



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CRL.O.P. (MD) No. 4496 of 2017

and

CrI.M.P. (MD) No. 3217 of 2017

Raja Mohammed : Petitioner/Accused No.6

-Vs-

1. The State Represented through the
Sub-Inspector of Police,
Vaalinkkam Police Station,
Ramanathapuram District,
(In Crime No.14 of 2016) : 1st Respondent/Complainant

2. Panjaandi : 2nd Respondent/De-facto
Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to call for the records pertaining to the proceedings in C.C.No.13 of 2017 on the file of learned Judicial Magistrate, Muthukulathur, Ramnad District and quash the same as far as the petitioner/Accused No.6 is concerned.

For Petitioner : Mr.D.S.Haroon Rasheed
For Respondent No.1 : Mr.K.Anbarasan,
Government Advocate (CrI.side)

O R D E R

On the complaint lodged by the second respondent, the first respondent police registered a case in Crime No.14 of 2016 and after completing the investigation, has filed a charge sheet in C.C.No.13 of 2017 before the learned Judicial Magistrate, Muthukulathur, Ramnad District against 16 accused, for offences under Sections 147, 294(b), 323, 324, 109 of the Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act r/w Section 34 of the Indian Penal Code, challenging which, Accused No.6 is before this Court.



2. Heard Mr.D.S.Haroon Rasheed, learned counsel for the petitioner/A-6 and Mr.K.Anbarasan, learned Government Advocate (Crl.side) appearing for the first respondent.

3. It is the case of the prosecution that there is a civil dispute between the accused in this case and the *defacto* complainant with regard to the property in question and that the accused were building a compound wall in the property, which was objected to by the *defacto* complainant on 04.02.2016. At that time, it is alleged that the accused had abused the *defacto* complainant and his wife and had assaulted them. Hence, the First Information Report and the charge sheet.

4. Mr.D.S.Haroon Rasheed, learned counsel appearing for the petitioner/Accused No.6 submitted that Accused No.6 is a bus conductor and on 04.02.2016, he was not available in the place of occurrence, but, he has been falsely implicated. In support of his contention, he placed reliance upon the subsequent police statements given by the *defacto* complainant, wherein, it is stated that he has wrongly implicated Accused No.6. Therefore, the learned counsel for the petitioner submitted that the proceedings should be quashed.

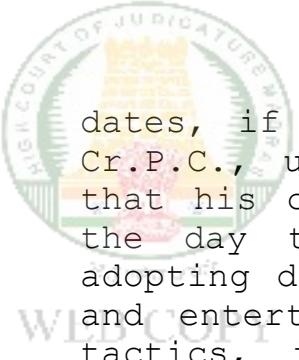
5. Per contra, the learned Government Advocate (Criminal side) refuted the contention.

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

7. The fact remains that the petitioner's role has been ascribed by the *defacto* complainant in the complaint given by him, which formed the basis of the First Information Report. Just because, in the further statement recorded by the police under Section 161 of the Code of Criminal Procedure, it is stated that Accused No.6 was not at the place of occurrence, the prosecution cannot be quashed. After all 161 statements are recorded by the police and the signature of the deponent should not even be obtained. Since there are triable issues, this is not a fit case to quash the prosecution at the threshold. Hence, this Criminal Original Petition is dismissed, with liberty to the petitioner to raise all the points before the Trial Court.

8. At this juncture, the learned counsel appearing for the petitioner submits that the presence of the petitioner/Accused No.6 before the Trial Court may be dispensed with.

9. Accepting the submission, this Court directs the petitioner/Accused No.6 to appear before the Trial Court for <https://hccseccourt.org.in/hccseccourt/> 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 on the day they are examined in chief, 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 petition is closed.

Sd/-

Assistant Registrar(P & A)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Muthukulathur,
Ramnad District.
2. Do thro The chief Judicial Magistrate,
Ramanathapuram District.
3. The Sub Inspector of Police,
Vaalinkkam Police Station,
Ramanathapuram District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.S.Haroon Rasheed, Advocate Sr.No.52595

sml/psd

vb/kp/sar2/27.04.2017/3p/6c

**Order made in
CRL.O.P.(MD) No.4496 of 2017
Dated: 17.04.2017**