

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.28926 of 2012

and

M.P.Nos.1 and 2 of 2012

K.Ramalingam

.. Petitioner

Vs

1.State : Rep. by
The Inspector of Police,
Pallapatty Police Station,
Salem.

2.R.Mahalakshmi .. Respondents
(R2 impleaded as per the suo moto order of
this Court dated 8.6.2017 in Crl.OP.No28926/12)

PRAYER: Petition under Section 482 of the Code of Criminal Procedure, to call for the records relating the proceedings in S.T.C.No.908 of 2012 on the file of the Judicial Magistrate No.II, Salem and quash the same.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.P.Govindarajan (for R1)
Addl. Public Prosecutor

No Appearance (for R2)

सत्यमेव जयते
ORDER

This criminal original petition is preferred by the petitioner/accused against the final report in S.T.C.No.908 of 2012 on the file of the learned Judicial Magistrate No.II, Salem.

2.Brief case of the petitioner/accused is that:

The facts of the case is that on 23.11.2010 at 9.30 hrs one R.Mahalakshmi, defacto complainant went to Batharakaliamman Temple through the path way in the petitioner/accused property and at that time, the petitioner/accused and his wife Vanaja abused the defacto complainant and thrown stone at her, which caused abrasion in the thigh, further the petitioner/accused

fisted her in the chest. The defacto complainant lodged a complaint at 5.00PM to the respondent police, and the respondent police registered a case in Cr.No.1342 of 2010 for the offences under section 294 (b) and 324 of IPC.

3.Again on 23.11.2010 the defacto complainant Mahalakshmi and her two sons Ganesan and Ashok Kumar came to the petitioner/accused house and abused him in filthy language and further one Ganesan hit the petitioner/accused with the knife thereby the petitioner sustained grievous injuries and they broke window glass. The petitioner/accused lodged a complaint at 6.30 P.M. and a case was registered against the defacto complainant in Crime No.1843 of 2010 under sections 294(b), 324 and 457 of IPC.

4.The respondent police without proper investigation filed the final report on 23.12.2010 stating that the petitioner had committed the offence under section 294(b) of IPC and the case was taken on file in S.T.C.No.908 of 2012 by the learned Judicial Magistrate No.II, Salem. Therefore, this quash petition is filed.

5.While pending of this petition, the defacto complainant was added as a 2nd respondent in CrI.M.P.No.28926 of 2012 through order dated 08.06.2017.

6.The learned counsel for the petitioner/accused submits that the respondent police failed to note that even though the alleged occurrence took place at 9.30 A.M., the complaint was lodged only at 5.00 P.M. and there is a delay in lodging the FIR. The statement of witness of Dhanam and Chinna Ponnu was misinterpreted by the respondent police and cited in favour of the defacto complainant.

7.The learned counsel for the petitioner/accused submits that the respondent police failed to note that no such incident took place in the field of the petitioner, only the defacto complaint and her son's had attacked the petitioner to counter blast the said occurrence, the false complaint has been lodged.

8.The learned counsel for the petitioner/accused submits that the respondent police failed to note that the defacto complainant in her statement had stated that she sustained injuries due to the attack of the petitioner but to substantiate the same no medical records were furnished. Therefore the offence under section 324 of IPC was dropped and the petitioner's wife was not arrayed as an accused, which clearly shows no such incident has taken place.

9.The learned counsel for the petitioner/accused submits that the respondent police filed final report after lapse of one and half years from the date of occurrence which clearly shows the defacto complainant was not interested in perusing the case.

10.The learned counsel for the petitioner/accused submits that the respondent police failed to note that the alleged occurrence had not taken place in a public place to attract section 294(b) of IPC.

11.The learned Additional Public Prosecutor for the 1st respondent opposed the prayer of the petitioner/accused.

12.I heard Mr.S.Parthasarathy, learned counsel for the petitioner and Mr.P.Govindarajan, learned Additional Public Prosecutor for the 1st respondent and perused the entire materials available on record. In spite of summons, nobody appeared on behalf of the 2nd respondent.

13.In the case on hand, the respondent police filed the final report against the petitioner/accused for the offences under Section 294(b) of IPC.

14.I carefully perused the 161 statements attached the final report which only mentioned the verbal abuse and the earlier statement made in the complaint was not taken into consideration by the investigation officer and he drop the offence under Section 324 of IPC which was included in the FIR. Once the main offence under Section 324 of IPC is disbelieved, the substratum of the case is affected and the intentions between the parties is to be suspected. Further on plain reading of the complaint and the 161 statements, section 294(b) of IPC will not be attracted as the occurrence had not taken in the public place, caused annoyance to others or nuisance as stipulated in the section.

15.In the result, this criminal original petition is allowed and the proceedings initiated against the petitioner in S.T.C.No.908 of 2012 on the file of the learned Judicial Magistrate No.II, Salem is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate No.II,
Salem.

2.The Inspector of Police,
Pallapatty Police Station,
Salem.

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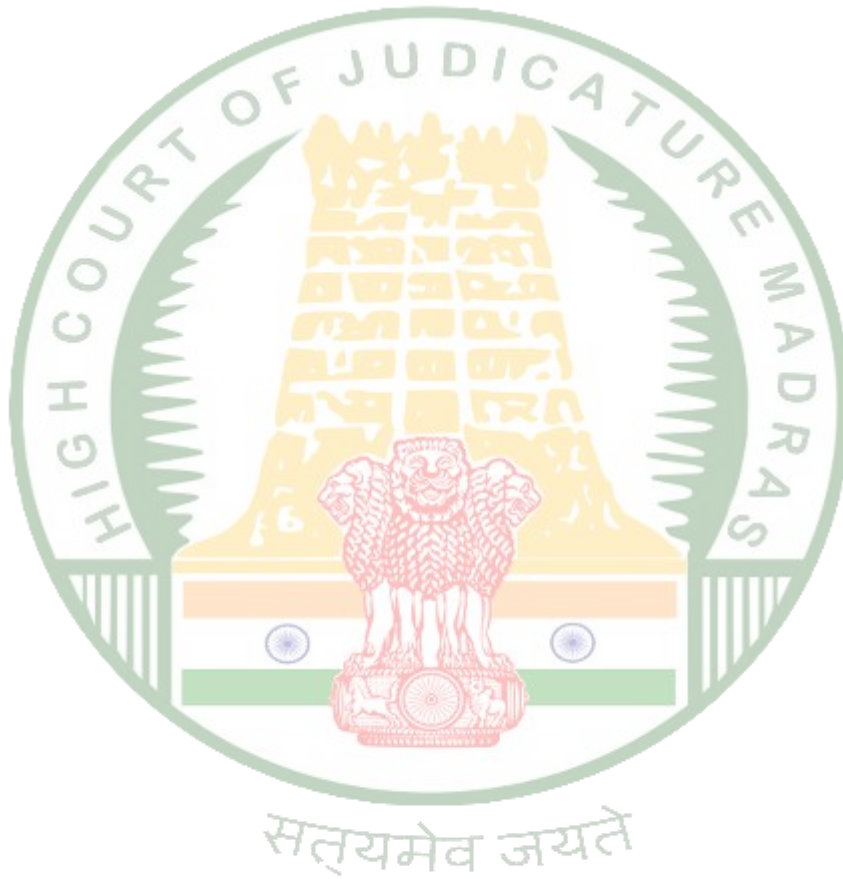
3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.Sairaman, Advocate, S.R.No.45287

CRL.O.P.No.28926 of 2012
and
M.P.Nos.1 and 2 of 2012

LN(CO)

rrs 07/03/2019



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