



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.12.2019
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
CRL OP(MD) . Nos.19973 and 19974 of 2015
and
Crl.M.P. (MD) . No.2079 of 2018
in
CRL OP(MD) . No.19973 of 2015

K.Gunavathy ... Petitioner in both Crl.O.Ps

-Vs-

The Inspector of Police,
Thiruvidaimaruthur Police Station,
Thiruvidaimaruthur Taluk,
Tanjore District. ... Respondent in CRL OP(MD) .
No.19973 of 2015

Mr.Selva Raj,
Formerly Inspector of Police
Served year (2012 - 2014),
Thiruvidaimaruthur Police Station,
Thiruvidaimaruthur Taluk,
Tanjore District.
Now Serving as:-
Deputy Superintendent of Police,
Thanjor District ... Respondent in CRL OP(MD) .
No.19974 of 2015

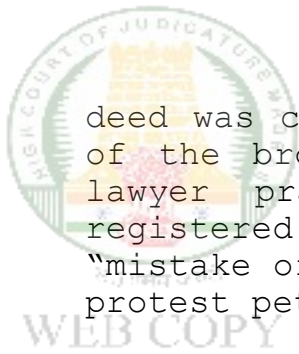
Commn Prayer: Criminal Original Petitions filed under Section 407 of Cr.P.C, to withdraw the protest petition in Crl.M.P.Nos.5901 and 6452 of 2015, respectively pending on the file of the learned Judicial Magistrate Cum II Additional District Munsif Court, Kumbakonam and transfer the same to any one of the learned Judicial Magistrate, Trichy.

(in both Crl.O.Ps)

For Petitioner : Mr.Nirajan S.Kumar
For Respondent : Mr.A.Robinson
Govt. Advocate (Crl. Side)

C O M M O N O R D E R

The petitioner is the defacto complainant in Crime No.292 of 2012 registered on the file of Thiruvidaimaruthur Police Station. The petitioner's allegation is that her signature and thumb impression were forged and by committing impersonation a mortgage



deed was created in her name. She would accused her in-laws. One of the brother-in-law is one Mr.Selvakumar, who happens to be a lawyer practicing in Kumbakonam. The petitioner's case was registered as Crime No.292 of 2012. But then, it was closed as "mistake of fact". The petitioner received RCS notice. She filed a protest petition in Cr.M.P.No.5901 of 2015.

2.Her grievance is that Since Thiru.Selvakumar is practising as lawyer in the Court where her protest petition has been filed, she is facing some difficulties. I do not want to go into factual veracity of the said statement. But then, the petitioner as complainant is entitled to a fair disposal of her complaint. Since the person whom she is accusing is a member of the bar practicing in the very same Court, the petitioner is probably justified in her apprehension. Therefore, the petitioner's protest petition in Cr.M.P.No.5901 of 2015 is transferred from the Court of learned Judicial Magistrate Cum II Additional District Munsif Court, Kumbakonam, to the Court of the learned Judicial Magistrate No.I, Thanjavur. Crl.O.P.(MD)No.19973 of 2015 stands allowed. The transferree Court will issue notice to the concerned and proceed with the matter in accordance with law. Consequently, connected miscellaneous petition is closed.

3.The petitioner is aggrieved by the closures given to her crime case by the investigating officer. She has also filed a private complaint against him. By the time the private complaint came to be filed, the investigating officer became Deputy Superintendent of Police. A Deputy Superintendent of Police is removable from his post only by orders of the Government. Therefore, without getting sanction from the Government under Section 197 of Cr.P.C., a Deputy Superintendent of Police cannot be prosecuted. In this case, there is nothing on record to show that the petitioner has obtained such a sanction. The learned Government Advocate (Crl. Side) stated that Mr.Selva Raj, who is shown as respondent in this criminal original petition has since retired from service. He has after all conducted the investigation and came to the conclusion that the case deserves to be closed as "mistake of fact". May be his conclusion is wrong but then the remedy available to the petitioner is else where. Seeking to prosecute the investigating officer cannot be said to be proper. In this view of the matter, I do not find any ground to grant relief. Hence, Crl.O.P.(MD)No.19974 of 2015 stands dismissed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To:

- 1.The Judicial Magistrate Cum II Additional District Munsif Court,
Kumbakonam.
- 2.The Judicial Magistrate No.I, Thanjavur.
- 3.The Inspector of Police, ,
Thiruvidaimaruthur Police Station,
Thiruvidaimaruthur,
Tanjore District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to Mr.NIRANJAN S.KUMAR, Advocate (SR-103314[F] dated
04/12/2019)

Crl.O.P. (MD)Nos.19973 and 19974 of 2015
03.12.2019

VB(04.06.2020) 3P 6C