



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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Crl.O.P.(MD)No.6275 of 2019

and

Crl.M.P(MD)No.4146 of 2019

1.Dhas

2.Silvestor

... Petitioners/Accused Nos. 2 & 3

-Vs-

1.State rep by

The Inspector of Police,
Puthukadai Police Station,
Kanyakumari District.

(In Crime No.301 of 2018)

... Respondent/Complainant

2.Vijayakumari

... Respondent/Defacto complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to Crime No.301 of 2018 on the file of the first respondent police and quash the same insofar as these petitioners/the 2nd and 3rd accused concerned.

For Petitioners : Mr.S.Muthukumar

For R1 : Mr.R.Suyambulinga Bharathi
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in Crime No.301 of 2018 on the file of the first respondent police for the offence under Sections 451, 354 (A) and 309 of IPC. Subsequently, altered into offence under Sections 452, 354 (A), 376, 306 and r/w 34 and 212 of IPC.

2. The learned counsel for the petitioners would submit that there are totally three accused. In which, the petitioners are arrayed as A2 and A3. The complaint lodged by the second respondent alleging that when the victim girl was alone in her home on 11.10.2018, her relative namely, the first accused had sought hammer from her. While, the victim girl requested him to adjust T.V channels, the first accused mis-behaved with her and as such, she felt ashamed and poured kerosene on her and set fire to herself. Therefore, she sustained grievous injurious and admitted into the Government Medical College Hospital, Assaripallam.

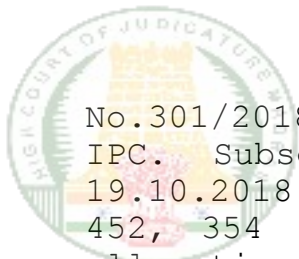


3. The learned counsel for the petitioners would further submit that the victim succumbed due to burnt injuries on 19.10.2018. Even according to the case of the prosecution, the petitioners have no overt act in the occurrence. The entire allegations are only as against the first accused, since he only mis-behaved and as such the victim girl herself set fire. On the confession of the first accused, the petitioners have been implicated as an accused for the reason that they provided shelter to the first accused after the occurrence. Therefore, there is absolutely no *prima facie* case to attract any of the offence as alleged by the prosecution as against the petitioners. Insofar as the offence under Section 34 IPC is concerned, the petitioners happened to be the relative of the first accused, except that no other intention commonly to do the offence. He further submitted that insofar as the offence under Section 212 of IPC is concerned, the petitioners never gave any shelter to them and never helped him to escape from the scene of crime and as such the entire proceedings are initiated nothing but clear abuse of process of law. He also relied upon the judgment in the case of **Anand Kumar Mohatta and another Vs. State (Government of NCT of Delhi) Department of Home and another** reported in **AIR 2019 SC 210**.

4. Per contra, the learned Government Advocate (Crl.Side) appearing for the first respondent submitted that on the complaint lodged by the second respondent, initially the case was registered in Crime No.301 of 2018 for the offence under Sections 451, 354 (A), 309 IPC. On the allegation that when the victim girl was alone in her house on 11.10.2018, the first accused had sought hammer from the victim. While the victim requested him to adjust the T.V Channel, the first accused mis-behaved with her. Therefore, she felt ashamed and poured kerosene on her and set fire on her. Therefore, she sustained injuries and taken to Government Medical College Hospital, Assaripallam. Thereafter, on 19.10.2018 she was succumbed due to the burnt injuries. Therefore, the offences were altered into Sections 452, 354 (A), 376, 306 r/w 34 and 212 of IPC and so far as the petitioners concerned, they arrayed as accused Nos.2 & 3. They have given shelter to the first accused after the occurrence. There are material to attract the offence under Section 212 of IPC. He further submitted that the petitioners along with first accused committed serious offence and as such he prayed for dismissal of the petition.

5. Heard, Mr.S.Muthukumar, learned counsel appearing for the petitioners and Mr.R.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first respondent.

6. There are totally three accused, in which, the petitioners are arrayed as accused Nos.2 & 3. On the complaint lodged by the second respondent, the first respondent registered a case in Crime



No.301/2018 for the offence under Sections 451, 354 (A) and 309 of IPC. Subsequently, the victim died due to burn injuries on 19.10.2018 and as such, the offences were altered into Sections 452, 354 (A), 376, 306 and r/w 34 and 212 of IPC. As far as the allegations as against the petitioners are concerned they provided shelter to the first accused and also allowed him to escape from the scene of Crime.

7. The case of the prosecution is that on 11.10.2018, when the victim was alone in her house, the first accused requested hammer to adjust the T.V Channels as requested by her. At that juncture, the first accused mis-behaved with her and as such, she felt ashamed and poured kerosene on her. Thereafter, she set fire on her and sustained grievous injuries. Immediately, she was taken to the Government Hospital and given treatment to her. Unfortunately, on 19.10.2018 she succumbed to grievous injuries. According to the case of the prosecution, the petitioners happened to be the relatives of the first accused have allowed the first accused to escape from the scene of crime and also given shelter to him after the crime committed by him. To substantiate this charges, the prosecution examined the second respondent and she stated that the petitioners have allowed the first accused to escape from the scene of crime and also they had common intention to give shelter to him after the crime. Except this allegation, no other allegations are there as against the petitioners to attract the offence as alleged by the prosecution.

8. While pending this petition to quash the FIR, the first respondent completed investigation and filed a final report and the same has been pending for trial in PRC.No.36/2019 on the file of the learned Judicial Magistrate, No.I, Kulithurai. In this regard, the learned counsel for the petitioners relied upon the judgment in the case of **Anand Kumar Mohatta and another Vs. State (Government of NCT of Delhi) Department of Home and another** reported in **AIR 2019 SC 210** held as follows:-

"15. First, we would like to deal with the submission of the learned Senior Counsel for the respondent No.2 that once the charge sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. Vs. State of Gujarat. In the case of Joseph Selvaraj A. (supra), this Court while deciding the question whether the High Court could entertain the 482 petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed:-



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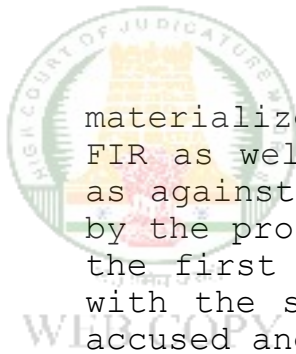
"16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Singly Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc., or not."

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr.P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C., Section 482 of Cr.P.C reads as follows:-

"482. Saving of inherent power of the High Court:- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial Court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advance, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

9. Hon'ble Supreme Court held that it is settled principle of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial Court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advance, and the allegations have



materialized into a charge sheet. In the case on hand, even in the FIR as well as the Charge Sheet there is absolutely no allegations as against the petitioners to attract any of the offence as alleged by the prosecution. The petitioners happened to be the relatives of the first accused, they have been falsely implicated as an accused with the simple allegation that they provided shelter to the first accused and also allowed him to escape from the scene of crime.

10. The case of the prosecution is that the first accused misbehaved with the victim girl and as such, she felt ashamed. Thereafter, the victim herself poured kerosene on her and set fire on her own. Therefore, no offence is made out as against the petitioners and the entire proceedings are nothing but clear abuse of process of law.

11. In view of the above discussion, the proceedings in Crime No.301 of 2018 on the file of the first respondent police, Puthukadai Police Station, Kanyakumari District, is hereby quashed as against the petitioners herein. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

dss

To

1.The Inspector of Police,
Puthukadai Police Station,
Kanyakumari District.

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

+1 CC to M/s.S.MUTHUKUMAR, Advocate (SR-91287[F] dated 04/10/2019)

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JM/22.10.2019/5P/4C