



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2017

CORAM

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Crl.O.P. (MD) No.11176 of 2017

and

Crl.M.P. (MD) Nos.7682 & 7683 of 2017

1.Karmegam

2.Nagamani

... Petitioners

/ Accused Nos.1 & 2

-Vs-

1. The State rep. by

The Inspector of Police,

C3, S.S.Colony Police Station (L&O),

Madurai.

(In Crime No.477 of 2016)

...1stRespondent/Complainant

2.Uma Maheswari

... 2nd Respondent/De-facto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the criminal proceedings in S.C.No.318 of 2017 pending before the learned Additional District and Sessions Judge (Mahalir Neethimandram), Madurai and quash the same.

For Petitioners :Mr.M.Ramu

For R-1 :Mr.K.Anbarasan,
Government Advocate(Crl.side)

For R-2 :Mr.Veerakathiravan
Senior Counsel for
Mr.Jeganathan

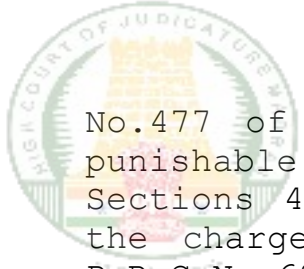
O R D E R

This Criminal Original petition has been filed to quash the criminal proceedings in S.C.No.318 of 2017, pending before the learned Additional District and Sessions Judge (Mahalir Neethimandram), Madurai.

2.Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the second respondent and the learned Government Advocate (Criminal side) appearing for the first respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The petitioners state that, a case was registered in Crime



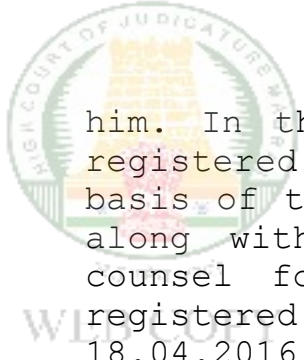
No.477 of 2016, before the respondent police, for the offences punishable under Sections 294(b), 323 and 506(ii) of I.P.C. and Sections 4 & 3 of TNPPDL Act, against them. It is admitted that the charge sheet was filed and the same was taken on file in P.R.C.No.68 of 2016, on the file of the learned Additional Mahila Court, Madurai. The case was also committed to the Principal District Court and the same was transferred to the Additional District and Sessions Judge (Mahalir Neethimandram), Madurai in S.C. No.318 of 2017. It is to be noted in this case that the complaints were given against the petitioners only in connection with the incident on 17.04.2016 and the other relating to the offences under Sections 294(b), 323 and 506(ii) of I.P.C.

4.The learned counsel for the petitioners referred to the complaint of the de-facto complainant, which was registered in Cr.No.477 of 2016 and referred to the statement of the Sub Inspector of Police, who has registered the complaint on 18.04.2016. The learned counsel for the petitioners tried to impress the Court that the statement of the Sub-Inspector of Police would only show that the cognizance was taken only for the offences that were alleged to have been committed on 17.04.2016 and that there is no scope for assuming that the incident on 18.04.2016 was taken cognizance for registering the case in Cr.No.477 of 2016.

5.The learned counsel for the petitioners relied upon the judgment of the Honourable Supreme Court, in the case of **State of Haryana and others vs. Bhajan Lal and others** reported in **1992 AIR 604**, wherein the Honourable Supreme Court, among other things, has held that where the allegations in the FIR do not disclose cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. The learned counsel for the petitioners also referred to paragraph 8(g) of the said judgment, which reads as follows:

"(g)where a criminal proceedings is manifestly attended with mala fide and / or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E]8.2. In the instant case, the allegations made in the complainant, do clearly constitute a cognizable offence justifi- on and this case does not call for the exercise of extraor-dinary or inherent powers of the High Court to quash the F.I.R. Itself.[307B] State of West Bengal v.S.N.Basak, [1963] 2 SCSR 52; distinguished."

6.First of all, the arguments of the learned counsel for the [petitioners](https://hcservices.ecourts.gov.in/hcservices/) does not get support from any of the observation of the Honourable Supreme Court made in the judgment, relied upon by



him. In this case, it is not in dispute that the FIR has been registered and disclose cognizable offences. It is only on the basis of the statement of Sub-Inspector of Police, which is filed along with the charge sheet. It is contended by the learned counsel for the petitioners that the complaint itself is not registered for the offences that was allegedly committed on 18.04.2016.

7.This statement is nebulous and not supported by any other materials including the FIR, which is available and found contrary to the contentions of the petitioner. Except stating that there is discrepancy in the statement relied upon by the petitioner, which may lead some assistance to defend his case before the Court. There is absolutely no reason to doubt the veracity of the complaint. It cannot be taken as a serious issue or valid ground so as to form a opinion that there is abuse of process of law or to hold that the complainant does not make out any cognizance offence. In that view of the matter, this petition does not deserve any merits and hence, this petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

8.The learned Counsel for the petitioners however submitted that the presence of the petitioners can be dispensed with. The learned Senior Counsel appearing for the de-facto complainant objected to grant an order to dispense with the presence of the petitioners/accused before the lower Court. The learned Senior Counsel also submitted that though anticipatory bail was granted by the lower Court earlier, at the instance of the de-facto complainant, the same was set aside by this Court. Despite the order of this Court, which was also confirmed by the Honourable Supreme court, with a direction that the petitioners shall surrender as their bail application was cancelled by this Court, the petitioners have not complied with the order. Since the petitioners have not surrendered so far, the learned Senior Counsel for the de-facto complainant submitted that the petitioners are not entitled to any further indulgence.

9.In that view of the matter, this Court is not inclined to pass any order accepting the contention of the petitioners to dispense with their presence before the Lower Court. However, the petitioners are at liberty to move an application before the lower Court and the same shall be disposed of on merits in accordance with law.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar



To

1.The Inspector of Police,
C3, S.S.Colony Police Station (L&O),
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.RAMU Advocate in SR. No.74541
+1cc to VEERA ASSOCIATES in SR. No.74834

CMR/IS
JS/SV.MMS/SAR.2/8.9.2017/4P-5C

Cr1.O.P.(MD) No.11176 of 2017
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