



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)No.79 of 2017

and

Crl.M.P.(MD)No.677 of 2017

K.Muthu Selvi

: Petitioner/Petitioner/
Accused NO.I,

Vs.

The State Rep. by
the Inspector of Police,
North Police Station,
Thoothukudi,
Thoothukudi District.
(Crime No.824 of 2013).

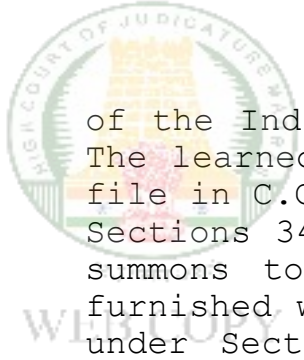
: Respondent/Respondent/
Complainant.

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.II, Thoothukudi, Thoothukudi District, in Cr.M.P.No.6710 of 2015 in C.C.No.202 of 2015, vide his order dated 09.01.2017 and set aside the same and consequently, discharge the petitioner from all the charges mentioned in the above said case.

For Petitioner : Mr.R.Anand
For Respondent : Mr.C.Mayil Vahana Rajendran,
Additional Public Prosecutor
Mr.J.Pandi Dorai for
Mr.T.Lajapathi Roy
Assist the Prosecuting

ORDER

Admittedly, Muthukrishnan, the defacto complainant, is the husband of Muthu Selvi (A-1). In respect of an incident that is said to have taken place on 29.01.2012, Muthukrishnan filed a petition under Section 156(3) of the Code of Criminal Procedure and on the directions of the learned Judicial Magistrate No.II, Thoothukudi, the respondent Police registered a case in Crime No.824 of 2013 and after completing the investigation, filed a final report on 21.08.2013 before the learned Judicial Magistrate No.II, Thoothukudi, for the offences under Sections 341, 294(b) and 506(I)



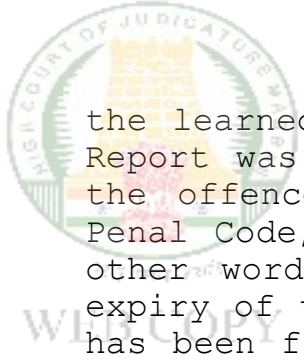
of the Indian Penal Code against Muthu Selvi (A-1) and Raja (A-2). The learned Judicial Magistrate No.II, Thoothukudi took the same on file in C.C.No.202 of 2015 and took cognizance of the offences under Sections 341, 294(b) and 506(I) of the Indian Penal Code and issued summons to the accused. On appearance of the accused, they were furnished with the copies of charge sheet and relied upon documents under Section 207 of the Code of Criminal Procedure. Thereafter, Muthu Selvi (A-1) filed Cr.M.P.No.6710 of 2015 in C.C.No.202 of 2015 under Section 239 of the Code of Criminal Procedure r/w Section 468 of the Code of Criminal Procedure for discharge on the ground of limitation and other grounds. The learned Judicial Magistrate No.II, Thoothukudi, by order dated 09.01.2017 in Cr.M.P.No.6710 of 2015 in C.C.No.202 of 2015, has dismissed the petition on the ground that the case is a Summons Case and not a Warrant Case and, therefore, the petition under Section 239 of the Code of Criminal Procedure for discharge is not maintainable, in view of the law laid down by the Supreme Court in Amit Sibal vs. Arvind Kejriwal reported in 2016(12) Scale 487. Challenging the order, Muthu Selvi (A-1) is before this Court.

2. Heard Mr.R.Anand, learned counsel for the petitioner/accused and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor for the respondent/State.

3. Today, Mr.A.Annamalai, Special Sub-Inspector of Police, Thoothukudi North Police Station is present. On instructions, the learned Additional Public Prosecutor submitted that the case in C.C.No.202 of 2015 has been transferred on administrative grounds from the file of the learned Judicial Magistrate No.II, Thoothukudi to the learned Judicial Magistrate No.III, Thoothukudi and has been re-numbered as C.C.No.621 of 2017.

4. Mr.J.Pandi Dorai, learned counsel, who had filed an application seeking permission to assist the prosecution on behalf of Muthukrishnan (defacto complainant), submitted that Muthukrishnan had died in an accident two months back under mysterious circumstances in Tirunelveli District.

5. Under normal circumstances, this Court in exercise of the power under Section 397 of the Code of Criminal Procedure, would not deal with the aspect of limitation. Since the limitation is a question of fact under Section 473 of the Code of Criminal Procedure, the petition to condone the delay can also be entertained by the Trial Court. However, in this case, the dispute is between the husband and wife. It is the allegation of the husband that his wife had abused him on 29.01.2012. Muthukrishnan lodged a complaint with the respondent police on 30.01.2012, for which, CSR.No.33 of 2012, dated 30.01.2012 has been issued by the police. Therefore, the police knew about the alleged offence on 30.01.2012. Since the police did not take any action, Muthukrishnan filed a petition under Section 150(3) of the Code of Criminal Procedure before the learned Judicial Magistrate No.II, Tuticorin and on the direction issued by



the learned Judicial Magistrate No.II, Tuticorin, First Information Report was registered and charge sheet was filed on 21.08.2015 for the offences under Sections 341, 294(b) and 506(i) of the Indian Penal Code, for which, the limitation period is only two years. In other words, the charge sheet should have been filed before the expiry of two years from 30.01.2012, but, whereas, the charge sheet has been filed nearly after lapse of three and half years. Bearing in mind the trivial nature of the allegations in the charge sheet and the fact that Muthukrishnan had died, this Court is of the view that it will serve the interest of justice, if this Criminal Revision Case is allowed and the order dated 09.01.2017 is quashed.

6. In the result, CrI.R.C.(MD)No.79 of 2017 is allowed and the entire prosecution in old C.C.No.202 of 2015, New C.C.No.621 of 2017, pending on the file of the learned Judicial Magistrate No.III, Thoothukudi is, hereby, quashed, not only against K.Muthu Selvi, but also against the co-accused Raja, though he is not a party before this Court. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II, Thoothukudi,
Thoothukudi District.

2.The Judicial Magistrate No.III, Thoothukudi, Thoothukudi District.

3.The Inspector of Police, North Police Station, Thoothukudi,
Thoothukudi District.

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

Order made in
CrI.R.C.(MD)No.79 of 2017
Dated:-04.01.2018

SML

AM/JC/SAR 1/29.01.2018/3P/5C