



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.08.2018
CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.[MD].No.3988 of 2018
and
Cr1.M.P.(MD)No.1959 of 2018

Karthika : Petitioner/Accused No.7

Vs.

1.The Inspector of Police,
Thazhamuthu Nagar Police Station,
Thoothukudi.
(Crime No.34 of 2018) : 1st Respondent/Complainant

2.Irudhaya Rajkumar : 2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the first information report in crime No.34 of 2018 on the file of the first respondent herein and quash the same as against this petitioner.

For Petitioner : Mr.C.Jeganathan
For R1 : Ms. S.Bharathi
Government Advocate (Criminal Side)
For R2 : No Appearance

ORDER

Notice was already ordered to the second respondent and since no counsel appeared on behalf of the second respondent, name of the second respondent was also printed in the cause list. Even today, there is no representation for the second respondent either in person or through a counsel.

2.This Criminal Original Petition has been filed to quash the First Information Report, registered in Crime No.34 of 2018. The petitioner is Accused No.7 in the said F.I.R.

3.The case of the prosecution is that on 16.01.2018, when the second respondent and other Head Constable were going in their bike in a patrol duty, at about 08.50.p.m., they saw the two groups of persons indulging in quarrel. The second respondent and the Head



Constable enquired and asked one Kannan and Vijayapandiyan to accompany with them to the police station for further enquiry. At that time, it is stated that six more persons assembled and prevented the second respondent as well as the Head Constable from taking Kannan and Vijayapandian (arrayed as A1 and A2 in the F.I.R) and also attacked the second respondent with an iron rod, resulting in the second respondent sustaining serious injuries. This resulted in the registration of an F.I.R in Crime No.34 of 2018 on 16.01.2018, for an alleged offences under Sections 147, 148, 294(b), 342, 353, 307 and 506(ii) I.P.C.

4.The learned counsel for the petitioner would submit that the petitioner was not even in the scene of occurrence and she was admitted on 09.01.2018 at Sororaj Hospital, at Tuticorin for delivering a baby and on 10.01.2018, the petitioner delivered a female child. Thereafter, the petitioner went for a family planning surgery on 11.01.2018 and she was discharged from the hospital only on 14.01.2018. In order to substantiate his submissions, the learned counsel for the petitioner also brought to the notice of the court the discharge summary that was issued by the hospital in which, the petitioner under went operation. Therefore, the learned counsel for the petitioner would submit that the petitioner has been roped as an accused in the F.I.R with a malafide intention and she has nothing to do with the alleged offence.

5.The learned Government Advocate was directed to take instructions on the ground raised by the petitioner and also on the documents that were filed before the court. The learned Government Advocate on instructions has fairly submitted that it is true that the petitioner had delivered child and had under gone family planning surgery as found in the discharge summary. However, the learned counsel would submit that the name of the petitioner is found in the complaint and therefore the respondent has to necessarily investigating the case, since the occurrence was only on 16.01.2018.

6.This Court has carefully considered the submissions made on either side. It is clearly a case where the group of persons have assaulted the defacto complainant on 16.01.2018. A reading of the F.I.R., will show that the averments with regard to the present petitioner is only to the effect that the petitioner and other persons had abused the second respondent. The fact remains that the petitioner was admitted in the hospital and she delivered a female child on 10.01.2018. Thereafter, she under went family planning surgery on 11.01.2018 and she was discharged from the hospital only on 14.01.2018. This incident is set to have been taken place on 16.01.2018. Therefore, it would have been impossible for the petitioner, to have been present in the scene of occurrence. Since, it was hardly two days wherein she was discharged from the hospital and this Court has to necessarily draw the presumption under Section 114 of the Evidence Act with regard to the existence of any fact which it thinks likely to have happened, regard being had to the



common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. When this Court draws the said presumption under Section 114 of the Evidence act, this Court finds that the presence of the petitioner in the scene of occurrence is improbable.

7. Accordingly, this Criminal Original Petition is allowed and the First Information Report is quashed, insofar as the petitioner is concerned. It is made clear that the respondent police can proceed further to investigate the case, insofar as the other accused persons are concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Inspector of Police,
Thazhamuthu Nagar Police Station, Thoothukudi.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.Veera Associates, Advocate, SR.No.81351

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