



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C. (MD) .No.108 of 2017

and

CRL.M.P. (MD) .Nos.930 & 931 of 2017

WEB COPY

1.P.Kanagaraj

2.Sundarammal

3.Radha

4.Sulochana

...Petitioners/Petitioners/
Accused

Vs.

The State Rep. By
The Sub Inspector of Police,
Watrap Police Station,
Virudhunagar District.
(Crime No.202 of 2015)

...Respondent/Respondent /
Complainant

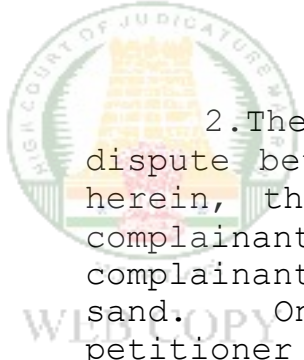
PRAYER: Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, to call for the records pertaining to the impugned order dated 01.11.2016 on the file of the learned Judicial Magistrate No.1, Srivilliputhur in Cr.M.P.No.389 of 2016, in C.C.No.115 of 2015, set aside the same and discharge the petitioners from the charges.

For Petitioners : Mr.M.Saravanan

For Respondent : Ms.S.Bharathi
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Case is filed against the impugned order dated 01.11.2016, on the file of the learned Judicial Magistrate No.1, Srivilliputhur, in Cr.M.P.No.389 of 2016, in C.C.No.115 of 2015. The respondent police registered a case against the revision petitioner under Sections 294(b), 323, 354, 506(i) IPC and Section 4 of TNPHW Act. After taking cognizance of the offence, the respondent police registered a FIR and the investigation has been completed and charge sheet was taken on file in C.C.No.115 of 2015.

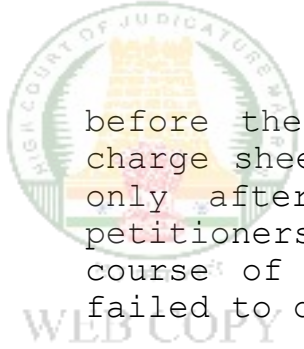


2. The case of the prosecution is that due to some civil dispute between the *de facto* complainant and the first petitioner herein, the first petitioner closed the pathway of the *de facto* complainant's house by placing thorns. Due to which, the *de facto* complainant obstructed the pathway of Kanagaraj's house by heaping sand. On 12.10.2015, at about 07.45 hours, when the first petitioner was scattering the said heaped sand, the *de facto* complainant questioned the first petitioner as to how he removed the sand by scattering the sand placed by her. Due to which, the first petitioner abused the *de facto* complainant with filthy language and beat her and also threatened her with dire consequences. Hence, the *de facto* complainant lodged a complaint before the Watrap Police Station, Virudhunagar District and the respondent Police registered a case in Crime No.202 of 2015 for the offences under Sections 294 (b), 323, 354 and 506 (i) I.P.C. and Section 4 of TNPHW Act.

3. After completion of investigation, charge sheet was filed before the learned Judicial Magistrate No.1, Srivilliputhur. The learned Judicial Magistrate has taken the case in C.C.No.115 of 2015. Thereafter, the petitioners filed a petition in Cr.M.P.No.389 of 2016, before the learned Judicial Magistrate No.1, Srivilliputtur seeking to discharge them from all the charges in C.C.No.115 of 2015. However, the learned Judicial Magistrate No.1 dismissed the said petition filed by the petitioners, dated 01.11.2016, on the ground that there is prima facie evidence to frame charges against the petitioners in the present case in C.C.No.115 of 2015. Aggrieved over the same, the present case has been filed by the petitioners.

4. According to the learned counsel appearing for the revision petitioners, the Trial Court has failed to see that the observation Mahazar and the sketch of both the cases would show that the house of the *de facto* complainant was not found near the house of the first petitioner and also the alleged pathway and the alleged obstruction said to have been made by placing thorns is also not found in the sketch and in the observation Mahazar. He further stated that the allegations made by the first petitioner in Crime No.201 of 2015 are true and hence the respondent Police filed charge sheet against the *de facto* complainant and four others in C.C.No.129 of 2015. He also pointed out that the Trial Court ought to have seen that the relevant facts in C.C.No.115 of 2015 relating to Crime No.202 of 2015 and C.C.No.129 of 2015 relating to Crime No.201 of 2015 are counter cases to each other. He further pointed out that even according to the prosecution, when the first petitioner was doing the lawful act of removing construction on the way to his house, the *de facto* complainant interfered and prevented him from doing the said act.

5. Per contra, the learned Government Advocate (Crl. side) appearing for the respondent would submit that there are reliable witnesses and documentary evidences available to prove the case of prosecution beyond all reasonable doubts against the petitioners



before the lower Court. She also further pointed out that the charge sheet in C.C.No.115 of 2015 was filed before the lower Court only after the completion of investigation. Even though the petitioners are having a right to challenge the same during the course of trial before the lower Court, but the petitioners are failed to do so.

6. Heard the learned counsel appearing for the revision petitioners and the learned Government Advocate (Crl. side) appearing for the respondent and perused the materials available on record.

7. According to Section 239 of Cr.P.C., " If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing". This is a settled provision under law. This Court has to see that the records submitted by the prosecution under Section 173 Cr.P.C and defence taken by the accused need not be entertained at this stage. Therefore, upon reading the entire materials, this Court finds that there is prima facie case made out. Therefore, the reading of the order passed by the learned Judicial Magistrate has clearly stated that on a perusal of the records, the prima facie materials available to proceed the case against the petitioners.

8. This Court finds that there is no illegality or infirmity in the order passed by the learned Magistrate and there is no perversity in the order passed by the learned Judicial Magistrate No.1, Srivilliputhur in Cr.M.P.No.389 of 2016, in C.C.No.115 of 2015 and there is no reason or ground to interfere in the order passed by the learned Magistrate. In these circumstances, there is no merit in the criminal revision case. Therefore, the present Criminal Revision case is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

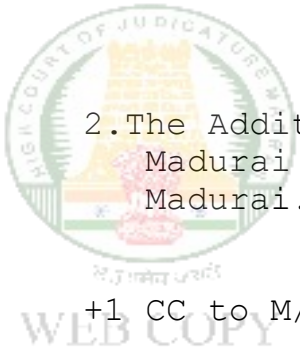
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Sub Assistant Registrar (CS-)

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To

1. The Judicial Magistrate No.1,
Srivilliputhur.



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

+1 CC to M/s.M.SARAVANAN, Advocate (SR-44636[F] dated 04/02/2019)

Cr1.RC.(MD)No.108 of 2017

ES/09.07.2019/4P/4C