

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P.No.23894 of 2010 and
M.P.Nos.1 & 2 of 2010

K.J.Kumar @ Jayakumar .. Petitioner

Vs.

1. Mahalakshmi

2. State by : Inspector of Police,
Kaaripatti Police Station,
Salem District. .. Respondents

Prayer : Criminal Original Petition has been filed under
Section 482 of Cr.P.C to call for the records culminating in
C.C.No.185 of 2008 on the file of the learned Judicial
Magistrate No.II, Salem herein and quash the same.

For the petitioner : Mr.M.R.Sivakumar

For the Respondent - 1 : M/s A.M.Amurtha Ganesh

For the Respondent - 2 : Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

This criminal original petition is preferred by the
petitioner/accused to call for the records pending in C.C.No.185
of 2008 on the file of the learned Judicial Magistrate
No.II,Salem and quash the same.

2.Brief case of the petitioner/accused:

The facts of the case is that on 15.10.2007 at 12 AM, the
petitioner has entered into defacto complainant's house and
attacked the defacto complainant and her mother alone in the
house and abused in filthy language and attempted to rape her by
tearing her dress and threatened her to death by transferring
her property in the petitioner's name. The defacto complainant
preferred a complaint and the same was registered FIR in Crime
No.483 of 2007 under sections 294(b) 506(2) 376 r/w 511 of IPC.
After investigation and recording statements of the neighbours,
the sub inspector of police has laid a final report on 8.2.2008

before the Judicial Magistrate II, Salem by referring the case as mistake of fact.

3. Heard the arguments on either side and perused the entire materials available on record.

4. The learned counsel for the petitioner submits that the respondent has filed a petition dated 13.3.2008 before the learned Judicial Magistrate-III, Salem by opposing the said charge sheet laid by the Sub Inspector of Police, Karipatti Police station and the learned Judicial Magistrate by order dated 12.5.2008 passed in the protest petition in C.M.P.No.2300 of 2008 inter alia by assuming that it is not possible for a normal human being to damage the name in such a way. Hence it appears that there is possibility for a prima facie case and directed for recording sworn statement of the informant and her witness. Accordingly on 5.6.2008 the sworn statement of the respondent was taken and 17.6.2008 the respondent's mother, her sister and her sister's son statements were recorded and the case has been taken on file as calendar case under sections 451, 354 and 506(2) of IPC.

5. The petitioner has purchased the subject property in his name even during the year 2003 itself for valuable considerations from the respondents. Further it is relevant to note that the respondent has also lodged similar complaint in Cr.No.543 of 2007 on the file of Inspector of Police, Karipatti Police Station, Salem under Sections 420 and 506(2) and subsequently referred as mistake of fact. Aggrieved over the order of the learned Magistrate, this quash petition is filed by the petitioner/accused.

6. The learned counsel for the petitioner submits that the learned Judicial Magistrate failed to appreciate the material contradictions in the complaint dated 16.10.2007 lodged by the respondent with the police authorities handling her sworn statement recorded on 5.6.2008.

7. The learned counsel for the petitioner submits that the learned Judicial Magistrate without having regard to the materials on record in its entirety and arraying at an inference with reasoning that based on the materials there is a possibility for the offence alleged would have been committed, as erred in issuing summons by relying exclusively on the sworn statements of the respondent and statement of witnesses and directed issuance of summons.

8. The learned counsel for the petitioner cited the following decisions in support of their contentions:

CDJ 2015 MHC 5821

9.The learned Additional Public Prosecutor appearing for the respondent opposed the contentions of the petitioner/accused and sought for dismissal of the criminal original petition.

10.In the case on hand, already two complaints preferred and the same was closed as mistake of facts. The learned trial court impliedly set aside the final report filed by the respondent police and taken cognizance of the offence on the sworn statement filed by the defacto complainant. Even though the manner in which the learned Magistrate proceeded cannot taken as a fault but on reading the whole averments stated in the sworn statement and in the earlier complaint, there is something which is hidden can be overturned in the cross examination.

11.Therefore without supporting material documents available on record, the petitioner cannot be sought the relief and hence, I am not inclined to interfere in the order passed by the learned Magistrate.

12.In the result, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

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vs
To

Sub Assistant Registrar

- 1) The Judicial Magistrate No.II,
Salem.
- 2) The Chief Judicial Magistrate,
Salem.
- 3) The Inspector of Police,
Kaaripatti Police Station,
Salem District.
- 4) The Public Prosecutor,
High Court, Chennai.

+1 cc to Mr.A.M.Amurtha Ganesh, Advocate, S.R.No.43373

+1 cc to Mr.M.R.Sivakumar, Advocate, S.R.No.43523

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M.P.Nos.1 & 2 of 2010

KAN(CO)
SSM(20/03/2019) .