



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Seventh day of April Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH

CRL MP (MD) No.2685 of 2017
IN
CRL OP (MD) No.23743 of 2016

ABDUL SALAM

... PETITIONER/2ND RESPONDENT/
DEFACTO COMPLAINANT

Vs

1 ABDUL RAHMAN

..1ST RESPONDENT/PETITIONER/
1ST ACCUSED

2 THE STATE REP.BY
THE SUB-INSPECTOR OF POLICE
AIRPORT POLICE STATION,
TRICHY DISTRICT
(CRIME NO. 438 OF 2015)

... 2ND RESPONDENT/1ST RESPONDENT/
COMPLAINANT

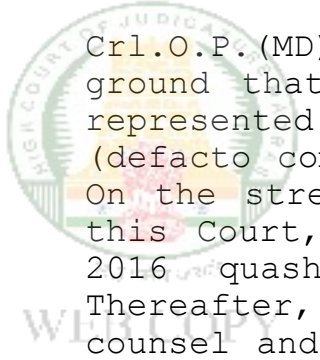
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to modify the order passed in the above Crl.O.P.No. 23734 of 2016 dated 09.01.2017 by this Honourable Court so as to give effect to the compromise memo as against the respondent/A-1 only

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.A.SURESH SELVA KUMAR, Advocate for the petitioner and of MR.A.P.BALASUBRAMANI, Government Advocate (Crl.Side) for the Respondent No.2 the court made the following order:-

This petition has been filed, seeking to modify the order dated 09.01.2017 passed by this Court in Crl.O.P.(MD) No.23743 of 2016.

2. For the sake of convenience, the parties would be referred to by their name.

3. On the complaint lodged by Abdul Salam, the Sub-Inspector of Police, Airport Police Station, Trichy District registered a case in Crime No.438 of 2015 on 22.10.2015 and after completing the investigation, filed a charge sheet in C.C.No.60 of 2016 before the learned Judicial Magistrate No.VI, Trichy for offences under Sections 120-B, 365 r/w 511 IPC against Abdul Rahman Sait and eight others. During pendency of the proceedings in C.C.No.60 of 2016, Abdul Salam / Defacto Complainant and Abdul Rahman Sait / A1 filed



Crl.O.P.(MD) No.23743 of 2016 for quashing the prosecution on the ground that they arrived at a compromise. Abdul Rahman Sait was represented by Mr.Santhanam Rajeshkumar, Advocate and Abdul Salam (defacto complainant) was represented by Mr.R.Lakshmanan, Advocate. On the strength of the joint memo of compromise dated 08.12.2016, this Court, by order dated 09.01.2017 in Crl.O.P.(MD) No.23743 of 2016 quashed the entire prosecution in C.C.No.60 of 2016. Thereafter, Abdul Salam (Defacto Complainant) has changed his counsel and has filed the present petition for modification of the order dated 09.01.2017 made in Crl.O.P.(MD) No.23743 of 2016, on the ground that this Court ought not to have quashed the prosecution against all the accused and that this Court should have quashed the prosecution only as against Abdul Rahman Sait / A1.

4. Heard Mr.A.Suresh Selva Kumar, learned counsel for Abdul Salam and the learned Government Advocate (Crl.Side) appearing for the State.

5. Learned counsel for Abdul Salam placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Narinder Singh and others vs. State of Punjab and another**, reported in **(2014) 6 SCC 466** and also placed a specific reliance on Paragraph Nos.29.1 and 29.6, wherein the Hon'ble Supreme Court has stated that the power to quash the prosecution should be exercised sparingly and with caution by High Courts. He further submitted that Abdul Salam / Defacto Complainant had agreed for quashment of the prosecution only as against Abdul Rahman Sait, not against other accused.

5.1. Learned counsel for Abdul Salam also placed strong reliance on the judgment of this Court in the case of **D.Simpson vs. S.T.Perumal**, reported in **2014-2-L.W. (Crl.) 239** in support of his submission. In that case, the accused was convicted by the Trial Court and conviction and sentence was confirmed by the Appellate Court and the Revisional Court. Thereafter, the accused and the complainant entered into a compromise and that was approved by this Court in the light of Section 147 of the N.I.Act. The facts in that case are different from the facts of the case on hand.

6. Per contra, learned Government Advocate (Crl.Side) refuted the contention.

7. This Court gave its anxious consideration to the rival submissions.

8. At the outset this petition is not maintainable in view of the bar under Section 362 of the Code. That apart, Paragraph Nos.3 and 4 of the joint memo of compromise, signed by Abdul Salam/Defacto Complainant and Abdul Rahman Sait/A1, read as follows:

"3) It is further submitted that the petitioner and the 2nd respondent herein is also belongs to same locality we know each other including both the family known to each other and after registered the above said case in our village elders interfere in the said dispute between the petitioner and 2nd respondent and compromise



the matter amicably and in such circumstances the above said matter has been settled between the Defacto-Complainant and petitioner.

4) In view of the said compromise the 2nd respondent has agreed to withdraw the case in C.C.No.60 of 2016 on the file of the Judicial Magistrate No.VI, Trichy and he hereby undertakes that he will not claim any damages against the Petitioner herein in future."

9. In the joint compromise memo, Abdul Salam/Defacto Complainant has not stated that he reserves his right to prosecute the case as against A2 to A9. A reading of the joint memo of compromise shows that on the intervention of the family members of both sides, he had agreed to have the case in C.C.No.60 of 2016 withdrawn. Only on the strength of the joint memo of compromise, this Court had quashed the entire proceedings in C.C.No.60 of 2016. Now, after changing the counsel, Abdul Salam/Defacto Complainant has filed the present petition, contending that he wants to proceed as against other accused in C.C.No.60 of 2016.

10. In order to satisfy the judicial conscience, this Court carefully perused the charge sheet in C.C.No.60 of 2016. It is alleged in the charge sheet that Mohamed Siddique/A2 is a business man in Singapore and that Varisai Mohamed @ Jinnah/L.W.3 had swindled money from Mohamed Siddique/A2 in Singapore and had come for good to Tamil Nadu with the booty. In order to get back the money swindled by Varisai Mohamed @ Jinnah/L.W.3, Mohamed Siddique/A2 came to Tamil Nadu and attempted to abduct Abdul Salam/Defacto Complainant, who is the brother-in-law of Varisai Mohamed @ Jinnah/L.W.3.

11. It is alleged that on 21.10.2015, A1 to A9 attempted to abduct Abdul Salam/Defacto Complainant, but abandoned the plan, when Abdul Salam/Defacto Complainant started making noise, Thus, this is a case of attempt abduction on account of financial dispute between members of the same family.

12. Admittedly, A1 & A2 are related to the defacto complainant and Varisai Mohamed @ Jinnah/L.W.3. This is not a case of abduction for ransom, but only a case of attempt to abduct the defacto complainant for making Varisai Mohamed @ Jinnah to return the amounts swindled by him from Mohamed Siddique/A2 at Singapore. In the facts and circumstances of the case on hand, this Court is of the view that this is not a fit case to modify the order dated 09.01.2017 passed by this Court in CrI.O.P.(MD) No.23743 of 2016.

13. In the result, this petition is devoid of merits and the same is accordingly dismissed.

sd/-
07/04/2017



AR
TO

1 THE JUDICIAL MAGISTRATE NO.VI, TRICHY
2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
TRICHY DISTRICT.

3 THE SUB-INSPECTOR OF POLICE
AIRPORT POLICE STATION, TRICHY DISTRICT

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.A.SURESH SELVA KUMAR Advocate SR.No.19702

GJM/PM/PN/SAR-2-10.4.17-2P-6C

ORDER
IN
CRL MP (MD) No.2685 of 2017
IN
CRL OP (MD) No.23743 of 2016
Date :07/04/2017