



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.2804 of 2017

and

Crl.M.P.(MD)Nos.2146 and 2147 of 2017

Gabriel Deva Irakkam,
S/o. Gabriel Jebarajan,
No.54, Cellathai Nagar,
Makilchi Nagar, Perumalpuram,
Tirunelveli Town,
Tirunelveli District.

: Petitioner

Vs.

1.The Sub-inspector of Police,
Perumalpuram Police Station,
Perumalpuram, Tirunelveli.
(In Crime No.110 of 2016)

2.R.Rajeswari,
W/o.Radhakrishnan,
Door No.L-100, Grade-III,
TNHB Colony, V.M.Chatram,
Tirunelveli.

: Respondents

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the charge sheet in C.C.No.176 of 2016 on the file of the Judicial Magistrate No.1, Tirunelveli and quash the same as illegal.

For Petitioner

: Mr.N.Pragalathan

For Respondent

: Mr.A.P.Balasubramani,

Government Advocate (Criminal Side)

O R D E R

On the complaint lodged by the second respondent, the first respondent registered a case in Crime No.110 of 2016 and after completing investigation, filed a final report in C.C.No.176 of 2016 on the file of the Judicial Magistrate No.1, Tirunelveli, for offences under Section 294(b), 506(ii) of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act against the petitioner, challenging which, the petitioner is before this Court.

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

2.Heard Mr.N.Pragalathan, learned counsel for the petitioner



and Mr.A.P.Balasubramani, learned Government Advocate (Criminal Side).

3. Today, Mr.D.Shanmugavel, Special Sub-Inspector, Perumalpuram Police Station, Tirunelveli District, is present before this Court.

4.It is the case of the prosecution that the petitioner is a Road Contractor and that he was laying a road in the street, where the de-facto complainant lives. The de-facto complainant found certain deficiencies in the work of the petitioner and when she questioned him, he said to have abused her in most filthy language. She has also stated that in her complaint to the police. Thereafter, the petitioner lodged a complaint against the de-facto complainant and obtained direction from this Court in Cr.O.P.(MD) No.6356 of 2016 dated 22.04.2016 to register an FIR on his complaint. Pursuant to which, the respondent police registered a case in Crime No.405 of 2016 against the de-facto complainant and her husband, who is said to be a Police Constable and after completing the investigation, they have closed the case as 'Mistake of Fact'. As regards the present case is concerned, there are *prima facie* allegations in the charge sheet for the trial to proceed against the petitioner. Hence, the same cannot be quashed in the light of law laid down by the Hon'ble Supreme Court in **State of Haryana and others v. Bhajan Lal and others** reported in **1992 Supp (1) SCC 335**. In view of the above, this petition is dismissed as devoid of merits.

5. At this juncture, learned counsel appearing for the petitioner submits that the presence of the petitioner before the Trial Court may be dispensed with.

6. Accepting the submission, this Court directs the petitioner to appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., at the time of framing charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the petitioner files an application under Section 317 Cr.P.C., undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses in his absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

1.The Judicial Magistrate No.1,
Tirunelveli

2.The Sub-inspector of Police,
Perumalpuram Police Station,
Perumalpuram,
Tirunelveli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
+1cc to M/s. n.PRAGALATHAN Advocate in SR. No.14333

MR/RR

JS/JC/SAR.4./3P-5C/5/04/2017

Order made in
Cr1.O.P. (MD) No.2804 of 2017
Dated: 14.03.2017