

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.19395 of 2018
CRL.M.P.No.10258 &10259 of 2018

Prabhu .. Petitioner
Vs

Inspector of Police,
G7, Thiyagadurgam Police Station,
Thirukovilur Road,
Aarangan Nagar,
Thiyagadurgam,
Kallakurichi Taluk,
Villupuram District - 606 206
Tamil Nadu.
(Crime No.239/2015) .. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set-aside the docket order dated 03.04.2018, passed by Judicial Magistrate-II, Kallakurichi in C.C.No.91 of 2018, thereby arraigning petitioner as Accused no.5 by allowing this criminal original petition.

For Petitioner : Mr.A.V.B.Krishnakanth
For Respondent : Mr.C.Iyyappa Raj, APP

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 03.04.2018 passed by the learned Judicial Magistrate No.II, Chengalpattu in C.C.No.91 of 2018.

2.Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3.On the complaint lodged by Gopu that five named persons including Prabhu, S/o.V.Ayyappan had trespassed into his wife's property, attacked him and damaged the property, the respondent police registered a case in Crime No.239 of 2015 on 20.09.2015 and after completing the investigation, filed a Final Report only against four accused excluding Prabhu [the Petitioner herein] before the Judicial Magistrate No.II, Kallakurichi for the offences under Section 447, 427, 294(b), 352 and 506[2] IPC. While taking cognizance of the offence, the Magistrate found that in the FIR, the name of Prabhu figures, but, however, in the charge sheet his name has been

deleted. Therefore, notice was issued to the de facto complainant and on the protest application filed by the de facto complainant in C.M.P.No.1528 of 2017, the learned Judicial Magistrate No.II, Kallakurichi took cognizance of the offences and issued process to Prabhu also, challenging which, Prabhu is before this Court.

4.Heard the learned counsel for Prabhu, who submitted that Prabhu's name has not been spoken to by any other witness and that, only in the complaint given by the de facto complainant, the name of Prabhu has been interpolated in order to fix him. He further submitted that the police had taken all that into consideration and has excluded Prabhu in the Charge Sheet. But, whereas, the learned Magistrate has issued process to Prabhu, which requires to be set aside.

5.Per contra, the learned Additional Public Prosecutor refuted the contentions.

6.It is true that in the complaint given by the de facto complainant, Prabhu's name has been included with an insertion mark. But, that cannot be appreciated in a quash petition and proceedings quashed. The de facto complainant has to be given an opportunity, whilst he is in the witness box by confronting him with this insertion. It is a trait law that when the name of an accused figuring in the FIR is deleted in the Charge Sheet, an opportunity should be given to the de facto complainant to file a protest application.

7.Therefore, the Magistrate has followed the law laid down by this Court in C.Ve.Shanmugam Vs DSP, Tindivanam Sub Division and Others (2010[2] MLJ [Cr1.] 833) and has not mechanically issued process based on the Final Report. This Court places on record its appreciation to the Judicial Magistrate No.II, Kallakurichi for understanding the correct legal position, instead of passing orders mechanically. Hence, this Court does not find any merits in this petition warranting interference and this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

8.However, learned counsel for the petitioner submitted that the petitioner is a sitting MLA and his presence before the trial Court may be dispensed with.

9.Accepting the submission, personal appearance of the petitioner before the trial Court shall be dispensed with, on condition that he shall file an affidavit before the trial Court that he will not dispute his identity and that, his counsel will cross-examine the witnesses when they examined in-chief, as held by the Supreme Court in Vinodh Kumar Vs State of Punjab reported in 2015[1] MLJ [Cr1] 288. The petitioner shall be present before the trial Court for receiving copies under Section 207 Cr.P.C., for answering charges, for questioning under Section 313 Cr.P.C. and on the

date of judgment. For other hearings, if the petitioner files an application under Section 317 Cr.P.C., the same shall be liberally construed. If the accused adopts any dilatory tactics, the trial Court shall insist upon the presence of the accused. If the accused absconds, a fresh FIR can be registered against him under Section 229-A of IPC.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.Judicial Magistrate Court No.II,
Kallakurichi.

2.The Inspector of Police,
G7, Thiyagadurgam Police Station,
Thirukovilur Road, Aarangan Nagar,
Thiyagadurgam, Kallakurichi Taluk,
Villupuram District - 606 206
Tamil Nadu.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.A.V.B.Krishnakanth, Advocate SR.NO.53142

+lcc to Mr.A.V.B.Krishnakanth, Advocate SR.NO.53142

dt.29.8.2018

GMR (CO)

sm:28.8.2018

सत्यमेव जयते

CRL.OP.No.19395 of 2018

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