

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM:

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

Crl.O.P. No.24635 of 2016 & Crl.M.P. Nos.11840 & 11841 of 2016

Ananda Raj Petitioner/7th accused

vs.

State represented by
the Inspector of Police
B-4, Race Course Police Station
Chennai

Respondent/complainant

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records in S.C. No.148 of 2016 on the file of the Sessions Court (Mahila Court) at Coimbatore and quash the same.

For petitioner Mr. R.C. Paul Kanagaraj

For respondent Mr. C. Emalias

Addl. Public Prosecutor

ORDER

This Criminal Original Petitions has been filed seeking to call for the records in S.C. No.148 of 2016 on the file of the Sessions Court (Mahila Court) at Coimbatore and quash the same.

2 On the complaint lodged by one Anand, a case in B4 Race Course P.S. Cr. No.1532 of 2008 was registered on 22.11.2008 and after completing the investigation, the respondent police filed a final report before the Judicial Magistrate Court No.III, Coimbatore in P.R.C. No.466 of 2008 against one Abdul Hakeem and 6 others under Sections 170, 323, 147, 148, 366, 343 and 392, IPC read with Sections 397, 354, 506(ii) IPC and Section 376 read with Section 120-B IPC. In the said final report in P.R.C. No.466 of 2008, Ananda Raj, the petitioner herein was arrayed as A7 and was shown as an "absconding accused". Therefore, the case against Ananda Raj (A7) was split up and numbered as P.R.C. No.16 of 2009. The Judicial Magistrate No.III, Coimbatore, committed the other accused, viz., A1 to A6 for trial to the

Court of Sessions, where, they were tried in S.C. No.214 of 2009 and were convicted and sentenced to various terms of imprisonment on 23.09.2014, about which, we are not concerned with. Ananda Raj (A7) was released on anticipatory bail in CrI.O.P. No.12295 of 2013 on 11.07.2013, pursuant to which, he surrendered before the Judicial Magistrate Court No.III and the warrant against him was recalled. The case in P.R.C. No.16 of 2009 has now been committed to the Court of Sessions (Mahila Court), Coimbatore in S.C. No.148 of 2016, challenging which, Ananda Raj (A7) is before this Court.

3 Heard Mr. R.C. Paul Kanagaraj, learned counsel for Ananda Raj (A7) and Mr. C. Emalias, learned Additional Public Prosecutor appearing for the respondent. Ms. T. Sumithra, Sub Inspector of Police, C2, Race Course Police Station, Coimbatore City is present.

4 The learned counsel for Ananda Raj (A7) submitted that Ananda Raj (A7) cannot be tried for any Sessions case, because, even as per the final report, the allegation against him is only for offences under Sections 170, 323 and 506(i) IPC.

5 Per contra, the learned Additional Public Prosecutor controverted the stand of the learned counsel for the petitioner.

6 This Court gave its anxious consideration to the rival submissions.

7 This Court has to see whether the offences committed by Ananda Raj (A7) were in the course of the same transaction as that of the offences committed by the other accused.

8 At this juncture, it may be relevant to extract the averments in the final report verbatim.

"This is a case of Gang Kidnapping followed to abuse, assault, criminal intimidation, unlawful demand of money and finally ended with rape.

Wherein, the marginally noted accused A1 to A6 formed themselves unlawfully and forcibly kidnapped the complainant T. D. Anand Jones (PW1) along with his girl friend Kumari Haripriya (Victim & PW 2) when they were chitchatting together in the complainant's car on 21.11.2008 at 20.30 hrs. in front of the shop "Coffee Day" Race Course which falls within the jurisdiction of B-4 Race Course Police Station. A1, A2, A3 are directly engaged in the kidnap of PW 1 & 2 whereas A4 to A6 under the direct instruction and with full knowledge of the crime committed, followed

the former vehicle in A1's car to SOC house for further assistance. Hence, all the accused are punishable u/s 147, 148 and 366 IPC.

Prior to that, the accused A7 Ananda Raj who forcibly climbed into the said complainant's car and threatened PW 1 and PW 2 under the pretext of police, abused and slashed victim Haripriya with some ulterior motive. Thus, he is punishable u/s 170, 323 and 506(i) IPC"

9 Even according to the prosecution, Ananda Raj (A7) was not part of the gang headed by Abdul Hakkim (A1). Ananda Raj (A7) peeped into the car and found the de facto complainant with a lady and he was chased away. Thereafter, A1 to A6 had abducted the victim and committed rape on her. Thus, the offence committed by Ananda Raj (A7) was not in the course of the same transaction as that of the offences committed by A1 to A6.

10 At this juncture, it is worth referring to Section 228 (1) (a), Cr.P.C., which reads as under:
"228. Framing of charge:

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which--

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report:"

11 On a reading of the statement of Haripriya (the victim) and Anand (de facto complainant), it is seen that they have disclosed the role of Ananda Raj (A7) in respect of the offence charged against him. Thus, there are prima facie materials for the Trial Court to frame charge against the petitioner. However, since the offences under Sections 170, 323 and 506(i) IPC are triable by a Magistrate, the Sessions Court, Coimbatore shall frame charge and send the case to the Chief Judicial Magistrate, Coimbatore, for trial.

This Criminal Original Petition stands ordered with the above direction. Connected Crl.M.Ps. are closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

- 1 The Judicial Magistrate No.III,
Coimbatore.
- 2 The Chief Judicial Magistrate,
Coimbatore.
- 3 The Sessions Court (Mahila Court)
Coimbatore
- 4 The Inspector of Police
B-4, Race Course Police Station
Chennai
- 5 The Public Prosecutor
Madras High Court
Chennai 600 104

Crl.O.P.No. 24635 of 2016

SDR 29.12.2016

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