

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM:

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

Crl.O.P.No.15324 of 2016
and Crl.M.P.No.7574 of 2016

Dhanapal

Petitioner

vs.

1.The State rep by
The Inspector of Police
Town Police Station
Salem City, Salem District.

2.Tamizmozhi

Respondents

Criminal Original Petition filed u/s 482 Cr.P.C. to
call for the records in C.C.No.24/2013 on the file of the
Judicial Magistrate Court-I, Salem and quash the same.

For petitioner
For R1

Mr.I.Paul Noble Devakumar
Mr. C. Emalias
Additional Public Prosecutor

ORDER

This petition has been filed to call for the records
in C.C.No.24/2013 on the file of the Judicial Magistrate
Court-I, Salem and quash the same.

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

3. On a reading of the Final Report, it is seen that
on 27.07.2011, the first accused dressed himself as the
Chief Minister of the State and posed in the public road
with the other accused hovering around him and encouraging
him in a most disgusting manner demeanouring the status of
a lady. On the complaint lodged by the de facto
complainant, the respondent police registered an FIR in
Cr.No.1422 of 2011 on 04.08.2011 and after completing the
investigation, has filed a Final Report against 20 persons,
challenging which the petitioner who has been arrayed as A6
is before this Court.

4. Learned counsel for the petitioner contended that though the alleged incident had taken place on 27.07.2011, FIR itself was registered only on 04.08.2011 after due deliberation and out of political vindictiveness. That apart, he contended that in the FIR, the offence only under Section 506(i) IPC was enumerated and even in the Final Report, it was filed as "u/s 506(i) IPC", but it has been altered by hand into one "u/s 506(ii) IPC" and that there are no ingredients for the said offence in the Final Report.

5. In the considered opinion of this Court, the materials collected by the police may not disclose the offence u/s 506(ii) IPC, but there are prima facie materials for offence u/s 506(i) IPC. It is trite that the Court need not accept the penal provision that is enumerated in the Final Report and that the Court can take cognizance of the offences disclosed in the Final Report from the materials produced with the Final Report. If the charges have already been framed, it is always open to alter the charges u/s 216 Cr.P.C.

6. As regards the delay in lodging of the FIR, this Court is of the view that delay by itself cannot be fatal to the prosecution case and it has to be considered by the trial Court while appreciating the evidence. Since there are prima facie materials in the Final Report, this is not a fit case to quash the prosecution and hence, this petition is dismissed with liberty to the petitioner to raise all points before the trial Court. Whatever is stated above is only for the purpose of deciding this limited question. The trial Court is directed to conduct the trial uninfluenced by what is observed, within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

gms

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To

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

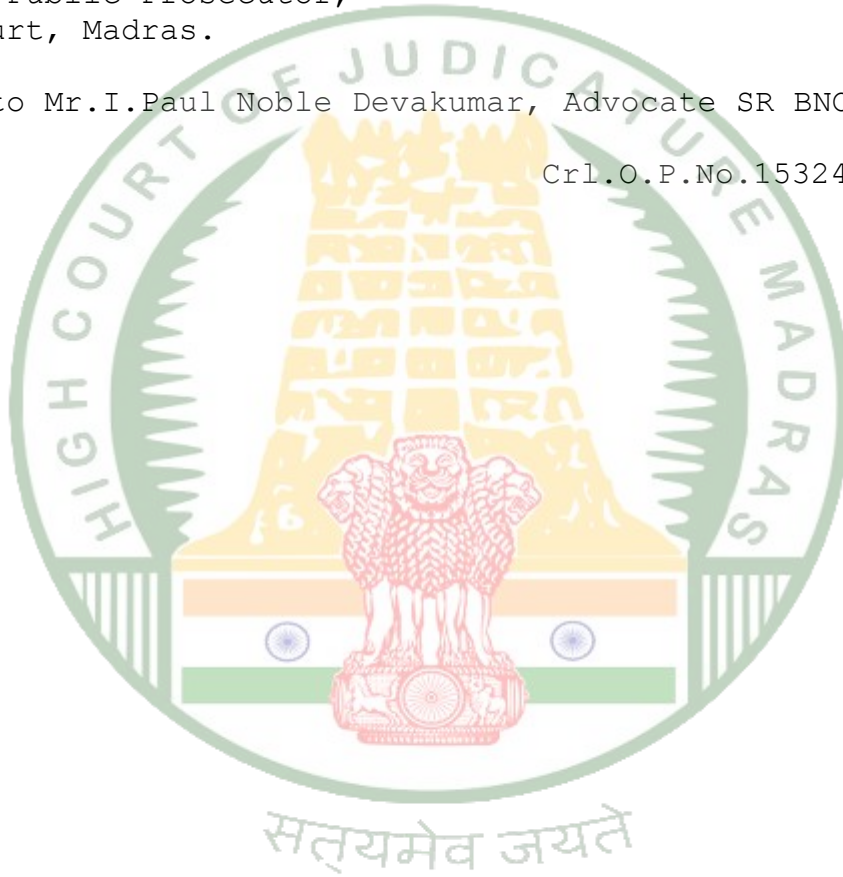
2.Judicial Magistrate Court-I,
Salem.

3. The Public Prosecutor,
High Court, Madras.

+ 1 CC to Mr.I.Paul Noble Devakumar, Advocate SR BNO 41146

CrI.O.P.No.15324 of 2016

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