

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.20976 of 2018 and
Crl.M.P.No.11364 of 2018

1. Selvam
2. Prabhu
3. M.G.R.
4. Kathiravan
5. Kanniappan
6. Mahendran

.... Petitioners

Vs

The State represented by
The Inspector of Police,
Panruti Police Station,
Cuddalore District.

.... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in PRC No.15 of 2018 on the file of the learned Judicial Magistrate No.I, Panruti, and set aside the order dated 23.07.2018, converting STC No.195 of 2013 into PRC No.15 of 2018.

For Petitioners : Mr.A.M.Rahamath Ali

For Respondent : Mr.C.Raghavan
Government Advocate

ORDER

This Criminal Original Petition has been filed to call for the records in PRC No.15 of 2018 on the file of the learned Judicial Magistrate No.I, Panruti, and set aside the order dated 23.07.2018, converting STC No.195 of 2013 into PRC No.15 of 2018.

2. On the complaint lodged by one Muthulakshmi, the respondent police have registered a case in Crime No.83 of 2010 on 28.01.2010 under Sections 147, 148, 427, 294(b), 323, 506(ii) and 436 IPC r/w. Section 4 of Tamil Nadu Prohibition of Women Harrassment Act, against one R.K.Kumar (A1) and unnamed others.

3. It is the case of the de facto complainant that on 28.01.2010, R.K.Kumar (A1) along with twenty persons suddenly came into her house; started assaulting her and her neighbours; demanded that they should vacate from the property and also set fire to her hut. In the light of the aforesaid complaint, an FIR was registered for the said offences.

4. During the course of investigation by the police, the following facts came to light :

R.K.Kumar (A1) was the owner of 5,000 sq.ft. of land, which the de facto complainant and her relatives had illegally encroached, occupied and put up huts in it; R.K.Kumar (A1) and his men asked them to remove the huts, on account of which, on 28.01.2010, a quarrel arose between the parties and a scuffle ensued; in that scuffle, the de facto complainant and her relatives poured kerosene on themselves as if they are going to immolate, in order to attract public attention; the de facto complainant and her relatives themselves set fire to a portion of their huts, in order to make it look as if they were being forcibly evicted.

5. Therefore, the police filed an alteration report dated 28.04.2010 before the learned Judicial Magistrate No.I, Panruti, deleting Sections 148, 294(b), 323, 506(2) and 436 IPC and filed a final report for the offences under Sections 147, 427, 352 IPC against the accused herein. Charges were framed against the accused and totally eleven witnesses were examined by the Investigating Officer.

6. The learned Public Prosecutor filed a petition under Section 323 Cr.P.C. contending that some of the witnesses, in their evidences, have stated that the huts were burnt by the accused and therefore, Section 436 IPC should be included, and the case should be committed to the Court of Sessions. On the said petition, the trial Court has passed the following order :

''A2 Pt. Overs abt. Petition filed on Cr.M.P.590/18 is allowed. This case is converted into PRC 15/18 u/s. 147, 148, 294(b), 323, 506 (ii), 436 IPC and Sec. 3 of Tamilnadu Public Property Damages Act. Hence, for appearance of all accused on 30.07.2018.''

Challenging the said order, the accused are before this Court.

7. Heard Mr.A.M.Rahamath Ali, learned counsel for the petitioners and the learned Government Advocate, appearing for the respondent police.

8. It is true that, during the course of trial, if evidence relating to serious offences surfaces, it is open to the trial Court to alter the charges under Section 216 Cr.P.C. or inter alia commit the case to the Court of Sessions, if the offence is triable by the Court of Sessions.

9. In this case, the de facto complainant and her relatives were asserting that their place of residence was illegally dispossessed by the accused party and their huts were burnt by them. On this allegation, the FIR was registered in Crime No.83 of 2010, in which, Section 436 IPC was included. However, on investigation by the police, it came to light that the de facto complainant had illegally occupied the property of R.K.Kumar (A1) and when R.K.Kumar (A1) and his men wanted them to vacate, a scuffle ensued, and in that scuffle, the de facto complainant and her relatives created a scene by dousing themselves with kerosene, in order to attract the attention of the press and public.

10. It is the specific case of the police that it was the de facto complainant and her relatives who had set fire to one of their huts and they had blamed the accused party for that. In fact, in the FIR, Section 148 IPC was included, but during the course of investigation, it came to light that the accused party were not armed with deadly weapons and therefore, Section 148 IPC was dropped. Thus, except the ipse dixit of prosecution witnesses that the accused had set fire to their hut, there is absolutely no material, whatsoever, to frame a charge under Section 436 IPC. The de facto complainant party did not file a protest application when the police filed the final report for the offences under Sections 147, 427 and 352 IPC in the year 2013.

11. On a reading of the evidences, it is seen that, none of the witnesses has stated as to which of the accused had set fire to the hut. Except making a general statement that the accused had set fire to their hut, there is nothing more.

12. The trial Court had failed to note that the police themselves filed an alteration report way back in the year 2010, contending that the allegations relating to setting fire to the hut was false. That apart, the trial Court has implicitly accepted the petition filed by the prosecution and has passed the impugned order dated 23.07.2018, without giving reasons.

In the result, this petition is allowed and the impugned order dated 23.07.2018, passed by the learned Judicial Magistrate No.I, Panruti, in STC No.195 of 2013, is set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

mkn Sub Assistant Registrar

To

1. The Inspector of Police,
Panruti Police Station,
Cuddalore District.
2. The Judicial Magistrate No.I,
Panruti.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.M.RAHAMATH ALI, Advocate, S.R.No. 59141

Cr1.O.P.No.20976 of 2018

TR(31/08/2018)

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