

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.08.2017

PRONOUNCED ON : 24 .08.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.OP No.3264 of 2014

and

M.P.No.1 of 2014

Robin Jesudasan

.. Petitioner

Vs

1.State by

The Inspector of Police,
Vadavalli Police Station,
Coimbatore District.

2.Santhi

.. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to Crime No.521 of 2013 from the file of the Inspector of Police, Vadavalli Police Station, Coimbatore District and quash the same.

For Petitioner

:Mr.P.Kumaresan

For R1

:Mr.B.Ramesh Babu,
Govt.Advocate (Crl.side)

For R2

:Mr.Govind Chandra

ORDER

This Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to Crime No.521 of 2013 from the file of the Inspector of Police, Vadavalli Police Station, Coimbatore District and

<http://www.judis.nic.in>quash the same.

2. None appeared for the second respondent.

3.The case of the prosecution in brief is that the 1st respondent police registered a case against the petitioner here based upon the 2nd respondent complainant for the allegation he has committed offence under Section 4 of Tamil Nadu Women's Harassment Act 1998.

4. The 2nd respondent herein Mrs.Shanthi and her daughter and her husband J.Suresh occupied the 1st floor of the house of petitioner, herein, on a monthly rent of Rs.5000/- and a deposit of Rs.20,000/- as advance. The advance was paid in two installment. Petitioner is running a trading Company under the name and style "Super Greeny & Packs Pvt.Ltd" in Coimbatore.

5.On 04.06.2012, the 2nd respondent's husband joined the petitioner's trading company as sales executive at the request made by the 2nd respondent herein. From June 2012, the 2nd respondent entered into tenant relationship with the petitioner. They had wonderful and cordial relationship until her husband was terminated from the petitioner's enterprise for incompetence and inefficiency. The petitioner submits that when his mother asked the 2nd respondent to vacate the house for her personal use, the 2nd respondent lodged false complaints against the petitioner periodically. He returned the advance deposit of Rs.20,000/- on 15.04.2013, when his mother requested the 2nd respondent to vacate the petitioner premises. The

defacto complainant claims in her voluminous complaint that the incident of sexual assault on her daughter took place in the ground floor where petitioner stays. Similarly, she claims another incident of sexual assault without date or time.

6.The 2nd respondent's husband was misbehaving with the customers of his company and hence, he terminated him from the company. To wreak a vengeance the 2nd respondent has given a false and lengthy complaint against the petitioner. So, the petitioner preferred a complaint on 28.04.2013 against the 2nd respondent's husband for threatening the petitioner and CSR was given by the respondent in CSR No.148 of 2013. Thereafter she chose to prefer a complaint of sexual harassment as a counterblast. The 2nd respondent and her husband on 29.04.2013, lodged a complaint against the petitioner. Later the petitioner received a call on 24.05.2013 from an unknown number 9380539441 claimed to be Commissioner of Police, Coimbatore and asked to settle certain amount to escape from the 2nd respondent complaint. The petitioner forwarded a complaint to Superintendent of Police on 25.05.2013 to take action against them.

7.On 04.06.2013, the petitioner paid an amount of Rs.18,000/- towards the balance of salary of the 2nd respondent at the instigation of 1st respondent police. The 2nd respondent also gave an undertaking that she

withdraw her complaint and thereafter she preferred false complaint against the petitioner before the respondent police with ulterior motive.

8.The learned counsel appearing for the petitioner has submitted that the second respondent/defacto complainant gave a criminal colour to settle the civil dispute of tenancy, as they are land owner of tenant and to overcome financial crisis of the complainant and the complaint itself is an abuse of process of law.

9. The first respondent through the Public Prosecutor filed the counter stated that the complainant /2nd respondent Tmt.Shanthi has averred that she was a tenant of the petitioner/accused Robin Jesudasan, her husband was working as Marketing Manager under the petitioner/accused and the accused's parents are residing at Nagpoor. On requisition of the mother of the accused, the complainant provides meals to the petitioner/accused.

10. On 25.12.2012 the complainant's daughter/victim Paulin Ruby aged about 14 years went to the petitioner/accused's house to collect Tiffin box, at that time the petitioner/accused playing ball with the complainant's daughter, he took the victim girl and made her sitting slyly between his legs and hugged her tightly till he satisfied his lustful hunger. Immediately, the victim girl stated screaming and yelling at the top of her voice, the complainant went to the accused's house and rescued her. Thereafter, on

27.12.2012, the complainant went to the accused's house with meals, at that time the accused hugged the complainant and based upon the said complaint a case was registered in the 1st respondent police station in Crime No.521 of 2013 under Section 4 of Women Harassment Act 1998.

11. After investigation and recording statement of as many as 11 persons and after obtaining a legal opinion from the Deputy Director of Prosecution case was transferred to All Women Police Station, Coimbatore and further investigation was conducted by the Inspector of Police, All Women Police Station, Thudiyalur and final report was filed in the Crime No.521 of 2013 under for alleged offense under Section 9(n) read with 12 the POSCO Act 2012 before the same was submitted before the Mahila Court, Coimbatore taken on file as Special C.C.No.22 of 2014 on 22.05.2014. Thereafter, amended charge sheet has been filed wherein the charge has been amended as under Section 9(n) read with 10 POSCO ACT 2012 and under Section 4 of TNPWH Act on 02.07.2014 and in view of the CrI.O.P, the case is adjourned from time to time.

12. The second respondent was served and name is printed in the cause list and there was no representation.

13. The learned counsel for the petitioner also filed an additional typed set and based upon the additional typed set, he submitted that the

second respondent made a private complaint to the Mahila Court, Coimbatore and same was taken on file on 20.11.2013 for alleged offence under POSCO ACT. The petition given by her was taken as C.M.P.521 of 2013 and the defacto-complainant gave a sworn statement and the same was given recorded by the Mahila Court, Coimbatore on 20.07.2013 and also a sworn statement of the daughter of the second respondent and also her husband Mr. Krishnakumar on the same day. Thereafter, deposition of witnesses P.W.1, the defacto-complainant and deposition of witnesses P.W.2 the daughter of the second respondent was recorded on 16.12.2013.

14. After preliminary enquiry, as the Mahila Court, Coimbatore found that prima facie case is made out. The case was taken on file as Special C.C.No.9 of 2014 and summons was issued to the accused and after his appearance, copies were furnished to him and witnesses have been examined and charges were framed under Section 354(2) and 506(i) I.P.C and Section 4 of Protection of Children from Sexual Offences Act 2012 against the accused. As the petitioner pleaded not guilty and he was asked to face the trial and P.W.1 and 2 were examined and Exhibits P1 to P3 were marked. Thereafter, the trial Court have rendered a finding that the charges are not proved and accordingly by a judgment dated 30.09.2016 has acquitted the accused/ Robin Jesudasan, the petitioner herein.

15. Heard both sides and perused the records.

16. On perusal of the complaint given in Crime No.521 of 2013 before the first respondent police on 08.10.2013 and the private complaint given by the second respondent-Santhi before the Mahila Court on 20.11.2013. They are on the same set of allegations and same set of witnesses leading to the same set of charges.

17. It appears that the complaint of the second respondent was registered with the first respondent police on 08.10.2013 and forwarded to the jurisdictional Magistrate on 11.10.2013 as could be seen from the endorsement in the F.I.R copy filed in the typed set.

18. A perusal of the complaint in Crime No.521 of 2013 pending on the file of the first respondent and subject matter of this Criminal Original Petition are one and the same, as stated in the private complaint given by the second respondent before the Special Sessions Court (Mahila Court), Coimbatore on 20.11.2013.

19. While, the investigation is pending with the first respondent-police, it appears that the second respondent/defacto-complainant had moved the Mahila Court by way of private complaint and the same has taken as a private complaint in CMP.No.521 of 2013 and proceeded as per Section 200 of Cr.P.C. Sworn statement was taken and thereafter based upon the C.M.P.521 of 2013 procedure under Section 202 of Cr.P.C has been followed. P.W.1 and P.W.2 were recorded and the case was taken on file by the Special Sessions Judge (Mahila Court) as Special C.C.No.9 of 2014.

20. When the matter was pending investigation by the first respondent-police, the private complaint given by the second respondent/defacto-complainant before the Mahila Court has progressed and after observing the procedure under Section 200 and 202 Cr.P.C. The case was taken up and sworn statement were recorded; evidence was taken under Section 202 of Cr.P.C; case was taken on file; accused was summoned; copies were furnished and charges were framed as stated above and after trial, for the reasons recorded therein, the Special Sessions Judge(Mahila Court) has rendered an order of acquittal on 30.09.2016.

21. It appears that the final report in the police case has been seems to have been filed on 31.01.2014 before the Mahila Court and Special C.C.No.22 of 2014 under the POSCO ACT and same has taken special C.C.No.22 of 2014 and same is pending trial.

22. On comparison of the both cases covered under the special C.C.No.9 of 2014 emerged from the private complaint given by the defacto-complainant, as stated supra with that of the special C.C.No.22 of 2014 emerged from the final report conducted by the police. They are relating to the same occurrence on the same day on same set of facts with same set of allegations. Though the private complaint before the Mahila Court was given only on 20.11.2013, subsequent to complaint given to police on 08.10.2013.

However, after following the due procedure, the Mahila Court, Coimbatore has

acquitted in C.C.No.9 of 2014. Since the facts and the alleged offence are one and the same, this Court is of the considered view that the petitioner who stands accused cannot undergo the order of trial for the second time.

23. It is stated Double Jeopardy is a second prosecution after a first trial for the same offence. Double Jeopardy emerges on the principle of Nemo Debet Bis Puniri Pro Uno Delicto Ne bis in idem. The legal maxim, governing this field are

- a) nemo debet bis vexari which means no man ought to be punished twice for one offence
- b) Ne bis in idem - a man shall not be twice tried for the same crime and
- c) Nemo debet bis vexari - No person should be twice sued or prosecuted upon the same set.

Section 300 of Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C) provide protection against double jeopardy. Section 300(1) Cr.P.C states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts. The bare reading of section 300 clarifies that, based on same facts of a case, a separate charge cannot be framed by prosecution. Also, if the elements of a crime is same as that to, for which the accused is being prosecuted, the accused cannot be held guilty or a separate charge cannot be initiated against that person.

24. Double Jeopardy law in India essentially protects a person from multiple punishments or successive prosecution based on same facts of a case where the elements of multiple prosecutions are similar to those for which the accused has already been prosecuted or has been acquitted by the Court. Going by the basic principle of law, a new charge cannot be framed against a person in view of prohibition contained under Section 300 of Cr.P.C based on same facts.

25. A plea of 'autrefois acquit' is not proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter. In view of factual position as discussed above paragraphs, this Court is of the view that the petitioner is entitled to the protection provided under Section 300 Cr.P.C.

26. On the principles of protection against Double Jeopardy as mandate under Section 300 of Cr.P.C., and in the light of the judgment of the Hon'ble Supreme Court reported in **2011 2 SCC 703 [Kolla Veera Raghav Rao Vs. Gorantla Venkateswara Rao]** and in view of the matter in the case on hand, as the alleged offence took place on 25.05.2012 and the alleged act of the petitioner/accused has already culminated in the order of acquittal in Special C.C.No.9 of 2014 on the very same set of facts and for the very same accused trial cannot be conducted twice and hence the special C.C.No.22 of 2014 is liable to be set aside accordingly, in exercise of powers

confirmed by this Court under Section 482 of Cr.P.C the proceedings in special C.C.No.22 of 2014 is here by set aside.

27. In the result, this Criminal Original Petition is allowed and the special C.C.No.22 of 2014 on the file of the Special Sessions Judge (Mahila Court) shall stand quashed. Consequently, connected Miscellaneous Petition is closed.

24.08.2017

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To

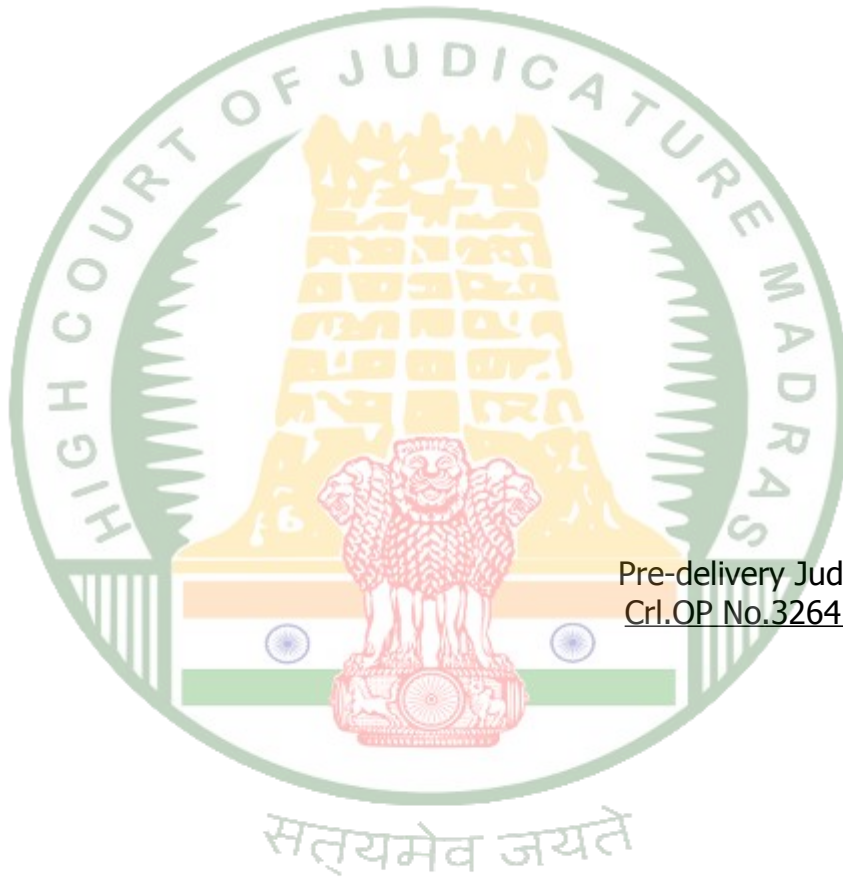
- 1.The Inspector of Police, Vadavalli Police Station, Coimbatore
2. The Public Prosecutor, High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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Pre-delivery Judgment in
Crl.OP No.3264 of 2014

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