



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2018

CORAM

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THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.9926 of 2015

P.Soundarapandian

... Petitioner/ Respondent

-Vs-

1. The State represented by
The Inspector of Police,
Odaipatti Police Station,
Uthamapalayam Taluk,
Theni District.

... Respondent/Respondent

2. Muthukumar

... Respondent/Petitioner

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the order dated 06.11.2014 made in Crl.M.P.No.7626 of 2014 in Crl.M.P.No.4265 of 2014 in Crl.No.106 of 2013 on the file of the Judicial Magistrate, Uthamapalayam and set aside the same.

For Petitioners : Mr.Y.Krishnan

For Respondents : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.side)
for R1
No appearance
For R2

ORDER

This petition has been filed to set aside the order passed in Crl.M.P.No.7626 of 2014 in Crl.M.P.No.4265 of 2014 on the file of the learned Judicial Magistrate, Uthamapalayam dated 06.11.2014.

2.Though notice was served on the second respondent, he neither appeared in person nor through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and the learned Government Advocate and on perusing the records, order is being passed.



3.The learned counsel for the petitioner has submitted that the petitioner is the defacto complainant and based on his complaint the first respondent has registered a case in Cr.No.106 of 2013 under Section 174 Cr.P.C., and subsequently, it was altered into one under Sections 304B, 120B, 304, 271 IPC. He further submitted that the deceased is the petitioner's daughter and hence, the petitioner has filed a petition under Section 451 Cr.P.C, seeking to return the jewels of his daughter and same was taken on file in Crl.M.P.No.4265 of 2014 on the file of the Judicial Magistrate, Uthamapalayam. He further submitted that during enquiry in that petition, the petitioner was examined as P.W.1 and he has also examined one more witness as P.W.2. He further submitted that the second respondent, who is accused No.2, has filed an application under Section 311 Cr.P.C and the same has been taken on file in Crl.M.P.No.7626 of 2014 to recall the witnesses 1 and 2 for cross-examination. He further submitted that the petitioner herein has opposed the said application on the ground that the second respondent herein, is not at all a party in Crl.M.P.No.4265 of 2014. However, the learned Judicial Magistrate, Uthamapalayam, has allowed the said application and challenging the said order, this petition has been filed. He further submitted that after disposal of Crl.M.P.No.7626 of 2014 the petitioner herein, has filed Crl.O.P.No.22206 of 2014 on the file of this Court to transfer the case in Crl.M.P.No.4265 of 2014 to some other Court and the said petition was allowed and Crl.M.P.No.4265 of 2014 was transferred to Judicial Magistrate No.I, Madurai, and the said petition is now pending before the Judicial Magistrate No.I, Madurai.

4.The learned Government Advocate has not raised any serious objection.

5.A perusal of the order passed by this Court in Crl.O.P.No.22206 of 2014 shows that even though the accused persons were not added as respondents in Crl.M.P.No.4265 of 2014, the learned Judicial Magistrate, Uthamapalayam has issued notice to them. Thereafter, the learned Judicial Magistrate has recorded the evidence of P.W.s 1 and 2 in Crl.M.P.No.4265 of 2014. The second respondent herein has filed Crl.M.P.No.7626 of 2014 to recall P.W.s 1 and 2 for cross examination and the said petition was allowed. The grievance of the petitioner is that since the accused were not added as party in Crl.M.P.No.4265 of 2014, the Magistrate should not have allowed Crl.M.P.No.7626 of 2014. Though the Magistrate has issued notice to the accused persons, he has not directed either the petitioner or the accused persons to file petition to implead them as parties. In the interest of justice, the accused persons should be added as parties in Crl.M.P.No.4265 of 2014. Therefore, the Judicial Magistrate No.I, Madurai is directed to implead the accused persons as respondents in Crl.M.P.No.4265 of 2014 and after giving opportunity to both



sides, dispose of the said petition, within a period of four weeks from the date of receipt of a copy of this order.

6. With the aforesaid direction, the Criminal Original Petition is disposed of.

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Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Madurai.
2. The Judicial Magistrate, Uthamapalayam.
3. The Inspector of Police,
Odaipatti Police Station,
Uthamapalayam Taluk,
Theni District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/S.Y.Krishnan, Advocate, IN SR No.53429
+1 cc to M/S.R.Venkateswaran, Advocate, IN SR No.54161

Cr1.O.P. (MD) No.9926 of 2015
07.03.2018

PK/RR-CSL/SAR-1/27.03.2018 : 3P/7C