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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.01.2018

DELIVERED ON : 24.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.O.P.(MD)No.7208 of 2013

and

M.P.(MD)No.1 of 2013

1.Sr.Mariammal

2.Renji @ Maria Nesam

... Petitioners/Accused 1 & 2

Vs.

1. The State of Tamil Nadu,

Rep. by its Inspector of Police,

Perumalpuram Police Station,

Tirunelveli District.

...1st Respondent/Complainant

2.Miss.Selvamani

...2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to P.R.C.No.31 of 2012 on the file of the I Additional District Judge-cum-Chief Judicial Magistrate, Tirunelveli, and quash the same.

For Petitioners : Mr.Issac Mohanlal
Senior Counsel
for M/s.Issac Chambers

For R1 : Mr.K.S.Duraipandian
Additional Public Prosecutor

For R2 : No Appearance

ORDER

The petitioners herein are the Accused Nos.1 and 2 in P.R.C.No.31 of 2012 pending on the file of the I Additional District Judge-cum-Chief Judicial Magistrate, Tirunelveli. Now, this petition is filed to quash the abovesaid proceedings.

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2.The first contention raised by the learned counsel for the petitioners is that the first respondent police laid a charge



sheet for the offences under Section 306 r/w 511 IPC, for the commission of offence under Section 306 IPC, the process of suicide has been completed by the individual. Only after completing the process of suicide, the question of abetment has to be come into force, but factually in this case, a person, who is attempted to commit suicide was luckily saved and not went to the extent of death. But, the Police Officers filed the charge sheet for the offence under Section 306 r/w. 511 IPC. Therefore, when the offence under Section 306 IPC is not made out, the question of attempt made by the petitioners does not arise. Hence, the charges levelled against the petitioners by the first respondent police is liable to be quashed.

3. On the other hand, the learned Additional Public Prosecutor appearing for the first respondent submitted that even though the offence mentioned by the first respondent police is not made out, the other offences provided in the Indian Penal Code is made out and therefore, the prayer sought by the petitioners is not at all maintainable and accordingly, he prays for dismissal of the Criminal Original Petition.

4. This Court heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record.

5. With regard to the issue involved in this case, it is relevant to refer Section 228 Cr.P.C., which reads as follows:

''228. Framing of charge - (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under



clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried''

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6. So, as per the above provision, the learned Sessions Judge alone is having the power to frame the charges, which could be attracted on the averments mentioned in the charge sheet. Mere mentioning of provisions in the IPC by the Investigation Officer is not at all relevant and the same will not be taken into account for framing charges.

7. In this regard, it is also relevant to refer the judgment of the Hon'ble Apex Court in **Satvir Singh and others Vs. State of Punjab and another** reported in **1998 Cri.L.J.405**, wherein it has been held as follows:

''It is obvious from aforesaid that while framing the charge, the Court has simply to see if there is ground to presume that accused has committed the offence or not. If there is sufficient ground found to proceed, the charge can be framed but if on the basis of the assertions made and the evidence collected by the prosecution, there is no case that is drawn, in that event, the charge need not be framed. With this backdrop, one can revert to the contentions raised at the bar.''

8. Accordingly, the learned Sessions Judge is having the power to pass an order of discharge, if no case is made out. If no case is made out as per the evidences collected by the prosecution, the learned Sessions Judge can very well discharge the accused from that case itself. But, in the case on hand, without availing the above remedy from the learned Sessions Judge, the petitioner herein directly filed this application under Section 482 Cr.P.C.

9. In general, the inherent powers, which are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code of Criminal Procedure, in case where there is no express provision empowering the Court to achieve the said object. It is well settled that inherent power is not to be invoked in respect of any matter covered by specific provision of the Code or if its exercise would infringe any specific provision of the Code. Therefore, when a specific provision is available in the Cr.P.C., invoking provisions under Section 482 Cr.P.C. is unwarranted.

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10. In view of the above, this Criminal Original Petition is dismissed with liberty to the petitioner to file a fresh



application before the Trial Court. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District Judge-cum-Chief Judicial Magistrate, Tirunelveli.
2. The Inspector of Police, Perumalpuram Police Station, Tirunelveli District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Smn2

AE/RSK/SAR1/06.02.2018/4P/4C

order in
Crl.O.P. (MD) No.7208 of 2013
24.01.2018