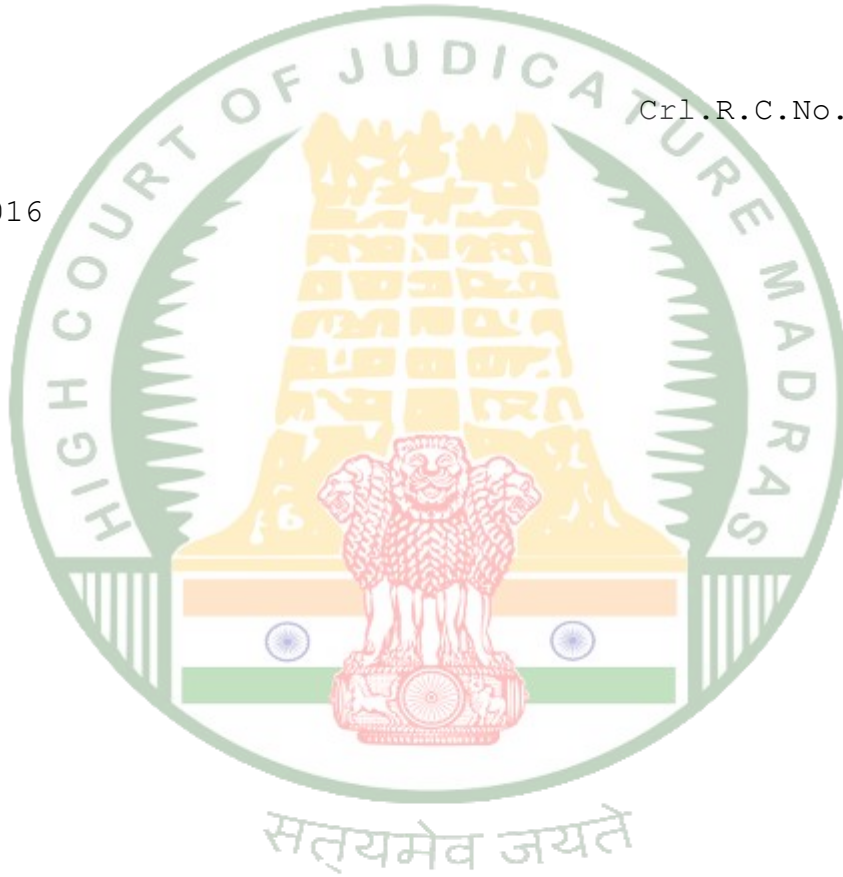
The Judicial Magistrate,
Kangeyam.

+1 cc to M/s.M.Guruprasad Advocate sr.6216

+1 cc to M/s.R.Vivekananthan Advocate sr.5509

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