



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.08.2018**

CORAM

THE HON'BLE MR.JUSTICE **N.ANAND VENKATESH****Crl.O.P. (MD) No.15219 of 2018****and****Crl.M.P. (MD) No.6738 of 2018**

A.P.Esther Lilly

...Petitioner

-Vs-

1. The Superintendent of Police,
Kanniyakumari District,
Nagercoil.

2. The Inspector of Police,
Nesamony Nagar Police Station,
Nagercoil,
Kanyakumari District.
Crime No.521 of 2017

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct the first respondent to pass an order of reinvestigation of the case in Cr.No.521 of 2017 on the file of the second respondent police by an unbiased competent police officer and consequently to file additional charge sheet in the above said Crime No.521 of 2017.

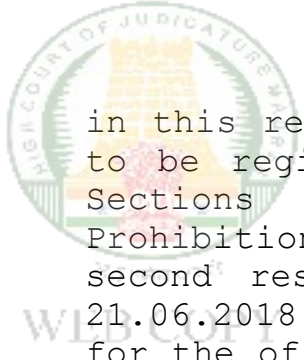
For Petitioner : Mr.M.Suri

For Respondents : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

ORDER

This criminal original petition has been filed seeking for reinvestigation of the case in Cr.No.521 of 2017 on the file of the second respondent police by an unbiased competent police officer

2.The learned counsel for the petitioner would submit that taking advantage of absence of the husband, who was staying away in view of his work, the accused person was repeatedly trying to keep in touch with the petitioner and was threatening her. In spite of the petitioner avoiding the accused person, the accused person was repeatedly stalking and went to the extent of threatening the petitioner with dire consequences. The complaint was given by the petitioner on 20.11.2017 to the second respondent



in this regard and only after several representations an FIR came to be registered in Crime No.521 of 2017 for the offence under Sections 294(b), 506(i) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002. Thereafter, the second respondent after investigation filed a final report on 21.06.2018. The final report was filed against the accused person for the offence under Sections 294(b), 506(i) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002. The same was taken on file by the Additional Mahila Court (Judicial Magistrate) Nagercoil in C.C.No.371 of 2018.

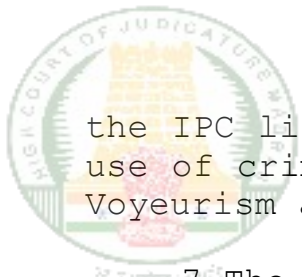
3.The learned counsel for the petitioner further would submit that the second respondent police in spite of being provided with the phone calls received by the petitioner, did not investigate the case and try to obtain the details with regard to the phone calls from the service provider. The petitioner gave a detailed representation dated 07.07.2018 to the first respondent with regard to the matters, which were not investigated by the second respondent and had sought for further investigation by a different agency.

4.The learned counsel for the petitioner further would submit that after the representation was made, the second respondent had sent summons to the petitioner to attend for an enquiry on 13.07.2018 and thereafter, no steps have been taken by the second respondent to further investigate the case. Therefore, present petition has been filed for re-investigation by the different agency.

5.*Per contra*, the learned Government Advocate (Crl.Side) would submit that the second respondent had properly investigated the complaint given by the petitioner and had taken statements from all the witnesses and had proceeded to file a final report immediately after the completion of the investigation. The learned Government Advocate (Crl.Side) further would submit that the offence shown in the final report is in consonance with the allegations that have been made by the petitioner and other witnesses and therefore, there is no ground to transfer the investigation.

6.On going through the records, it is found that the petitioner has provided call details from the accused person. But however, the second respondent has not taken any steps to investigate the case by taking note of the call details from the service provider and see if it is only the accused, who was only responsible or if there is any other person, who is also involved in the said offence. That apart, on a cursory reading of the final report and the statements given by the witnesses, this case

<https://hcservices.gov.in/hcservices> takes out an offence under Sections 354 (D) IPC. By virtue of Criminal Law (Amendment) Act, 2013, the parliament has brought in certain types of offences into



the IPC like 354 (A) for sexual harassment, 354 (B) for assault or use of criminal force to woman with intent to disrobe, 354 (C) for Voyeurism and 354 (D) for stalking.

7. The offence of stalking is committed by a man, who follows a woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman. A person, who commits such an offence can be punished for a term, which may extend to three years.

8. In the present case on the reading of the final report and the statement given by the witnesses, this Court is of the considered view that *prima facie* offence under Section 354 (D) has been made out. But, however, neither final report has indicated this offence nor the Court below had thought it fit to frame the charges for this offence.

9. There are enough materials to show that further investigation is required in this case and further report needs to be filed, wherein, the offence under Section 354 (D) is also to be added as one of the offences. The second respondent has investigated this case and filed a final report. This Court does not want to direct any other police to investigate the case and in order to maintain neutrality, the first respondent is directed to monitor the investigation made by the second respondent. The second respondent based on the representation made by the petitioner on 07.07.2018 and the materials provided by the petitioner, shall proceed further with the investigation of this case and file a final report as expeditiously as possible not later than three months from the date of receipt of a copy of this order. The first respondent shall ensure that the further investigation is properly monitored and the necessary offences are added to the further report to be filed in this case.

10. The Additional Mahila Court, Nagercoil, is directed to keep C.C.No.371 of 2018 in abeyance and await filing of the further report by the second respondent. Thereafter, frame proper charges against the accused persons and proceed further in accordance with law.

11. This criminal original petition is disposed of with the above directions. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/



To

1. The Additional Mahila Court, (Judicial Magistrate)
Nagercoil.

2. The Superintendent of Police,
Kanniyakumari District,
Nagercoil.

3. The Inspector of Police,
Nesamony Nagar Police Station,
Nagercoil,
Kanyakumari District.

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

+1cc to Mr.M.Suri, Advocate Sr.No.80436

MM

VB/SKN/SAR1/18.09.2018/4P/6C

Cr1.O.P. (MD) No.15219 of 2018
28.08.2018