

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.5545 of 2017

1. Janarthanam
2. Narayanan @ Narayanamurthy .. Petitioners

Vs

1. The State
Rep. Inspector of Police
K-4, Anna Nagar Police Station
Chennai-600 040.
2. Ms.Kavitha ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the Pre-Register Case records in P.R.C.No.50 of 2007 pending before the learned V Metropolitan Magistrate, Egmore, Allikulam, Chennai and quash the same under the ground of compromise.

For Petitioners : Mr.M.Anandaraj
For Respondents : Mrs.Kritka Kamal.P
Government Advocate (Crl.Side)
For R1
Mr.S.Michael, for R2.

ORDER

This Criminal Original Petition has been filed seeking to call for the Pre-Register Case records in P.R.C.No.50 of 2007, pending before the Metropolitan Magistrate Court No.V, Egmore, Allikulam, Chennai and quash the same under the ground of compromise.

2. On 11.05.2006, when the *de facto* complainant was going in her two wheeler, one person in another two wheeler dashed her from behind and she fell down. The said person attacked her with a knife asking her as to why she moves with Srinivasan despite being told that she should not move with him. The *de facto* complainant was rushed to the hospital where her statement was recorded by the police and a case in Crime No.483 of 2006 was registered by the police. After investigation, a charge sheet was filed in PRC.No.50 of 2007, before the Metropolitan Magistrate No.V, Egmore, Allikulam, Chennai-8, for the offences under Sections 147, 148, 109, 324, 326, 307 and 506(ii) IPC r/w 149 IPC against Janarthanam (A1), Ramesh (A2), Narayanan @ Narayanamoorthy (A3), Kathir @ Kathirvel (A4) and Muthu (A5). While so, Janarthanam (A1) and Narayanan @ Narayanamoorthy (A3) have filed the present quash petition on the ground that they have arrived at a compromise with the *de facto* complainant.

3. Heard Mr.M.Anandaraj, learned counsel for the accused, Mrs.Kritika Kamal.P, learned Government Advocate (Crl.Side) for the first respondent and Mr.S.Michael, learned counsel for the second

4. Today, Mrs.Gnanasoundari, Women Head Constable-35667 is present before this Court.

5. Mr.M.Anandaraj, learned counsel for the accused submitted that the *de facto* complainant herself has given an affidavit agreeing that the prosecution against the petitioner may be quashed.

6. In ***Narinder Singh & Others Vs. State of Punjab [(2014) 6 SCC 466]***, the Supreme Court has held that a prosecution under Section 307 IPC can be quashed. However, in the said judgment the Supreme Court has cautioned that quashment of prosecution should be done taking into consideration the circumstances of the particular case. In this case, the *de facto* complainant is a lady, who has been attacked by one assailant and he is said to be absconding before the trial Court.

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7. In the opinion of this Court, this is not a fit case, in which, the charge sheet can be quashed on the ground that the parties have arrived at a compromise. The delay by the Court cannot enure to the dis-advantage of any party and justice has to reach the *de*

8. The learned counsel for the accused submitted that Kathir @ Kathirvel (A4) and Muthu (A5), the alleged actual assailants are absconding. The prosecution is directed to file an application under Rule 17 of the Criminal Rules of Practice & Circular Orders, 1958, for splitting up the case, as against the absconding accused and commit the case to the Court of Sessions within a period of one month from the date of receipt of a copy of this order. The prosecution shall ensure the presence of Ramesh (A2) before the committal Court. If the case is committed to the Court of Sessions, the Sessions Court shall complete the trial within a period of four months thereafter, provided the petitioners co-operate. The petitioners shall also file an affidavit of undertaking before the trial Court that they will not dispute their identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined in chief, as held by the Supreme Court in **Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288]**. If the petitioners adopt any dilatory tactics, it is open to the trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in **State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]**. If thereafter the petitioners abscond, the trial Court

shall direct registration of an FIR against them u/s 229-A IPC. The

evidence of prosecution witnesses shall be recorded by the Sessions Court in duplicate under Section 299 Cr.PC., so that, as and when, Kathir @ Kathirvel (A4) and Muthu (A5) are apprehended, the same can be used against them and the witnesses need not have to be re-called.

9. With the above direction, this petition is closed.

10.04.2018

Internet : Yes/No
Index : Yes/No
Speaking / Non-speaking order

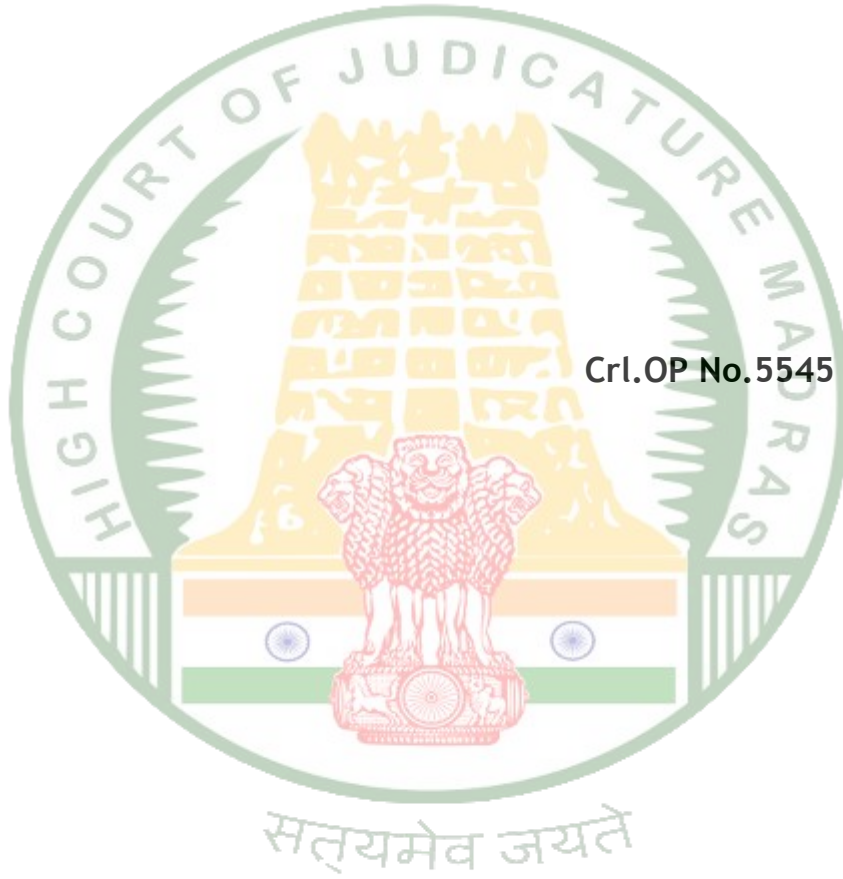
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To

1. The Metropolitan Magistrate No.V
Allikulam, Egmore,
Chennai.
2. The Inspector of Police
K-4, Anna Nagar Police Station
Chennai-600 040.
3. The Government Advocate (Crl.Side)
High Court, Madras.

P.N.PRAKASH,J.

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