



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.16512 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

WEB COPY

1.Viswanatham

2.V.Menaga

... Petitioners/Accused 1&2

Vs

V.Rajasekaran

... Respondent/Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to P.R.C.No.74 of 2014 on the file of the learned Judicial Magistrate No.2, Madurai and quash the same.

For Petitioners : Mr.B.Jameel Arasu

For Respondent : No appearance

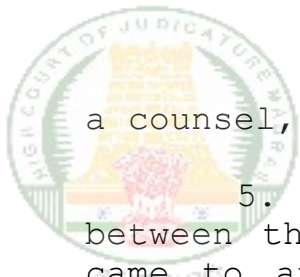
ORDER

The petitioners have filed this criminal original petition for quashing the proceedings in P.R.C.No.74 of 2014 on the file of the Judicial Magistrate No.2, Madurai.

2. It appears that there was a love affair between the daughter of the petitioners and the son of the respondent.

3. The allegation of the respondent is that this was not acceptable to the petitioners herein and that therefore, they had engaged henchmen and attacked him causing serious injuries on 20.08.2013. The son of the respondent namely Vivek Kumar was admitted to the Hospital by the Thilagarthidal Police. In that regard, Crime No.1123 of 2013 was registered on the file of the C4, Thilagarthidal Police Station for the offences under Sections 323, 324, 326, 379, 406 and 307 of IPC. Investigation was taken up and it was closed as "Mistake of fact". Notice was given to the respondent herein. The respondent filed protest petition. He however withdrew the same and the order was passed in R.C.S.No.99 of 2014 on 09.07.2014 permitting the respondent herein to withdraw his protest petition. In the meanwhile, he filed the impugned private complaint. Cognizance of the offences under Sections 323, 324, 326, 379, 406 and 307 of IPC was taken. In the private complaint, not only the petitioners but also their daughter was implicated as accused. To quash the same, this criminal original petition has been filed.

<https://hcservices.ecourts.gov.in/hcservices/> 4. Though the respondent has been served and he had engaged



a counsel, there is no representation on his behalf.

5. The petitioner's counsel submitted that the love affair between the daughter of the petitioners and the respondent's son came to an end. The petitioners herein as responsible parents arranged the marriage of their daughter. Unable to come to terms with the said development, the son of the respondent jumped from Madura Coats Bridge with an intention to commit suicide. In fact, this was witnessed by the policemen on bandobast duty. That is why, the investigating officer filed final report closing the case as "Mistake of Fact".

6. I am of the view that the impugned complaint will have to be quashed on a short ground. According to the respondent herein/complainant, his son Vivek kumar was brutally attacked and pushed from a overbridge, thereby, causing him serious injuries. The police have filed a final report indicating that it was a case of attempt to commit suicide. Vivek Kumar is very much alive. It is he who could have filed a private complaint. In the private complaint, Vivek Kumar has not even been shown in the list of witnesses. The sworn statement of Vivek Kumar was not obtained. As per Section 200 of Cr.P.C., a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present. In this case, in the very nature of things, Vivek Kumar ought to have been examined on oath. The private complaint was filed in February 2014. But it appears that cognizance was taken only in August 2014. If Vivek Kumar could not have come physically to the Court, by some other mode, his sworn statement ought to have been obtained. Nothing of the sort so done in this case. Therefore, the very act of taking cognizance is vitiated. Vivek Kumar must forget the past and move on. In this case, even though he may prefer to do so, it appears that his father would not allow him to do so. The continuation of the impugned proceedings would amount to abuse of legal process. Even though the petitioner's daughter has not been added as third petitioner, the benefit of this order will extend to her also. The entire proceedings will have to be quashed. The impugned proceedings stand quashed. This criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)



To
The Judicial Magistrate No.2, Madurai.

+1 CC to M/s.B.JAMEEL ARASU, Advocate (SR-87190[F] dated
17/09/2019)

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