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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 24.08.2018
PRONOUNCED ON : 31.08.2018
CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
CRL.R.C. (MD) No.435 of 2018

M.Deivam

... Petitioner

Vs

1.The State rep. By,
Inspector of Police,
CBCID,
Theni District.
(Crime No.03/2015)

2.Pandi

3.Krishnammal

4.Palaniammal

5.Subburaj

6.Bhuvaneswari

7.Pandi

8.Perumalsamy

9.Kottaisamy

10.Ramasamy

11.Selvaraj

12.Sekar

... Respondents

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C, praying, to call for the records pertaining to the order in CrI.M.P.No.5153 of 2017 on the file of the learned Judicial Magistrate, Theni District, Theni dated 21.11.2017 in C.C.No.273 of 2016, dated 12.07.2016 on the file of the respondent police and set aside the same.

For Petitioner

: Mr.S.Vanchinathan

For R1

: Mr.A.Robinson



O R D E R

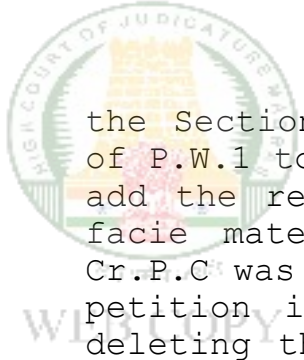
The revision petitioner is the defacto complainant in the case originally registered under Crime No.200 of 2012 on the file of the Mayiladumparai Police Station on 15.10.2005. According to the complaint, the defacto complainant Deivam married Bhuvaneshwari daughter of Subburaj was ill-treated by his wife and his family members. As a result, he has preferred a divorce petition before the Sub Court, Theni. Counselling between them took place at Bangalore but one Krishnasamy, uncle of Bhuvaneshwari, an Army man threatened him. Hence, he gave a complaint against the said Krishnasamy on 23.12.2011, before the Commissioner of Police, Coimbatore.

2. In this complaint, he has further alleged that on 21.04.2012 and 06.05.2012, one T.K.R.Ganesan, paternal junior uncle of Bhuvaneshwari arrived with 20 henchmen and attacked him brutally. On 22.04.2012 one Pandi came to his house with aruval and abused him with filthy language and tried to attack him. When he went to Mayiladumparai Police Station to give complaint about Pandi, Pandi brother Ramasamy and junior paternal uncle of Bhuvaneshwari Kottaisamy came to the police station and gave bribe to Selvaraj, Sub Inspector of Police and Sekar writer to register false complaint against this revision petitioner and his family members. His dress was removed. Hands and legs were chained and he was brutally attacked by the police. His brother Arivalagan was threatened over phone.

3. Based on his complaint against Ramasamy, Palanisamy, Pandi and Krishnammal and others, case was registered and taken up for investigation by one Saravanan, Sub Inspector of Police, Mayiladumparai. Later, he filed a closure report as mistake of fact on 10.01.2013. Aggrieved by that, the revision petitioner filed CrI.O.P.(MD)No.3121 of 2015 before this Court for change of investigation. This Court, allowed this petition on 10.07.2015 and thereafter investigation was transferred to CBCID. The complaint was re-registered under Crime No.2 of 2015 on the file of CBCID. After completion of the investigation, CBCID has filed a final report against Pandi for the offence under Sections 294(b) and 506 (ii) IPC and against Krishnammal for the offence under Section 294 (b) and against Palanisamy for the offence under Section 294(b) IPC. The trial Court has taken the final report along with documents and after framing charge, proceeded to conduct the trial.

4. Deivam, the revision petitioner herein was examined as P.W.1, Muthaiah, father of P.W.1 examined as P.W.2 and Manivel, an independent witness for the rough sketch prepared by the Investigating Officer examined as P.W.3.

5. At this juncture, the revision petitioner has filed an application under Section 319 of Cr.P.C to add the respondents 5 to 12 as accused. The trial Court after perusing the records including



the Section 161 statement of the witnesses, FIR and the deposition of P.W.1 to P.W.4 found that there is no incriminating materials to add the respondents 5 to 12 as accused. Since there is no prima facie material to prosecute them, application under Section 319 Cr.P.C was dismissed. Aggrieved by the same, the present revision petition is filed on the ground that the final report of CBCID deleting the respondents 5 to 12 without notice to him is bad in law. The police officials who are shown as accused in the F.I.R have abused their position and misused their power and foisted a false case against him and the respondents 5 to 10 are the relatives of his wife intimidated him. The Pandi, family who are shown as accused, are the henchmen of Subburaj and others. Hence, the order of the trial Court is liable to be set aside and the respondents 5 to 12 have to be arrayed as accused and tried along with the respondent 2 to 4.

6. Heard the learned counsel for the revision petitioner. Perused the records.

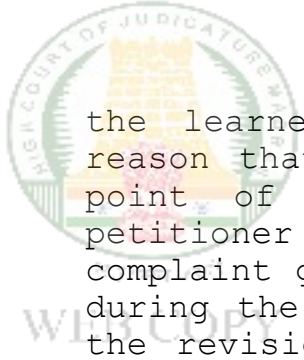
7. The complaint and the deposition of P.W.1 centres around an event alleged to have been taken place on 22.04.2012. On that day, specific allegation is made in the complaint that Pandi who is arrayed as first accused came with aruval and threatened the revision petitioner and his father. Further, he threatened the revision petitioner that he will not leave him alive. The investigation reveals that Pandi is the owner of the neighboring house and there is a dispute between Deivam family and Pandi family regarding the construction. The alleged threat mentioned in the complaint dated 22.04.2012 is nothing to do with Subburaj or family members of Bhuvaneswari. In fact, a complaint has been lodged against this revision petitioner before the same police station by Ramasamy and that complaint has been registered in Crime No.85 of 2012. The revision petitioner was arrested and remanded to judicial custody for alleged offences under Sections 147, 294(b), 323 and 506 (ii) IPC.

8. A perusal of the complaint, final report, statement of witnesses, more particularly, the deposition of P.W.1 to P.W.3 does not make out a case against the respondents 5 to 12. The allegation of the revision petitioner that on 22.04.2012, he was attacked and his hand and legs were chained has been taken into consideration during the investigation. Since some allegations have been against Selvaraj, Sub Inspector of Police, the Investigating Officer has recommended to take departmental action against him.

9. The learned counsel appearing for the revision petitioner submitted that departmental proceedings cannot be equated with criminal prosecution, when there is a prima facie material to show that there is abuse of power, recommending departmental action is not sufficient.

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10. This Court finds no force in the above submission made by



the learned counsel for the revision petitioner for the simple reason that Selvaraj, Sub Inspector of Police during the relevant point of time, ie on 22.04.2012, has arrested the revision petitioner and remanded him to judicial custody, based on the complaint given by one Ramasamy. The lapse on his part pointed out during the investigation is non-registering the complaint given by the revision petitioner. In the counter affidavit filed by the respondent police, it is pointed out that when the revision petitioner was arrested and produced before the Judicial Magistrate for remand, he did not raise any allegation against the police regarding the ill-treatment. While so, as an after thought, he has made certain allegation against the police and his falsehood has been established during the investigation done by the CBCID Police.

11.In such circumstances, neither Subburaj and his relatives nor the police officials need to be arrayed as accused and tried in this case. This Court after appraising the materials and for the reasons stated above, has no hesitation to hold that the revision petition is devoid of merits.

12.Accordingly, this criminal revision petition is dismissed.

Sd/

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar (CS-II)

To

1.The Inspector of Police,
CBCID,
Theni District.

2.The Judicial Magistrate, Theni District.

3.The Chief Judicial Magistrate, Theni District.

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

+1cc to Mr.S.VANCHINATHAN, Advocate, SR.No. 81901

CRL.R.C. (MD) No.435 of 2018
31.08.2018

RMI

KK/SKN/SAR-2/27.09.2018/4P-6C