



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.(MD) Nos.800 and 801 of 2016

and

Crl.M.P(MD)Nos.11621, 11622, 11680 and 11681 of 2016

1.D.Selvamohandhas Pandian

2.Jegatha

... Petitioners

in Crl.R.C.(MD)No.800 of 2016

Kalidass

... Petitioner

in Crl.R.C(MD)No.801 of 2016

Vs.

The State by

The Deputy Superintendent of Police,

Alangulam Division,

Tirunelveli District.

... Respondent in both Crl.R.Cs.

Petitions filed under Sections 397 read with 401 Cr.P.C, to call for the entire records relating to the order passed in Cr.M.P.No.2736 of 2016 in S.C.No.86 of 2015 by the II Additional District and Sessions Judge (PCR), Tirunelveli dated 20.10.2016 by the suo motu order under Section 193 of Cr.P.C during the proceedings under Section 226 of Cr.P.C and set aside the same.

For Petitioners

: Mr.D.Venkatesh

For Respondent

: Mr.C.Mayilvahana Rajendran,

(In both Crl.RCs)

Additional Public Prosecutor.

COMMON ORDER

Challenging the order of dismissal passed by the learned II Additional District and Sessions Judge, Tirunelveli issuing summons to the petitioners by taking cognizance of the offence under Section 193 Cr.P.C, the present revisions have been filed by A-7, 8 and 9.

2.When the matter came up for hearing learned counsel for the seeks permission of this Court to withdraw Crl.R.C.(MD)No.801 of 2016 and Crl.R.C(MD)No.800 of 2016 in respect of the first petitioner/A-7 and he has also made an endorsement to that effect.

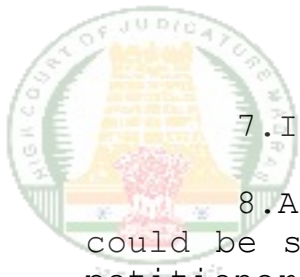
<https://hcservices.ecourts.gov.in/hcservices> counsel appearing for the petitioners advanced his arguments only in respect of the second petitioner/A9 in Crl.R.C.(MD)No.800 of 2016.

4. The facts leading to filing of the revision case are as follows:

The defacto complainant in this case, one Jeyakumar working as P.G. Assistant in the Government School, Pavoorchatram, in the same school, A-9 was working as a teacher. Alleging that the defacto complainant instigated a school boy and written some obscene words about A-9 in the school wall, a complaint has been given before Headmaster of the school and based on the complaint, an enquiry has been conducted in which A-9, her husband, A8, the defacto complainant and others were participated. After enquiry was over, A-9 left the school thereafter, the defacto complainant came out of the school. At that time, the other accused 1 to 6 have attacked the defacto complainant and caused injuries. Thereafter, he has given complaint against A-7 to 9 herein alone before the respondent police and based on his complaint, a crime has been registered in Crime No.279 of 2014 for the offence punishable under Sections 147, 148, 323, 506 (ii) IPC and Section 3(1)(r)(s) and 3(2)(r)&(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance 2014. After investigation, the respondent police filed a final report wherein they have implicated other six accused and deleted the name of A-7 to A9 herein. While taking cognizance of the offence under Section 193 Cr.P.c, the Court below found that there are materials available against A7 to A9 and issued summons to the petitioners. Challenging the same, the present revisions have been filed.

5. Learned counsel appearing for the petitioners would submit that so far as the second petitioner in CrI.R.C.(MD)No.800 of 2016 who was arrayed as A-9 is concerned, there is absolutely no material available on record to take cognizance against her even in the FIR or in the subsequent statement given under Section 161 Cr.P.C. Alleging that the defacto complainant instigated a school boy and written some obscene words in the school wall, A-9 has given a complaint before Headmaster of the school and based on the complaint, an enquiry has been conducted in which A-9, her husband A8, the defacto complainant and others were participated. After enquiry was over, the second petitioner left the school, thereafter, the accused attacked the defacto complainant. There is no material available to show that the second petitioner had instigated the accused to commit the offence or has conspired with others to commit the offence, the Court below wrongly implicated the second petitioner in this case.

6. Per contra, learned Additional Public Prosecutor appearing for the respondent police submitted that the statement of defacto complainant and other witnesses would establish the motive for the occurrence and the second petitioner has also instigated the other accused to commit the offence. In the above ~~services and notices~~ the Court below has rightly taken cognizance against the A-9.



7.I have considered the rival submissions.

8.A perusal of the entire materials available on record, it could be seen that it is only based on the complaint given by the petitioner herein enquiry was conducted. Thereafter, after the enquiry, the other accused attacked the defacto complainant. Even in the statement under Section 161 Cr.P.C, the defacto complainant has only stated that the petitioner's husband and Kalidas instigated the other accused and attacked him and the other witnesses also stated that after enquiry, the second petitioner left the school at 5.45 p.m. Thereafter, the occurrence took place at about 6.00 p.m. It is the consistent statement of all the witnesses. From their statements, it could be seen that the second petitioner was not present at the time of occurrence and absolutely there is no material available on record to show that the second petitioner has instigated the other accused to attack the defacto complainant. The Court below without considering the materials available on record in proper perspective issued summons and taken cognizance of the offence against the second petitioner and hence, the order passed by the Court below so far as the second petitioner/A9 is concerned is set aside.

9.In the result, CrI.R.C(MD)No.800 of 2016 is partly allowed in respect of the second petitioner-A9 and CrI.RC(MD) No.800 of 2016 is dismissed as withdrawn in respect of the first petitioner and CrI.R.C.(MD)No.801 of 2016 is dismissed as withdrawn. Consequently, CrI.M.P(MD)Nos.11621, 11622, 11680 and 11681 of 2016 are closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Deputy Superintendent of Police,
Alangulam Division, Tirunelveli District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
3. The II Additional District and Sessions Judge (PCR),
Tirunelveli.

+1cc to M/s.D.Venkatesh, Advocate, in SR No.74934

**CrI.R.C.(MD) Nos.800 and 801 of 2016 and
CrI.M.P(MD)Nos.11621, 11622, 11680 and 11681 of 2016
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