

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.11398 of 2018
and
Crl.M.P.No.5905 of 2018

Usha

... Petitioner

Vs

The State rep.by
The Inspector of Police,
R9 Valasaravakkam Police Station,
Chennai-87.

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to pass an order directing the respondent to conduct further investigation in Crime No.1173 of 2016 and in C.C.No.177 of 2017 on the file of the learned Judicial Magistrate No.I, Poonamallee, pending trial.

For Petitioner :Mr.V.Padmanabhan,
Senior Counsel
for Mr..S.B.Viswanathan

For Respondent :Mr.C.Raghavan
Government Advocate (Crl.Side)

ORDER

On the complaint lodged by Usha, the petitioner herein, the respondent police registered a case in Crime No.177 of 2017 on 08.12.2016 and after completing the investigation, have filed a charge sheet in C.C.No.177 of 2017 before the learned Judicial Magistrate No.I, Poonamallee, for the offences under Sections 294 (b), 323 and 506(i) of IPC and 4 of the Tamil Nadu Prohibition of Woman Harassment Act, 2002, against four accused.

2.It is the case of the petitioner in the complaint that on 04.12.2016, when she was making preparations for house warming Ceremony, the nephew of the defacto complainant abused her in filthy language; that Boopalan, Naresh Kumar, Amutha and Nishok

entered the house of the defacto complainant and started beating and pulling her hair; that when her husband Chandrasekaran came to her rescue, he was also beaten by the accused. This is the sum and substance of the complaint in the FIR.

3.The defacto complainant took treatment in Ramachandra Hospital. During the investigation, the police have recorded the statement of the defacto complainant, her husband and some other witnesses including Dr.Aswini, who has given treatment to the defacto complainant. On the appearance of the accused, charges were framed under Sections 294(b), 323, 325 and 506(i) of IPC read with 4 of the Tamil Prohibition of Women Harassment Act and they pleaded not guilty. On 21.11.2017, the trial begun with the examination of PW1 to PW3 including the petitioner and her husband Chandrasekaran. These witnesses have given their evidence in Chief. While so, the petitioner has filed the present application for re-investigation of the case by contending that the police have not properly recorded the statement under Section 161 of CrPC, inasmuch as they have not given the individual overt act of each of the accused.

4.The learned counsel appearing for the petitioner submitted that if the evidence is recorded as per the 161 statement, there is every chances of the accused getting acquitted. He also submitted that A1 is a retired Sub Inspector of Police and that even for registering an FIR, four days was taken by the police.

5.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent refuted the contentions. He submitted that further investigation, after charge sheet is filed, can be ordered only at the instance of the police, as held by the Hon'ble Supreme Court in Amrutbhai Shambhubhai Patel v. Sumanbhai Kantivhai Patel and others reported in 2017 (4) SCC 177.

6.However, the power of this Court to order further investigation under Section 482 of CrPC or under Article 226 of the Constitution of India, is always available.

7.In this case, all the accused are relatives of the defacto complainant. They entered the house of the petitioner and started assaulting the defacto complainant. In the complaint, which formed the basis for registration of the FIR, the defacto complainant herself has not given the individual overt acts. A complaint, which formed the basis for registration of an FIR, can be used either for corroborating or for contradicting the testimony of the complainant in the witness box. Whereas a statement under Section 161 CrPC can be used only for contradiction. Just because the police have not recorded certain facts in the 161 statement, it does not mean

that the witness cannot speak about it in the witness box. The evidence of a witness can be appreciated albeit the alleged contradictions. If the testimony of a witness, as a whole, inspires the confidence of the Court, despite the contradictions, the Court can act upon it. The legislature was aware that the police are capable of writing distorted statements and that is why a statement given to the police cannot be used for corroboration, but can be used only for contradiction. A witness cannot be nailed on the cross of his 161(3) Statement.

In such view of the matter, this is not a fit case to order further investigation. Hence, this Criminal Original Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mps
To

1.The Inspector of Police,
R9 Valasaravakkam Police Station,
Chennai-87.

2.The Public Prosecutor,
Madras High Court,
Chennai.

3.The Judicial Magistrate No.I,
Poonamallee.

+1cc to Mr.S.B.Viswanathan , Advocate, S.R.No.27910

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pa (CO)
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