

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

CORAM:

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

Crl.O.P. No. 25745 of 2016 and Crl.M.P. Nos.12581 & 12582 of 2016

1 Periyasamy
2 Santhakumari
3 Muruganantham Petitioners

vs.

1 The State represented by
the Inspector of Police
Thalaiivasal Police Station
Salem District
2 Anusuya Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records pending on the file of the Judicial Magistrate Court No.II, Attur, Salem District in C.C. No.169 of 2016 and quash the same.

For petitioners Mr. E. Kannadasan
For R1 Mr. C. Emalias
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the records pending on the file of the Judicial Magistrate Court No.II, Attur, Salem District in C.C. No.169 of 2016 and quash the same.

2 On the complaint lodged by one Santhakumari, the second petitioner herein, the first respondent police registered a case in Crime No.308 of 2016 on 01.09.2016 under Sections 341, 294(b), 323, 354 and 506(i) IPC against Kanagarathinam and Anusuya, the second respondent herein. Likewise, on the complaint given by Anusuya, the first respondent police registered a case in Crime No.309 of 2016 against Periyasamy, Santhakumari and Muruganantham under Sections, 294(b), 323, 354 and 506(i) IPC. After completing the investigation in Cr. No.309 of 2016, the first respondent police filed the final

report in C.C. No.169 of 2016 before the Judicial Magistrate Court No.II, Attur against Periasamy, Santhakumari and Muruganantham for the aforesaid offences, challenging which, the accused are before this Court.

3 Mr. Kannadasan, learned counsel for the petitioners submitted that the complaint given by Santhakumari, the second petitioner herein, is at the earlier point of time and the case has been registered as Cr. No.308 of 2016, whereas, the police have not yet completed the investigation in the said case.

4 Today, Mr. S. Subramaniam, Special Sub Inspector, Thalaivasal P.S. is present before this Court.

5 On instructions, Mr. C. Emalias, learned Additional Public Prosecutor submitted that the police have completed the investigation in Cr. Nos.308 and 309 of 2016 and have filed two final reports before the Judicial Magistrate No.II, Attur on 28.09.2016, whereas, the said Magistrate has taken on file, only the case in Cr. No.309 of 2016 and has numbered it as C.C. No.169 of 2016 and he has not passed any orders in the final report in Cr. No.308 of 2016.

6 Under such circumstances, when there is a case and counter, it is needless to state that the cases should be tried simultaneously.

7 In view of the above, this Criminal Original Petition is dismissed as being devoid of merits. Connected Crl. M.Ps. are closed.

8 Mr. Kannadasan, learned counsel for the petitioners submitted that the presence of Periyasamy (A1) and Santhakumari (A2) before the Trial Court may be dispensed with as both of them are teachers.

9 Acceding to the submission made by Mr. Kannadasan, learned counsel for the petitioners, Periyasamy (A1) and Santhakumari (A2) are directed to surrender before the Trial Court within a period of two weeks from the date of receipt of a copy of this order and on their surrender, they shall be released on bail under Section 436, Cr.P.C. on the same day on they executing a bond for Rs.10,000/- each with two sureties, who can be common sureties also. Thereafter, their presence before the Trial Court shall be 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 (Cr1.) 288]. If they 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, they abscond, the trial Court shall direct registration of an FIR against them u/s 229-A IPC.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 The Inspector of Police
Thalaivasal Police Station
Salem District
- 2 The Judicial Magistrate Court No.II
Attur
Salem District
- 3 The Public Prosecutor, High Court, Madras

+lcc to Mr.E. Kannadasen, Advocate, S.R.No.69566

rp(CO)
md(16/12/2016)

सत्यमेव जयते

Cr1.O.P. No. 25745 of 2016

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