

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.1385 of 2018
and
Crl.M.P.No.16023 of 2018

Mrs.S.Jeeva

... Petitioner

--Vs--

The State Represented by
Sub-Inspector of Police,
K-2 Ayanavaram,
Chennai -23.

... Respondent

This Criminal Revision Petition is filed under Sections 397 read with 401 of Cr.P.C. praying to set aside the order passed by the Learned V Metropolitan Magistrate in Crl.M.P.No.2808 of 2016 in C.C.No.5118 of 2016 and order dated 04.09.2018 and direct the Learned V Metropolitan Magistrate to reject the final report filed by the respondent in Crime No.1438 of 2015 in C.C.No.5118 of 2016 and further direct the respondent to conduct proper further investigation under section 173(8) of CPC and file a Additional Report before the Learned V Metropolitan Magistrate at Egmore, Allikulam.

For Petitioner : Mr.S.Venkatesh

For Respondent : Mr.G.Harihara Arun Soma Sankar
Government Advocate (Crl. Side)

O R D E R

The above revision case has been filed against the order passed by the learned V Metropolitan Magistrate in Crl.M.P.No.2808 of 2016 in C.C.No.5118 of 2016 dated 04.09.2018 dismissing the application filed by the petitioner/defacto complainant under Section 173(8) of Cr.P.C. seeking direction to the respondent to conduct further investigation.

2 According to the petitioner/defacto complainant, a complaint was given against the accused stating that on 28.06.2015 at about 11 hours, the accused trespassed into the

petitioner's house and abused the petitioner with filthy language and inflicted injury and the petitioner's in-laws were also attacked by the accused. On the basis of the complaint, the respondent police registered a case under Sections 448, 294(b) & 323 IPC. However, the petitioner herein was not satisfied with the registration of the case under the above provisions of IPC and the case of petitioner was that the incident happened on 28.06.2015 attracted offences under Sections 315, 326, 327, 307 & 354 IPC. According to the petitioner, instead of proceeding against the accused under these Sections, an FIR was registered only under Sections 448, 294(b), 323 IPC. In the said circumstances, this revision case has been filed seeking further investigation into the matter and to include the above Sections and proceed against the accused.

3 The learned Magistrate after adverting to the various materials and report of the police, dismissed the petition. When the matter was taken up for hearing, the learned Government Advocate was directed to produce a copy of the Doctor's certificate in order to verify the claim of the petitioner that she was grievously injured in the attack and she was hospitalised for few days and the learned Magistrate unfortunately had overlooked the said fact and dismissed the petition.

4 When the matter was taken up today, the Doctor's certificate was produced and the same was perused by this Court. From the Doctor's certificate, it is clear that the petitioner was conscious, oriented and suffered no external injuries. She had visited the hospital on her own and everything appears to be normal. According to the medical report, both the mother and the baby were fine. From the medical report it is seen that, if at all any injuries suffered by the petitioner in the alleged attack, it was only simple injury and cannot attract the various provisions as demanded by the petitioner in order to proceed against the accused for the offences under various provisions as indicated in the petition filed under Section 173(8).

5 In the above circumstances, the learned Magistrate has rightly dismissed the petition being devoid of merit. In fact, the learned Magistrate has also relied on the decision of Hon'ble Supreme Court while rejecting the petition filed by the petitioner. The finding of the learned Magistrate on the basis of its conclusion is extracted here under:

"6. In the case on hand, as per the averments made in the complaint, the respondent/police

registered FIR under Sec.448, 294(b) and 323 of IPC. The allegations made in the complaint did not disclose the offence under Secs.315, 326, 327, 307 and 354 IPC. The petitioner, petitioner's husband, petitioner's father-in-law and also petitioner's mother-in-law were cited as witnesses in this case. In Sec.161 Cr.P.C. statement of material witnesses, there is no whisper about the commission of offence by all the accused under Sec. Secs.315, 326, 327, 307 and 354 IPC. Further before the Doctor, the petitioner informed that she sustained injury by "assault by hands on 28.06.2015 at 11.00 a.m". As per the opinion of the treatment doctor Mrs.Ranjini, KMC Hospital, the injury sustained by the petitioner is only "simple injury". Added to that the grounds raised in the petition are not supported by any documentary evidence. On clear scrutiny of entire records it reveals that the respondent/police had conducted investigation in a diligent manner and filed final report. In the present case, the respondent/police filed final report on 2.7.2016 and this Court took cognizance on 4.7.2016 and taken the case on the file in C.C.No.5118/2018. After the receipt of summons A1 to A3 entered their appearance before this Court on 16.8.2016. Now the case is in the stage of questioning under Sec.239 Cr.P.C. In the decision reported in Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, 2017 (2) Scale 198, the Hon'ble Supreme Court held that the power to grant permission for further investigation under Section 173(8) of Cr.P.C. after cognizance has been taken on the police report can be exercised by the Magistrate only on a request made by the investigating agency and not, at the instance of any one other than the investigating agency or even suo motu.

7. Under the said circumstances, the present application before this Court is not maintainable. The petitioner is directed to work out her remedy in the manner known to law. In the result this petition is dismissed."

6 This Court is in an agreement with the conclusion reached by the learned Magistrate since the crucial evidence, namely, the medical certificate, does not even remotely support the case of the petitioner herein. Therefore, this Court finds that the order 04.09.2018 passed in CrI.M.P.No.2808 of 2016 in C.C.No.5118 of 2016 by the learned Magistrate does not suffer from any infirmity calling for interference. Hence, the present

revision case stands dismissed. Consequently, connected
miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pns/cgi

To

1. The Sub-Inspector of Police,
K-2 Ayanavaram,
Chennai -23.
2. The V Metropolitan Magistrate,
Egmore, Allikulam.
3. The Public Prosecutor,
High Court, Madras 104.

Copy To:

The Section Officer,
Criminal Section,
High Court, Madras.

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Crl.M.P.No.16023 of 2018

SSV(CO)
CSL/21.02.2019