



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.05.2017

CORAM

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

Crl.O.P (MD) No.22167 of 2016

and

CRL.M.P (MD) NOS.11470 and 11471 of 2016

1.Sivaji

2.Ponvannan @ Ponpandi

3.Karthick

4.Nagaraj : Petitioners/Accused No.1 to 4
-vs-

1.The State, represented by
The Inspector of Police,
Anna Nagar Police Station(E3),
Madurai.
(Crime No.1212 of 2015) :Respondent/Complainant

2.Sumathi : Respondent/De-facto complainant

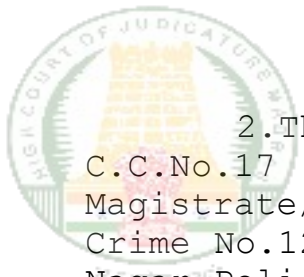
Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C praying this Court to call for the records made in C.C.No.17 of 2016, on the file of the learned Judicial Magistrate/Additional Mahila Court, Madurai in connection with Crime No.1212 of 2015 on the file of the Inspector of Police, Anna Nagar Police Station(E3), Madurai and to quash the same as devoid of merits and illegal.

For Petitioners : M/s.S.Palani Velayutham
For Respondent No.1 : Mr.K.Anbarasan
Govt. Advocate (Crl.side)

For Respondent No.2 : No appearance

O R D E R

On the letter given by the learned counsel for the petitioner, on 24.04.2017, this matter has been listed today in the special sitting.



2.This Criminal Original Petition has been filed to quash C.C.No.17 of 2016, on the file of the learned Judicial Magistrate/Additional Mahila Court, Madurai in connection with Crime No.1212 of 2015 on the file of the Inspector of Police, Anna Nagar Police Station(E3), Madurai.

WEB COPY

3.On the complaint lodged by the second respondent, the first respondent/Police registered a case in Crime No.1212 of 2015 on 20.7.2015 and after completion of the investigation, charge-sheet was filed in C.C.No.17 of 2016, before the learned Judicial Magistrate/Addl.Mahila Court, Madurai for the offences under Sections 341, 294(b), 323, 506(ii) of IPC r/w Section 4 of Tamil Nadu Protection of Women Harassment Act. The accused challenging the same, is before this Court.

4.Heard the learned counsel for the Petitioners and the learned Government Advocate(Crl.Side) appearing on behalf of the first respondent.

5.It is the case of the de-facto complainant that she had filed W.P.No.7189 of 2015 before the High Court and obtained orders of status-quo with regard to the appointment of Poojari for the Pandi Koil, on account of which, the accused were having some grievances against her. It is further alleged by the de-facto complainant that on 17.07.2015, around 7.00 a.m, in the morning, when she was coming from the temple all the four named accused waylaid her, abused her and assaulted her and tore her jacket. She has named all the accused in the complaint. Based on which, an FIR was registered as stated above, which has resulted in C.C.No.17 of 2016, which is under challenge.

6.Mr.Palani Velayutham, learned counsel for the Petitioners submitted that the entire prosecution case is a fabricated one. Inasmuch as the Accident Register shows that Sumathi was admitted in the hospital on 17.07.2015 at 6.30 p.m., but whereas, in her complaint, she has stated that she was assaulted at 6.40 a.m. He also contended that though the assault had taken place on 17.7.2015, the FIR was registered only on 20.7.2015 with a delay of two days, which is inexplicable. Lastly, Mr.Palani Velayutham, learned counsel for the petitioners contended that the name of the fourth accused in the charge-sheet was shown as Nagaraj, son of Nagamalai. But in the list of prosecution witnesses, Nagaraj, son of Nagamalai is shown as third witness. Therefore he submitted that Nagaraj, son of Nagamalai was not involved in the offence and that is why he was shown as prosecution witness in the memo of witness and therefore, the prosecution is an abuse of process of law.

<https://hcservices.ecourts.gov.in> Contra, the learned Government Advocate(Crl.Side) refuted the contentions raised by the learned counsel for the Petitioners.



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

9.From the Accident Register, it is clear that Sumathi was admitted in the hospital on 17.07.2015 and at the time of admission, she has told the Doctor that she was assaulted by three known persons at 6.30 a.m., on 17.7.2015 with iron rods. But however, in the complaint given by her, she has implicated Nagaraj also, who is said to have abused her and assaulted her on the back. Initially, the Police had taken the complaint of Sumathi in C.S.R.No.940 of 2015 and only thereafter, an FIR was registered subsequently. Therefore, it cannot be stated that there is a delay by the first respondent/Police in lodging the FIR. That apart, mere delay in lodging the FIR is not a ground to quash the prosecution case, when the fact remains that Sumathi had suffered injuries and had identified four persons, who have assaulted her. As regards the contention of the learned counsel for the Petitioners that Nagaraj/A4 has been shown as prosecution witness No.3, this Court finds that though the father's name of A4 and prosecution witness No.3 is one and the same, namely Nagamalai, yet the address differs in the 161(3) statement of witness Nagaraj, he has stated that he had seen the accused Nagaraj also abusing and assaulting Sumathi. Therefore, just because, the prosecution witness No.3 is also Nagaraj, Son of Nagamalai, it cannot be stated that the said person is accused No.4 Nagaraj. Since prima facie materials are there in the charge-sheet, it is not a fit case to quash the prosecution case.

10.Hence the Criminal Original Petition is dismissed, with liberty to the Petitioners to raise all the points raised herein before the trial Court. The observations made herein is only for the limited extent of deciding the quash application and the trial Court shall proceed with the trial, without in any manner being influenced by any of the observations, as stated above. Consequently, connected Miscellaneous Petitions are dismissed.

11.Mr.Palani Velayutham, learned counsel for the Petitioners submitted that the personal appearance of the accused may be dispensed with before the trial Court.

12.Accepting his submission, the personal appearance of Sivaji/A1 and Karthick/A3 alone is dispensed with before the trial Court on condition that they 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 they file an application under Section 317 Cr.P.C., undertaking that they will not dispute their identity and that their counsel will continue to appear and defend them, the Trial Court may liberally consider and entertain the same. If they adopt any dilatory



tactics, it is open to the Trial Court to insist upon their presence.

Sd /-
ASSISTANT REGISTRAR(C)

WEB COPY

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To:

1.The Judicial Magistrate/Additional Mahila Court,
Madurai.

2.-Do-thro Chief Judicial Magistrate, Madurai.

3.The Inspector of Police,
Anna Nagar Police Station(E3),
Madurai.

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

+1 CC TO M/S.PALANIVELAYUTHAM, ADVOCATE, SR NO.55572

vsn

MAS/MR:23.05.2017:4P-6C

Order made in
Crl.O.P(MD) No.22167 of 2016
and
CRL.M.P(MD)NOS.11470
and 11471 of 2016
Dated: 03.05.2017