

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.25718 of 2018
and Crl.M.P.No.14707 of 2018

1.Illangovane
2.Balasaraswathy

... Petitioners

-Vs-

1.The Station House Officer,
Mettupalayam Police Station,
Puducherry.

2.Sundari

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and to quash the FIR dated 09.08.2017 in crime No.66 of 2017, on the Mettupalayam Police Station, Puducherry.

For Petitioner : Mr.S.Ravee Kumar

For Respondents

For R1 : Mr.V.Balamurugane

Additional Public Prosecutor (Pondy)

For R2 : Mr.R.Rajarajan

ORDER

This petition has been filed to quash the F.I.R dated 09.08.2017 in crime No.66 of 2017, on the Mettupalayam Police Station, Puduchery, for the offences punishable under Sections 174(3) of Cr.P.C., @ 306, 506(i) of IPC r/w Section 34 of IPC.

2. The learned counsel appearing for the petitioners would submit that the petitions are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the third respondent police registered a case in Crime No.66 of 2017 for the offences punishable under Sections 174(3) of Cr.P.C., @ 306, 506(i) of IPC r/w Section 34 of IPC, as against the petitioners.

2.1. The learned counsel appearing for the petitioners also relied upon the judgement of the High Court of Madhya Pradesh in M.C.R.C.No.20164 of 2018 in the case of Nitin Sharma Devmurari Vs. The State of Madhya Pradesh, which reads as follows :-

"9. The matter came up for hearing before the Hon'ble Supreme Court to analyze abetment in the case of M. Mohan Vs. State represented by Dy. Superintendent of Police reported in 2011 (3) SCC 626, wherein it has been held that :

"Indian Penal Code, 1860, Section 306 - Abetment - Abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing - Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

Indian Penal Code, 1860, Section 306 - Required an active act or direct act, which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

10. In the case of Babbi @ Jitendra and Others Vs. State of M.P., 2008 (2) M.P.H.T. 160 = 2008 (III) MPWN 8, it is held that -

"(1) Penal Code, 1860, Section 107 - Abetment - is constituted by instigating a person to commit an offence - Engaging in conspiracy to commit it - Intentionally aiding a person to commit it.

(2) Word and Phrases - Word 'instigate' - Means to goad or urge forward to provoke, incite, urge or encourage to do an act."

11. In the case of Babbi @ Jitendra (supra) this Court has held that, the petitioners borrowed loan of Rs.10,000/- on the land of the deceased. That amount was kept by the petitioner. All the money was kept by Babbi (the petitioner) which the deceased demanded from the petitioner. The petitioner abused and assaulted him. After informing his family, the deceased went to somewhere and never returned back. Later his dead body was found. Police registered offence under Section 306 of I.P.C. It was held that merely the petitioner refused

to return the money of the deceased allegedly kept by him, he never intended that that the deceased should commit suicide.

4 MCRC-20164-2018

12. In the present case, the accused persons have been alleged to have advanced money and the deceased committed suicide for the accused persons were harassing him for recovery of the same.

13. In the case of Radheshyam Vs. State of M.P., 2014 (3) M.P.H.T 103= 2014 Cr.LR (MP) 416 , it is held that:-

Criminal Procedure Code, 1973, Section 397/401- Order of framing charge under Section 306, I.P.C- No evidence of abetment to commit suicide- Money borrowed to the deceased and demanding back of money was not an act of harassment- Demand of loan amount is not an abetment under Section 107, I.P.C- Words uttered in heat of moment does not amount to abetment- Held- Order of framing charge is not sustainable and set aside.

14. In the case of Gangula Mohan Reddy Vs. State of Andhra Pradesh 2010 (1) SCC 750, the Apex Court has held that, in the case under Section 306 of IPC for offence of abetment to commit suicide mens rea and active act of the accused is essential to constitute the offence. When allegations against the appellant-accused for harassing his deceased servant by accusing him of committing theft of gold ornaments, two days prior to servant's death- Appellant allegedly, also demanded the money from deceased, given in advance to him at the time he was kept in employment- Deceased committing suicide by consuming poison and bears to be higher sensitive man and the accused was not held liable for offence under Section 306 of IPC. The offence does not show how the petitioner has instigated or goaded the deceased for committing suicide."

Therefore, he prayed to quash the FIR.

3. The learned counsel appearing for the second respondent submitted that the petitioners had already approached this Court to quash the very same FIR in CrI.O.P.No.19923 of 2017, and the

same was dismissed as withdrawn. Again the petitioners approached this Court with the same prayer to quash the FIR. Therefore, he sought for dismissal of this petition.

4. The learned Additional Public Prosecutor would submit that the investigation is almost completed and the respondent police have only to file final report.

5. Heard Mr.S.Ravee Kumar, learned counsel appearing for the petitioners Mr.V.Balamurugane, learned Additional Public Prosecutor (Pondy) appearing for the first respondent and Mr.R.Rajaraman, learned counsel appearing for the second respondent.

6. It is seen from the First Information Report that there is a specific allegation as against the petitioners, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code. In the case on hand, there are specific averments to attract the offence under Section 306 of IPC. Therefore, the judgment relied upon by the learned counsel appearing for the petitioners does not help to this case.

7. It is also seen from the records that the petitioners had already approached this Court for quashing the very same FIR in Crime No.66 of 2017 and when this Court was not inclined to allow the said petition, it was withdrawn by the earlier counsel. Again with the same prayer, the petitioners filed this petition to quash the very same FIR. Therefore, this Court is not inclined to quash the FIR. However, considering the crime is of the year 2017, the first respondent is directed to complete the investigation in Crime No.66 of 2017 and file a final report within a period of three months from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.

8. With the above directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jas/rts

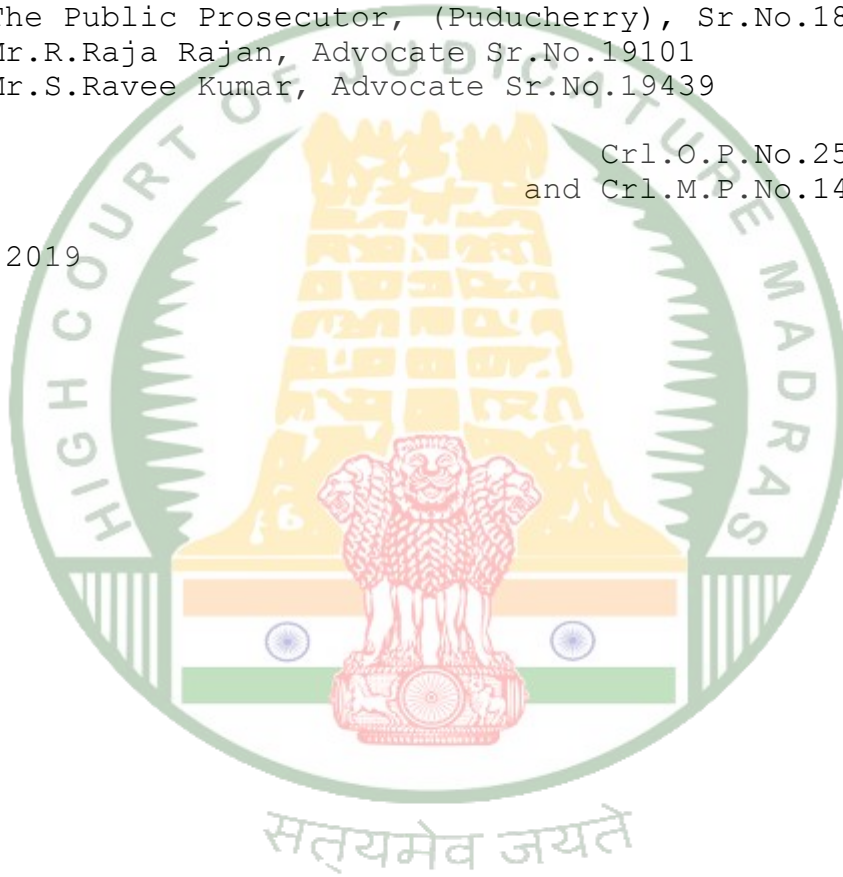
To

1. The Station House Officer,
Mettupalayam Police Station,
Puducherry.
2. The Public Prosecutor,
High Court, Madras.

+1 cc to The Public Prosecutor, (Puducherry), Sr.No.18966
+1 cc to Mr.R.Raja Rajan, Advocate Sr.No.19101
+1 cc to Mr.S.Ravee Kumar, Advocate Sr.No.19439

Crl.O.P.No.25718 of 2018
and Crl.M.P.No.14707 of 2018

CSL/07.03.2019



WEB COPY