



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. (MD) No.23857 of 2016

and

Cr1.M.P. (MD) Nos.12618 & 12619 of 2016

B.Pandi @ Pandi Moopar

... Petitioner / Accused No.3

vs.

1. The State of Tamilnadu,
rep.by its Inspector of Police,
Nathampatti Police Station,
Virudhunagar District.
(Crime No.117 of 2015)

... 1st Respondent/Complainant

2. Maheswari

... 2nd Respondent/*De facto*
Complainant

PRAYER: This petition is filed under Section 482 Cr.P.C., to call for the records from the file of the Judicial Magistrate Court No.I, Srivilliputhur, Virudhunagar District, in C.C.No.379 of 2015 and quash the same.

For Petitioner : Mr.R.Srinivasan

For Respondents : Mr.A.P.Balasubramani
Govt. Advocate for R1
Mr.M.Jegadeesh Pandian for R2

O R D E R

On the complaint lodged by the second respondent / *de facto* complainant, the first respondent Police registered a case, in Crime No.117 of 2015, on 28.08.2015, against Senthil Kumar, Pandiammal and Pandi Moopar, and after completion of investigation, they filed a final report before the learned Judicial Magistrate Court No.I, Srivilliputhur, for the offence under Sections 109, 294(b), 323, 324 and 506(ii) I.P.C., and the same has been taken on file in C.C.No.379 of 2015. Challenging the same, the third accused, namely, Pandi Moopar is before this Court.



2. Heard the learned counsel for the petitioner / third accused, Mr.A.P.Balasubramani, learned Government Advocate for the first respondent and Mr.M.Jegadeesh Pandian, learned counsel for the second respondent / *de facto* complainant and perused the materials produced.

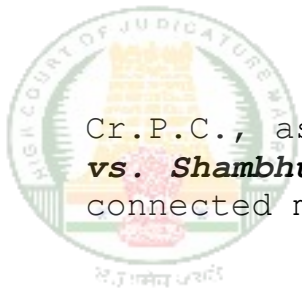
3. The learned counsel for the petitioner / third accused submitted that even according to the case of prosecution, the first accused, namely, Senthil Kumar is allegedly assaulted the second respondent / *de facto* complainant on the instigation of the petitioner / third accused. The learned counsel has also submitted that the petitioner / third accused is working in the Electricity Board and on the date of incident, namely, 27.08.2015, he was in the Office. The learned counsel has also produced a copy of the attendance report to show that the petitioner / third accused was not at the place of incident on the date of occurrence.

4. In the considered opinion of this Court, disputed question of facts cannot be gone into in an application filed under Section 482 Cr.P.C. Alibi is a question of fact, which is relevant under Section 11 of the Evidence Act and it requires to be established by adducing evidence. Therefore, the documents produced by the petitioner / third accused cannot be looked into in an application filed under Section 482 Cr.P.C., to decide the issue of alibi.

5. In the result, the criminal original petition is devoid of merits and it is dismissed. However, the petitioner / third accused is at liberty to raise all the points before the Trial Court.

6. At this juncture, learned counsel appearing for the petitioner / third accused submitted that the presence of the petitioner / third accused before the Trial Court may be dispensed with as he is a Government Servant.

7. Accepting the submission and also taking into consideration the fact that the petitioner / third accused has the fundamental right to fair trial, this Court directs the petitioner / third accused 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 / third accused 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 on the day they are examined in chief without adopting dilatory tactics, as held by the Honourable Supreme Court in **Vinod Kumar vs. State of Punjab**, reported in **2015 (3) SCC 220**, the Trial Court may liberally consider and entertain the same. If the petitioner / third accused adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence. If the petitioner / third accused adopts dilatory tactics, he can be remanded to custody under Section 309



Cr.P.C., as laid down by the Hon'ble Supreme Court in **State of U.P. vs. Shambhu Nath Singh**, reported in **2001 (4) SCC 667**. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Srivilliputhur
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.R.SRINIVASAN, ADVOCATE IN SR No. 13059

KRK

TE/RR : 21/03/2017 : 3P/4C

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