



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

Crl.O.P. [MD] .No.14586 of 2018

and

Crl.M.P(MD) Nos.6503 and 6504 of 2018

V.Velladurai

... Petitioner/1st Accused

Vs.

The State rep by

1. The Inspector of Police
Puliyangudi Police Station
Puliyangudi
Tirunelveli District
(Crime No. 73 of 2016) ... 1st Respondent/complainant

2. Kalyani ... 2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the proceedings in C.C. No. 165 of 2017 on the file of the District Munsif cum Judicial Magistrate, Sivagiri, Tirunelveli District and quash the same in so far as the petitioner/first accused is concerned.

For Petitioner : Mr.S.S.Thesigan

For Respondent : Mr.K.Suyambulinga Bharathi
No.1 Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the First Information Report that has been filed in C.C. No.165 of 2017 on the file of the learned District Munsif cum Judicial Magistrate, Sivagiri, Tirunelveli District.

2. The learned counsel for the petitioner would submit that the allegations as found in the Final Report and also the statements that have been recorded under Section 161(3) Cr.P.C does not in any way make out an offence for abetment under Section 109 of Cr.P.C. He invited the attention of this Court to the statements that have been made by the witnesses during the course of investigation and also the Final Report and would submit that no positive act has been attributed as against the petitioner except the mere statement that the entire incident happened due to instigation of the



petitioner. He also relied upon the judgement of the Honourable Supreme Court in **Gangula Mohan Reddy -Vs- State of Andhra Pradesh reported in AIR 2010 Supreme Court 327**. The Honourable Supreme Court in Paragraph 20 has held as follows:

"20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained".

3. Per contra, the learned Government Advocate (Crl.Side) would submit that for the purpose of framing charges necessary materials are available and necessary allegations have been made against the petitioner in the Final Report and therefore at this stage, strong suspicion is enough for the purpose of framing charges .

4. This Court gave careful consideration to the submissions made on either side.

5. The petitioner has been roped in this case as an accused only on the ground that he has abetted the crime. The learned counsel for the petitioner had questioned the relationship that has been attributed by the injured person as if the petitioner and the injured person are husband and wife and the very relation is being denied by the petitioner. For the purpose of substantiating the same, the learned counsel for the petitioner had relied upon certain materials. It is a settled law that at the time of framing charges, the Court cannot look into the materials submitted by the learned counsel for the petitioner and the Court has to merely go by the Final Report and the statements that are filed in support of the Final Report.

6. This Court does not want to go into the merits of the case at this stage. All the issues that have been raised by the petitioner is left open to be raised before the trial court at the appropriate stage.

7. The learned counsel for the petitioner submitted that the petitioner is a Teacher and therefore his presence may be dispensed with. It is left open to the petitioner to file appropriate petition before the court below and the court below shall consider the same in accordance with law.

8. This Court does not find any merit to entertain this petition and quash the Final report at this stage. Hence the Criminal Original Petition is dismissed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)



Sub Assistant Registrar(CS-II)

To

1. The District Munsif Cum Judicial Magistrate,
Sivagiri, Tirunelveli District.
2. The Inspector of Police
Puliyangudi Police Station
Puliyangudi
Tirunelveli District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.S.Thesigan, Advocate Sr.No.79550

AAV

VB/KAK/SAR2/04.09.2018/3P/5C

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