



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.6166 of 2016

in

Crl.M.P.(MD) Nos.3052 & 3053 of 2016

Christopher

...Petitioner/Accused

vs.

1.State, rep by

The Sub-Inspector of Police
Nithiravilai Police Station
Kanyakumari District
(Crime No.336 of 2015)

..1st Respondent/Complainant

2.Vigila

..2nd Respondent/De facto complainant

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned proceedings in C.C.No.125 of 2015, on the file of the Judicial Magistrate No.II, Kuzhithurai, and to quash the same.

For Petitioner : Mr.M.R.Sreenivasan

For Respondents : Mrs.S.Prabha

Govt. Advocate (Crl.Side) for R1

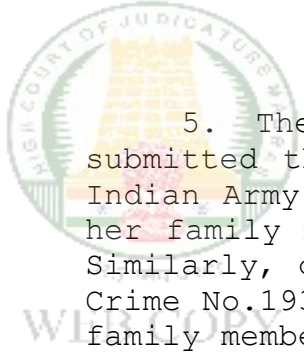
O R D E R

The petitioner has filed this criminal original petition, under Section 482 of the Code of Criminal Procedure, seeking quashment of the proceedings, in C.C.No.125 of 2015, on the file of the learned Judicial Magistrate No.II, Kuzhithurai.

2. It is seen that on the complaint lodged by the second respondent / de facto complainant, the respondent Police registered a case, in Crime No.336 of 2015, on 10.09.2015, for the offences punishable under Sections 341, 294(b), 323, 506(ii) I.P.C., and Section 4 of Women Harassment Act, 2002, against the petitioner / accused. It is the case of the second respondent / de facto complainant that on 09.09.2015, when she and her husband Allwin were coming by two-wheeler, the petitioner / accused had waylaid them and tried to pull the saree of the second respondent / de facto complainant.

3. Further, it is seen that on the complaint lodged by the petitioner / accused, the respondent Police registered a case, in Crime No.337 of 2015, on 10.09.2015, for the offences punishable under Sections 324, 506(ii) and 379 I.P.C., against the second respondent / de facto complainant and her husband Allwin.

4. After completion of investigation, in Crime No.336 of 2015, the respondent Police have filed a final report, in C.C.No.125 of 2015, against the petitioner / accused, before the learned Judicial Magistrate No.II, Kuzhithurai. Challenging the same, the petitioner / accused has filed this criminal original petition.



5. The learned counsel appearing for the petitioner / accused submitted that the petitioner / accused is an army personnel serving in Indian Army and earlier the second respondent / *de facto* complainant and her family members filed several cases against the petitioner / accused. Similarly, on the complaint lodged by the petitioner / accused, a case in Crime No.193 of 2010, has been registered against the said Allwin and his family members and final report has also been filed, in C.C.No.9 of 2011, before the learned Judicial Magistrate No.II, Kuzhithurai and the same is still pending. Therefore, the learned counsel for the petitioner submitted that as a counter blast, the second respondent / *de facto* complainant and her husband have falsely lodged the present F.I.R., leading to filing the final report against the petitioner / accused.

6. This Court has given its anxious consideration to the submissions of the learned counsel appearing for the petitioner / accused and the learned Government Advocate (Criminal Side) appearing for the State.

7. It is seen that the second respondent / *de facto* complainant and her husband Allwin were admitted in Government Hospital, Kuzhithurai, wherein they were treated by T.Chandra, Medical Officer, contemporaneously around 05.30 p.m., on 09.09.2015. The injuries sustained by them have been classified as simple injuries. Thus, there are *prima facie* materials for the trial to proceed further and hence this is not a fit case to quash the entire prosecution at this stage. Further, as stated above, on the complaint lodged by the petitioner / accused, a case, in Crime No.337 of 2015 has been registered. Under such circumstances, this Court directs the respondent Police to complete the investigation in Crime No.337 of 2015 expeditiously and take action in accordance with law.

8. With the above observations, this criminal original petition is dismissed with liberty to the petitioner / accused to raise all the points before the Trial Court.

9. At this juncture, the learned counsel for the petitioner / accused prayed that the presence of the petitioner / accused before the Trial Court may be dispensed with.

10. Accepting the submission and also taking into consideration the fact that the petitioner / accused has the fundamental right to fair trial, this Court directs the petitioner / accused to appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., at the time of framing charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the petitioner / accused files an application under Section 317 Cr.P.C., undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses in his absence on the day they are examined in chief without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence. If the petitioner / accused adopts dilatory tactics, he can be remanded to custody under Section 309 Cr.P.C., as laid down by the Hon'ble Supreme Court in *State of U.P. vs. Shambhu Nath Singh*, reported in 2001 (4) SCC 667. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)



To:

1.The Judicial Magistrate No.II,
Kuzhithurai.

2.The Sub-Inspector of Police,
Nithiravilai Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.M.R.Sreenivasan, Advocate in SR.20508

Crl.O.P.(MD) No.6166 of 2016
in

Crl.M.P.(MD) Nos.3052 & 3053 of 2016
12.04.2016

krk

PBK/JGB-DP/AR-I 21/04/2016 ::3P-5C::