



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2017

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THE HON'BLE MR.JUSTICE P.N.PRAKASH**Crl.O.P. (MD) No.4278 of 2017 and**
Crl.M.P. (MD) Nos.3079 & 3080 of 2017

1. Feroz Khan
 2. Rubash Khan
 3. Sulthan
- ... Petitioners/A1 to A3

-vs-

1. The State Rep. by
The Inspector of Police,
Thiruppullani Police Station,
Ramanathapuram District.
(Crime No.93 of 2011) ... 1st Respondent/Complainant
2. Ismath Nisha ... 2nd Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the records relating to the Charge Sheet in P.R.C No.13 of 2017 on the file Judicial Magistrate Court No.I, Ramanathapuram and quash the same as illegal.

For Petitioner : Mr.Ajmal Khan, Senior Counsel
For M/s.Ajmal Associates &
Mr.J.Sulthan Basha

For R1 : Mr.K.Anbarasan
Govt. Advocate (Crl.Side)

Reserved on	Pronounced on
20.04.2017	27.04.2017

ORDER

This petition has been filed to call for the records relating to the Charge Sheet in P.R.C No.13 of 2017 on the file Judicial Magistrate Court No.I, Ramanathapuram and quash the same as illegal.

2. On the complaint lodged by Ismath Nisha / R2, the 1st respondent police registered a case in Crime No.93 of 2011 on 21.06.2011 for offences under Sections 147, 342, 323 and 302 IPC. It is the specific case of Ismath Nisha that her younger brother Jeenath was married to one Jeenath on 19.06.2011 at Periyapattinam. After the Nikkah, the bride and bridegroom returned to the groom's village. On 20.06.2011, the relatives of



Jeenath summoned the family members of Jahangir Sait to their village. Therefore, Jahangir, his newly wedded wife Jeenath and his sister/defacto complainant went to the bride's village. It is alleged by Ismath Nisha that the members of Jeenath started accusing Jahangir Sait that he was already a married man and by suppressing the earlier marriage, he got married to Jeenath, which allegation was fervently denied by Jahangir Sait. Thereafter, Ismath Nisha and her brother were beaten by the relatives of Jeenath. When the relatives of Jeenath started beating Jahangir Sait and Ismath Nisha, Jahangir Sait started fleeing and took refuge in the house terrace of one Feroz Khan. The gang chased Jahangir Sait and after beating him blue threw him out from the terrace on account of which he got entangled in transformer wires, fell down and died. As stated above, on the complaint of Ismath Nisha, a case in Crime No.93 of 2011 was registered against Feroz Khan and seven others and after completing the investigation, the 1st respondent police has filed a charge sheet in PRC No.13 of 2017 before the learned Judicial Magistrate No.I, Ramanathapuram for offences under Section 306 IPC r/w 34 IPC against Feroz Khan, Rubash Khan and Sulthan, challenging which the accused are before this Court.

3. In the charge sheet in PRC No.13 of 2017, it is stated that the deceased Jahangir Sait got married to Jeenath on 19.06.2011 and on 20.06.2011, he was called by the relatives of Jeenath to their village. While Jahangir Sait was standing in the house terrace of Feroz Khan, three accused proceeded to the terrace, abusing and chasing Jahangir that he had suppressed his earlier marriage and has married Jeenath and on seeing them, Jahangir Sait committed suicide by jumping from the terrace.

4. Heard the learned Senior Counsel for the petitioners and the learned Government Advocate (Cr1.Side) appearing for the State.

5. Learned Senior Counsel for the petitioner painstakingly took this Court to the charge sheet and 161 statement and submitted that offence under Sections 306 r/w 34 IPC has not been made out in the charge sheet, inasmuch as the accused had not committed any of the acts set out under Section 107 IPC for them to be prosecuted for abetment of suicide of Jahangir Sait. He placed strong reliance on the following judgments:

1. Amalendu Pal alias Jhantu vs. State of West Bengal, reported in AIR 2010 SC 512;

2. Gangula Mohan Reddy vs. State of Andhra Pradesh, reported in AIR 2010 SC 327;

3. S.S.Chheena vs. Vijay Kumar Mahajan and another, reported in (2010) 12 SCC 190;

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

4. Mani vs. State rep. by the Inspector of Police, Chennai, reported in (2014) 3 MLJ (Cr1) 18;



5. M.Mohan vs. State rep. by the Deputy Superintendent of Police, reported in (2011) 3 SCC 626"

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

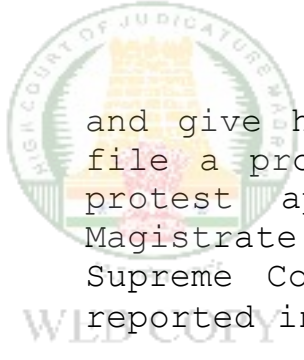
7. This Court gave its anxious consideration to the rival submission.

8. In this case, there appears to be some foul play by the Police. It is the specific case of Ismath Nisha that after the marriage of Jahangir Sait with Jeenath, they were asked to come on 20.06.2011 to the village of bride, where the members of Jeenath started assaulting Jahangir Sait on the allegation that he had suppressed his earlier marriage. Ismath Nisha has clearly stated that eight accused named in the FIR physically thrashed Jahangir Sait in the house terrace of Feroz Khan (A1) and threw him out of the terrace, resulting in Jahangir Sait hitting the electricity transformer wires, falling on the ground and dying. The FIR was registered for an offence under Section 302 IPC. After nearly six years, the Police have filed the present charge sheet, the recording 161 statements of some witnesses and have converted a murder case into a case of one under Section 306 IPC.

9. In the FIR, eight persons were named by Ismath Nisha, but whereas in the charge sheet, only three persons have been shown as accused. It is trite law that when the persons named in the FIR are excluded in the final report, an opportunity should be given to the defacto complainant to file a protest application. That apart, Ismath Nisha has given a written and signed complaint as an eye witness to the murder of her brother, but the Police have recorded their own 161 statements for diluting a murder case into a case of suicide.

10. Learned Magistrate has failed to issue notice to the defacto complainant before taking cognizance of the offence under Sections 306 r/w 34 IPC on the final report filed by the Police. Judgments of the Hon'ble Supreme Court on the right of the defacto complainant to file protest application are legion. Suffice it to refer to the judgment of the Hon'ble Supreme Court in the case of **Bhagwan Singh vs. Commissioner of Police**, repoted in **AIR 1985 SC 1285**.

11. Under such circumstances, this Court is of the view that this is not a fit case to be quashed by this Court under Section 482 Cr.P.C. This Court is constrained to set aside the order of cognizance passed by the learned Judicial Magistrate No.I, **Rayachoti** in PRC No.13 of 2017 with a direction to the Magistrate to issue notice to Ismath Nisha / defacto complainant



and give her an opportunity, so that she gets an opportunity to file a protest application. In the event of Ismath Nisha filing protest application, the same shall be dealt with by the Magistrate in accordance with the law laid down by the Hon'ble Supreme Court in of **Vinay Tyagi vs. State of U.P. and others**, reported in **Laws (All)-2010-8-369**.

12. With the above observation and direction, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To:

1. The Judicial Magistrate Court No.I,
Ramanathapuram.
 2. -Do- Thro' The Chief Judicial Magistrate,
Ramanathapuram.
 3. The Inspector of Police,
Thiruppullani Police Station,
Ramanathapuram District.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 CC to M/s.AJMAL ASSOCIATES, Advocate, SR No. 54857
AR
PSM/MMS/09.05.2017/4P/6C

PRE-DELIVERY ORDER IN
Cr1.O.P. (MD) No.4278 of 2017
27.04.2017