



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE P.N.PRAKASH

**Crl.O.P.(MD) No.3055 of 2017
and Crl.M.P.Nos.2318 and 2319 of 2017**

1.Meenal

2.Muthukaruppan

3.Lakshmanan

... Petitioners

-vs-

1.The State rep. by its
Inspector of Police,
Kumbakonam Taluk Police Station,
Kumbakonam, Thanjavur District
Crime No.548/2016

2.Lathangi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the impugned charge sheet laid in C.C.No.36 of 2017 on the file of the learned Judicial Magistrate, No.II, Kumbakonam and quash the same.

For Petitioner : Mr.S.Veeranasamy

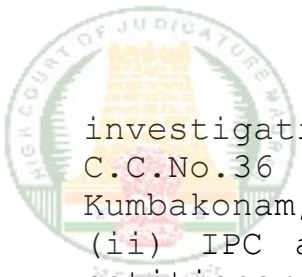
For Respondents : Mr.A.P.Balasubramani for R1
Govt. Advocate (Crl.Side)

O R D E R

This petition has been filed to quash the case in C.C.No.36/2017 on the file of Judicial Magistrate, No.II, Kumbakonam.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. side) for the first respondent.

3. The 2nd respondent approached the Judicial Magistrate, No.II, Kumbakonam District in Cr.M.P.13041/2016 and on the order dated 01.11.2016 passed by the learned Judicial Magistrate, under Section 156(3) Cr.P.C., the respondent police registered a case in Crime No.548/2016 on 27.11.2016 and after completing the



investigation, the respondent police has filed the chargesheet in C.C.No.36 of 2017 before the Judicial Magistrate, No.II, Kumbakonam, for offences under Sections 448, 294(b), 354 and 506 (ii) IPC against the petitioners herein, challenging which, the petitioners are before this Court.

WEB COPY

4. It is the case of the de-facto complainant that on 28.09.2016, the petitioners trespassed into her house in search of her husband and started beating and abusing her.

5. The learned counsel for the petitioners/accused submitted that the de-facto complainant's husband had borrowed money from the accused and in order to avoid repaying the amount, this false case has been foisted against the accused. He also submitted that the first accused is a Teacher by profession and that in order to have her suspended from service, the de-facto complainant has engineered the present false prosecution. The learned counsel for the petitioners submitted that the de-facto complainant herself had earlier issued a notice dated 24.12.2016 to the first accused and her superior officers alleging that the 1st petitioner is involved in Crime No.548/2016 and calling upon them to take departmental action against her.

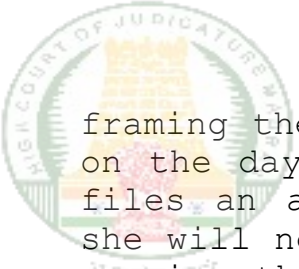
6. This Court gave its anxious consideration to the rival submissions.

7. On a reading of the final report, it is alleged by the de-facto complainant that on 28.09.2016, at 9.30 a.m., the accused barged into her house and had assaulted her. This incident is also seen by three persons, namely, Devamani, Don Bosco and Ramadoss. Police have recorded 161 Cr.P.C. statement of these three witnesses, who are supporting the case of the de-facto complainant.

8. The learned counsel for the accused submitted that the first accused was admitted in the hospital on 28.09.2016 for abdomen pain and in support of that, he submitted a medical certificate dated 28.09.2016.

9. In the considered opinion of this Court, alibi is a question of fact, which has to be established only during trial. Since there are prima facie materials for the trial to proceed, this is not a fit case to quash the prosecution. Hence, this criminal original petition is dismissed.

10. At this juncture, the learned counsel for the petitioners prays for dispensed with the presence of the petitioners before the trial Court. Hence, the presence of the 1st petitioner shall appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., for



framing the charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the 1st petitioner files an application under Section 317 Cr.P.C., undertaking that she will not dispute her identity and that her counsel will cross-examine the prosecution witnesses in her absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the 1st petitioner adopts any dilatory tactics, it is open to the Trial Court to insist upon her presence. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To:

- 1.The Judicial Magistrate, No.II,
Kumbakonam
- 2.The Inspector of Police,
Kumbakonam Taluk Police Station,
Kumbakonam, Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

RR
AE/MR/10.04.2017/3P/4C

Crl.O.P. (MD)No.3055 of 2017
and Crl.M.P.Nos.2318 and 2319/2017
20.03.2017