



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)No.474 of 2018

WEB COPY

Naveen @ Gopalakrishnan

.. Petitioner/Petitioner

Vs.

1.Damodarasamy

2.Sarpendiran

3.Sethuraman

4.Mohandoss

.. Respondents / Accused Nos.1 to 4

PRAYER: Criminal Revision Case is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, against the impugned order dated 15.09.2017 made in Crl.M.P.No.5758 of 2015 on the file of the learned Judicial Magistrate, Periyakulam.

For Petitioner : Mr.V.Janakiramulu

For Respondent No.1 : Mr.K.R.Laxman

For Respondent Nos.2 to 4 : No appearance

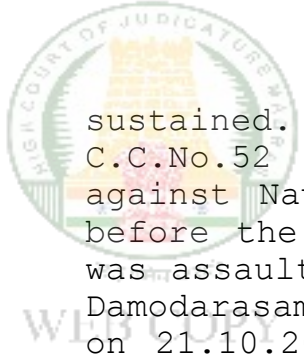
ORDER

This revision has been filed against the impugned order dated 15.09.2017 made in Crl.M.P.No.5758 of 2015 on the file of the learned Judicial Magistrate, Periyakulam.

2. Heard the learned counsel for the revision petitioner and the learned counsel appearing for the respondents.

3. Pursuant to the complaint given by one Damodarasamy, Thenkarai, Periyakulam, Theni District, FIR in Crime No.419 of 2014 has been registered on 22.10.2014 against one Naveen and six others. According to the said complaint on 21.10.2014 at about 9.00 p.m. based on the intimation from the Government Hospital, Periyakulam, the statement of Damodarasamy was recorded at the hospital wherein he has informed that he is running a real estate business at Lakshmipuram Main Road, near Karthik Hotel at Theni. Due to some land dispute pertaining to the transaction with one Prabakaran and his wife Puspalaatha, who are the parents of the revision petitioner, the revision petitioner picked quarrel with Damodarasamy. On 21.10.2014 at about 8.30 p.m., Naveen and others came to his office, used filthy language and assaulted him with wooden log all over the body and also threatened him that they will do away him if he meddles with their property.

4. At the same time the revision petitioner herein Naveen alias Gopalakrishnan, son of Prabakaran and Pushpalatha has also been admitted in the hospital to get treatment for the injuries he



sustained. Therefore, when the police complaint was taken on file in C.C.No.52 of 2015 based on the complaint given by Damodarasamy against Naveen and others, a private complaint has been initiated before the trial Court by the revision petitioner alleging that he was assaulted by Damodarasamy and others at the chit fund office of Damodarasamy. He had been admitted at Theni Medical College Hospital on 21.10.2014 and treated as inpatient till 23.10.2014. The trial Court considering the private complaint which in the nature of case and counter.

5. The trial Court, considering the discrepancy in the time of admission at the Theni hospital, which differs from the ocular evidence of the Doctor and the documentary evidence found in the medical certificate, had disbelieved the case of the revision petitioner and dismissed the private complaint. The trial Court has also observed that the said private complaint is only to counter-blast the police complaint pending in C.C.No.52 of 2015 filed against the revision petitioner.

6. The learned counsel appearing for the revision petitioner would submit that in the private complaint, the doctor has been examined as P.W.2. Due to lapse of memory or due to sleep, the doctor has wrongly mentioned the time of admission, whereas the medical report clearly indicates that the defacto complainant, Naveen @ Gopalakrishnan was admitted in the Periyakulam Government Hospital on 21.10.2014 at about 9.40 p.m., and to substantiate the same he has also now furnished the certificate issued by the medical Superintendent of that hospital. Therefore, the learned counsel would contend that the trial Court ought not to have dismissed the private complaint invoking Section 203 Cr.P.C. abruptly, solely based on the minor discrepancies towards the time of admission in the ocular evidence of the doctor P.W.2, which is contrary to the documentary evidence.

7. This Court finds some force in the above submission. The entire facts as narrated above indicates the sequence of incident, which took place on 21.10.2014 on the eve of Deepavali. The animosity between the family of Naveen and Damodarasamy has explicitly mentioned in the FIR registered on the complaint given by Damodarasamy. In such circumstances, when the record indicates that Naveen has sustained some injuries and admitted in the hospital and treated as inpatient for three days, the said complaint cannot be thrown away abruptly on a sole ground that there is discrepancies between the testimony of the doctor and the medical certificate issued by the hospital. When the trial has not reached its logical end, Court ought not to have arrive to a conclusion abruptly without examining the remaining listed witnesses likely to be examined by the accused, merely based on contradiction in timing of admission in the hospital found in the testimony of the doctor contrary to the documentary evidence issued by the hospital. Therefore, this Court finds that the trial Court has prematurely dismissed the complaint by invoking Section 203 Cr.P.C., without affording full opportunity



to the complainant to establish his case. Hence, the order impugned in this revision is liable to be set aside.

8. Accordingly, this Criminal Revision Case is allowed. The order of the trial Court passed in CrI.M.P.No.5758 of 2015 dated 15.09.2017 dismissing the complaint is hereby set aside and restored on file. The trial Court is directed to proceed the trial, examine the remaining witnesses and dispose the complaint on merits, after affording due opportunity to either side.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Judicial Magistrate,
Periyakulam,
Theni District.
- 2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.V.Janakiramulu, Advocate, SR.No.89860

CrI.R.C(MD)No.474 of 2018
10.10.2018

PJL
ES/SKN/RSK/SAR 2/09.11.2018/3P/5C