

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.11.2019
Pronounced on : 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.30687 of 2014 and
Crl.M.P.Nos.1 & 2 of 2014

P.Periasamy

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Deputy Superintendent of Police,
Mettur, Salem District.

2.The Inspector of Police,
Kolathur Police Station,
Kolathur, Salem District.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the order passed in C.M.P.No.1080 of 2014 in S.C.No.276 of 2009 on the file of the Principal Sessions Judge, Salem dated 24.09.2014 and set aside the same.

For Petitioner : Mr.C.K.M.Appaji
Mr.S.Regu

For Respondents: Mr.M.Prabhavathi,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 24.09.2014 in C.M.P.No.1080 of 2014 in S.C.No.276 of 2009, passed by the learned Principal Sessions Judge, Salem.

2.The petitioner is facing trial in S.C.No.276 of 2009 for the offence under Sections 147, 148, 448, 294(b), 427, 365, 506 (ii) of IPC and Section 3(i)(x) of the SC/ST (POA) Act, 1989, on

the file of the Principal Sessions Court, Salem.

3.The defacto complainant belongs to Scheduled Caste Community residing at Kannamoochi Village and her brother-in-law Krishnan was in love affair with one Manimegalai, who is the sister-in-law of the petitioner and she belongs to Hindu Nadar Community/Backward Class. On 21.06.2008 at about 08.00 a.m., both Krishnan and Manimegalai eloped from the said village. The petitioner along with 20 others armed with deadly weapons, went to the house of the defacto complainant by car, abused and called her by caste name, forcibly entered into her house, damaged the door, caused damage to the household articles and kidnapped her to her younger sister's house, where the petitioner along with 20 others made enquiry with regard to elopement of the lovers and again abused the defacto complainant with her caste name in public view and also caused life threat. On 21.06.2008, the defacto complainant lodged a complaint before the 2nd respondent Police, who on receipt of the same registered a case in Crime No.181 of 2008 for the offence under Sections 147, 148, 448, 294(b), 427, 365, 506(ii) of IPC and Section 3(i) (x) of the SC/ST (POA) Act, 1989. After completion of the investigation, the 1st respondent filed charge sheet before the trial Court and the same is taken on file as S.C.No.276 of 2009.

4.The learned counsel for the petitioner submitted that the defacto complainant earlier filed C.M.P.No.1716 of 2011 in S.C.No.276 of 2009, seeking for reinvestigation of the case under Section 173(8) Cr.P.C, on the allegation that the co-accused Rajendran and twenty others were deliberately deleted from the list of the accused, due to the partial investigation carried out by the Investigation Officer. The respondent filed a counter in C.M.P.No.1716 of 2011, stating that the investigation carried out by the Investigating Officer-Mr.D.J.D.Ashok Kumar, then Deputy Superintendent of Police, was perfectly in order and the defacto complainant is not entitled to file application for further investigation after the committal of the case. The learned Principal Sessions Judge, Salem by order dated 04.10.2012 in C.M.P.No.1716 of 2011, recording the objection of the respondent Police dismissed the petition.

After commencement of the trial, the respondent Police filed C.M.P.No.1080 of 2014 in S.C.No.276 of 2009, seeking further investigation of the case under Section 173(8) Cr.P.C for the reason that then, the investigating officer conducted the investigation in a partial manner, despite the witnesses stated about the involvement of the co-accused Rajendran and the twenty others in the alleged occurrence.

5.The learned counsel for the petitioner further submitted that the statements of LW18 and LW19 would clearly state about the falsity of the contention of the respondent. On 24.09.2019, the learned Principal Sessions Judge, Salem allowed the said petition of the respondent to conduct further investigation in Crime No.181 of 2008. Against which the present petition.

6.The contention of the learned counsel for the petitioner that the respondent police had filed an application for further investigation under Section 173(8) Cr.P.C, without any materials and further no proper reason has been produced. He further submitted that earlier, when the defacto complainant had filed an application for further investigation in C.M.P.No.1716 of 2011, the respondent police filed a counter, stating that the investigation was carried out as per the procedure in proper manner. But the same, the respondent now filed the above petition, after retirement of the earlier investigation officer stating that further investigation is required without any delay.

7.The learned Additional Public Prosecutor appearing for the respondents filed status report and submitted that in this case there are totally 33 witnesses have been examined and 8 documents have been collected and thereafter only the charge sheet has been filed. Though the accused persons namely Periyasamy, Rajendran and twenty unknown persons have been mentioned in the complaint, the said Rajendran is not taken as an accused in the final report.

8.The learned Additional Public Prosecutor further submitted that the present investigating officer on perusal of the records found that no notice has been given to the defacto complainant with regard to removal of the name of the said Rajendran at the time of filing of the charge sheet and had given a reason for earlier objection of C.M.P.No.1716 of 2011. Further, with regard to twenty others involvement in the crime, no convincing and proper material had been collected to delete their name. Therefore, the lower Court had given a well reasoned order setting out the reasons for granting further investigation and needs no interference.

9.On considering the rival submissions and on perusal of the materials it is seen that LW18 and LW19 stated about the presence of Rajendran in the occurrence. Further, the other witnesses have categorically stated about the presence of Rajendran and his overtact and steps have been taken to find out the involvement of other twenty persons in this case. The defacto complainant was examined as PW1 and Ex.P1 had been

marked through in her chief examination. She had deposed about the occurrence and specifically mentioned about the presence of Rajendran in several places apart from the role of twenty others persons in the crime. Further, the defacto complainant had given a reasons for delay in lodging the complaint.

10. Further from the statement of witnesses LW2 to LW17, it is seen that they have all mentioned about the presence of Rajendran and his overtact and also about the twenty others in the occurrence and three cars being used in commission of offence. Earlier investigating officer failed to conduct investigation in all these aspects. Thus from the evidence of PW1 and on perusal of the statement of witnesses, the trial Court had rightly granted permission to conduct further investigation in Crime No.181 of 2008.

11. The contention of the learned counsel for the petitioner that earlier the defacto complainant filed the petition under Section 173(8) Cr.P.C, which was opposed by the respondent Police and came to be dismissed and thereafter the respondent filed a petition for similar relief, is bad in law and cannot be accepted for the reason that PW1 has got into the box and given evidence against the petitioner, Rajendran and twenty others and also spoken about the accused persons coming in three cars while commissioning the offence and the evidence of LW2 to LW17 stated about the role played by Rajendran and twenty others. Further, the name of the Rajendran finds place in the complaint and in the First Information Report and the defacto complainant was not served any notice while dropping the name of the accused.

12. Taking these factors into consideration and also finding sufficient materials to proceed, the trial Court had rightly allowed C.M.P.No.1080 of 2014 for conducting further investigation. This Court finds that there is no reason to interfere with the order dated 24.09.2014 passed by the learned Principal Sessions Judge, Salem in C.M.P.No.1080 of 2014 in S.C.No.276 of 2009. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

13. Since the occurrence had taken place in the year 2008 and the case has been taken on file in the year 2009 and five years thereafter only PW1 came to be examined and now it is for the past ten years the trial is pending, without any progress. Further, cases under SC/ST Act, the investigation and the trial are to be completed in time bound manner. Hence, the respondent

shall conduct further investigation and complete the same within a stipulated time for the trial to reach its logical conclusion in a time bound manner.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Principal Sessions Judge,
Salem.
- 2.The Deputy Superintendent of Police,
Mettur, Salem District.
- 3.The Inspector of Police,
Kolathur Police Station,
Kolathur, Salem District.
- 4.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.30687 of 2014

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