

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.08.2017

PRONOUNCED ON :17.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

**Crl.OP No.30645 of 2011
and
M.P.No.1 of 2011**

Rathinammal

..

Petitioner

Vs

The State of Tamil Nadu rep.by
the Sub-Inspector of Police,
Karumalaikoodal Police Station,
Salem District – 636 402
Crime No.18/2010 of Karumalaikoodal PS

..

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., quash the final report/charge sheet dated 02.03.2010 filed by the respondent in this case taken on file as CC.No.94 of 2010 on the file of the Judicial Magistrate No.2, Mettur (Salem District) and to cause fresh re-investigation in this case of the Cr.No.18 of 2010 on the file of the respondent by CBCID Chennai and for filing a final report in this case in accordance with law.

For Petitioner :M/s.K.Vennila

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

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to quash the final report/charge sheet dated 02.03.2010 filed by the respondent in this case, taken on file as CC.No.94 of 2010 on the file of the Judicial Magistrate No.2, Mettur (Salem District) and to cause fresh re-investigation in this case of the Cr.No.18 of 2010 on the file of the respondent by CBCID Chennai and for filing a final report in this case in accordance with law.

2. The case of the prosecution in brief is that the petitioner was abused with obscene words assaulted, criminal intimidated and caused injuries by unlawful assembly of eight persons, namely 1.Kumaresan, 2.Raji, 3.Vijaya, 4.Pappathi, 5.Pappiyan, 6. Santhi, 7. Sasi, and 8.Pavithra on 17.01.2010 at 9.30 AM at Bharathi Nagar, within the limits of the respondents. The petitioner was rushed to the Government Hospital Mettur, where she was admitted as an in-patient for treatment of her injuries. On intimation by the above said Government Hospital Mettur, Thiru.K.Jayakumar, Sub-Inspector of Police/respondent went to that Hospital and recorded the statement of the petitioner and thereupon, the above SI registered the First Information Report in Cr.No.18 of 2010 of Karumalaikoodal Police Station on 17.01.2010, under Section 294(b), 323, 324 and 506(ii) of I.P.C.

3. The learned counsel for the petitioner has submitted that in the statement which formed the basis of the FIR, the petitioner had given the specific overt acts committed by the above mentioned eight accused persons. The respondent subverted the entire prosecution case to wreck and demolish by fabricating statements of witnesses including that of the petitioner to highlight that the petitioner is a quarrelsome woman and excluding four named persons, viz, Pappiyan, Santhi, Sasi and Pavithra and accordingly omitted and excluded them from the final report/charge sheet.

4. The learned counsel for the petitioner further submitted that the respondent colluded with the accused and fabricated statements under Section 161 Cr.P.C to wreck and demolish the very prosecution case so as to leave the accused go scot-free and the final report/charge sheet dated 02.03.2010 was filed against the four accused persons, namely, Kumaresan, Raji, Vijaya and Pappathi under Sections 294(b), 323, 324 and 506(ii) of I.P.C and the same was taken on file by the Judicial Magistrate No.2, Mettur in C.C.No.94 of 2010.

5. The learned Government Advocate (Crl. side) has submitted that the de-facto-complainant is not a happy with the investigation conducted by the respondent-police herein and the investigation has been carried out by the police in a fair manner and does not warrant any interference by this

Court at this stage.

6. Heard both sides and perused the records and the final statement and list of witnesses filed in C.C.No.94 of 2010.

7. The petitioner has come forward with the specific case that on 07.01.2010 at about 9.30a.m in the Bharathi Nagar, 8 named accused in the complaint, have formed and assembled and uttered obscene words and assaulted the complainant and criminally intimidated and caused injury and she filed a complaint in Karumalaikoodal Police Station in Crime No.18 of 2010 for alleged offences under Sections 294(b), 323, 324 and 506(ii) of I.P.C.

8. From the list of witnesses and all the statements annexed with the FIR filed in the above case, it is seen that L.W.8, namely Dr.Thiyagarajan, Civil Assistant Surgeon, Govt. Hospital, Mettur, would corroborate the version of the petition given by her in the First Information which was recorded by Thiru.K.Jayakumar, SI of Poice, Karumalaikoodal Police Station, who is cited as 9th prosecution witness in the charge sheet. It is to be stated that it is the specific case of the complainant that 8th accused has formed unlawful assembly and she was assaulted by all the eight persons named in the F.I.R and also that at the earliest point of time and immediately after admission in the Government Hospital, she had given a statement to Dr.Thiyagarajan, L.W.8 regarding involvement 8 named accused persons named in the F.I.R.

However it seems that one Shanthi who is arrayed as accused No.4 has been shown as list witnesses (listed witness No.4) and hence, when the defacto-complainant has specifically alleged a specific overt act against one of the accused, this Court is unable to understand as to why the Investigation Officer has chosen to array the said named accused as a prosecution witnesses and this compels this Court to observe that all is not well with the prosecution and investigation.

9. It is the specific contention of the counsel for the petitioner in this case that there is self-wrecking and self-demolition of the prosecution case itself, rendering the dismissal of the prosecution case, which would result in the acquittal of the accused charged, which will result in failure of justice. It is apparent from the fact that one of the accused specified by the petitioner, namely Santhi has been cited as 4th prosecution witness in the charge sheet and is found to have force.

10. In view of the discussion in the preceding paragraphs and also of the fact that there are 8 named accused in the F.I.R and also the statement of L.W.1 with the police and also with the medical evidence of the L.W.8 and other materials placed before this Court, this Court is of the considered view that the present final report is a demolition of the prosecution case, which would render only the dismissal of the prosecution case, which in turn, will result in acquittal of the accused and hence, this

Court is of the considered view that the investigation said to have been carried on in the F.I.R in Crime No.18 of 2010, "lacks fairness"and hence, the same is not legally sustainable and liable to be interfered with.

11.Accordingly, in exercise of power conferred upon this Court under Section 482 of Cr.P.C., the final report filed by the respondent in Crime No.18 of 2010 and pending on the file of the learned Judicial Magistrate No.II, Mettur, is hereby quashed and it is further directed the respondent shall re-investigate the matter under Section 173(8) Cr.P.C and file a final report within three months from the date of receipt of a copy of this order.

12. Registry is directed to send a copy of this order to the Superintendent of Police, Salem, for effective control over the investigation in Crime No.94 of 2010 , Karumalaikoodal Police Station by the respondent.

13. With the above observations and directions, this Criminal Original Petition is allowed and the charge sheet/final report dated 02.03.2010 filed by the respondent in this case, taken on file as CC.No.94 of 2010 on the file of the Judicial Magistrate No.2, Mettur (Salem District) is quashed and it is further directed the respondent shall re-investigate the matter under Section 173(8) Cr.P.C and file a final report within three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

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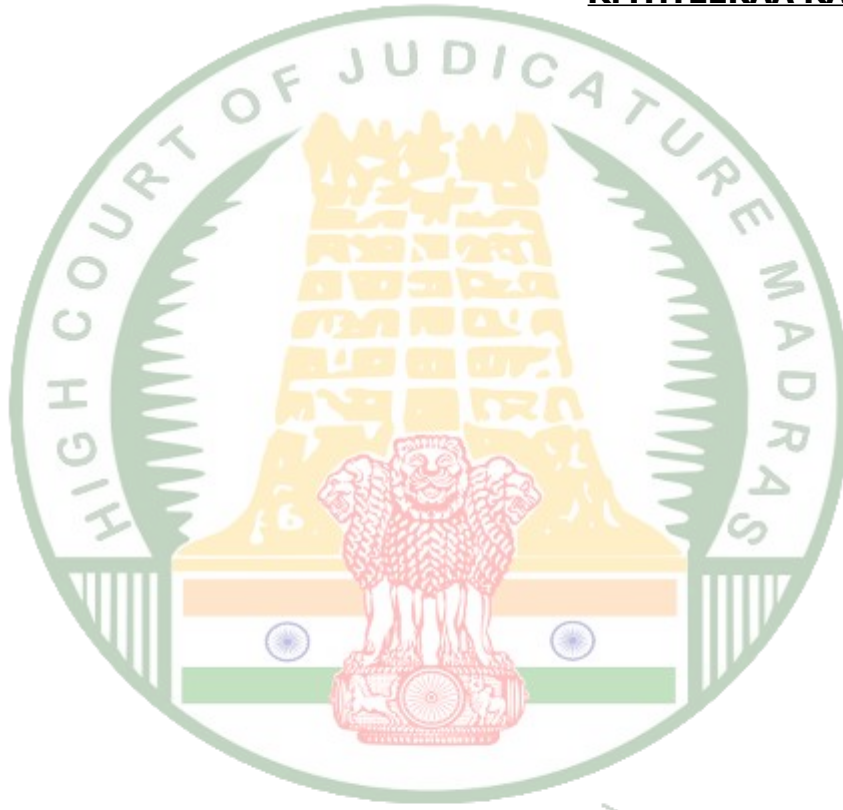
- 1.The Judicial Magistrate No.2, Mettur,Salem District
 2. The Public Prosecutor, High Court, Madras.
 3. The Superintendent of Police, Salem District.
 4. The Sub-Inspector of Police,
Karumalaikoodal Police Station,
Salem District – 636 402
- Crime No.18/2010 of Karumalaikoodal PS



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RMT.TEEKAA RAMAN,J.,

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Judgment in
Crl.OP No.30645 of 2011

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17.08.2017



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