



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.04.2019

PRONOUNCED ON :15.07.2019

CORAM

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1 OP(MD)No.3097 of 2016

and

CRL MP(MD)No.1564 of 2016

1.Indhumathi

2.Muthu Ganeshan

... Petitioners / Accused Nos.1 and 2

Vs

Fathima

... 1st Respondent / Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the case in PRC No.14 of 2015 on the file of the Judicial Magistrate Court, Devakottai and quash the same, thereby allow the present Criminal Original Petition.

For Petitioners : Mr.C.Jeyaprakash
For Respondent : Mr.R.Mariappan

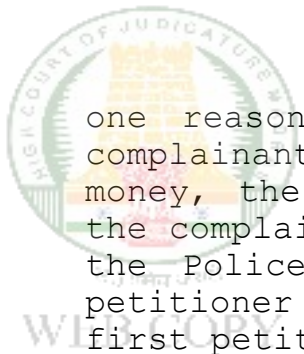
ORDER

This petition has been filed by the accused 1 and 2 in PRC No.14 of 2015, pending on the file of the learned Judicial Magistrate, Devakottai to quash the proceedings pending against them.

2.The learned Judicial Magistrate, Devakottai has taken cognizance of the private complaint filed by the respondent as against these petitioners for the offence punishable under Sections 294(b), 341, 307 and 506(ii) IPC and issued summons to these petitioners on 25.08.2015.

3.The sum and substance of the complaint in PRC No.14 of 2015, is as follows:

3.1.The complainant and her husband are Teachers by profession and the accused were their neighbours. The accused are running computer centre at Ram Nagar, Devakottai and they are said to have borrowed a sum of Rs.50,000/- from the complainant, two years prior to the date of complaint and when the complainant requested to return the money, the petitioners had evaded by saying



one reason or other. On 10.03.2014 at about 7.00 am, when the complainant went to the petitioners' house and asked for return of money, the petitioners refused to return the money and therefore, the complainant warned them that she would prefer a complaint before the Police and was returning home and at that time, the first petitioner by abusing her with filthy words, waylaid her and the first petitioner has instigated the second petitioner to kill her by throttling the complainant's neck and the second petitioner by saying, only if you are alive, you would lodge a complaint, strangled the complainant's neck and the complainant's husband attempted to prevent her, had pushed the second petitioner away and he fell down on a nearby stone and sustained blood injury on his head. The complainant also sustained lacerated injury and according to her, if her husband had not interfered at the right time, she would have been killed by the second petitioner. On seeing this incident, one Jesurajan came to the occurrence place and on seeing him, the accused fled away from the place of occurrence by intimidating with an iron rod.

3.2. According to the complainant, her husband went to the Police Station, lodged a complaint, but did not return and therefore, with the help of one Palani Murugan, she went to "Sri Baalamurugan Nursing Home", situated at No.39/19, Silambani North Street, Devakottai - 630 302 and took treatment for her injury. Thereafter, she went to the Devakottai Police Station, where she found her husband was made to sit on the floors of the Police Station. The Inspector of Police, enquired her and assured that he would act upon her complaint and insisted her husband to remain in the Police Station to sign in certain papers. But to their shock and surprise, her husband was remanded by the Police. After the release of her husband from jail, they went to Devakottai Police Station and enquired about their complaint and the Police replied that they have taken action and they would receive the summons from the Court.

3.3. While so, on 06.04.2015, the complainant and her husband received summons from the Judicial Magistrate Court, Devakottai and only then, they came to know that Police had registered a case only against them and has not acted upon the complaint lodged by the complainant. Hence, she lodged a private complaint on 19.06.2015 before the learned Judicial Magistrate, Devakottai. According to her, she and her husband were examined by the learned Magistrate on 24.06.2015 and three other witnesses were also examined on 03.07.2015 and 20.07.2015 and only thereafter, the learned Magistrate had taken the complaint on file in PRC No.14 of 2015 and issued summons to the petitioners on 25.08.2015. As against the same, this quash petition has been filed by the petitioners.

4. The learned Counsel for the petitioners submitted that the petitioners are the husband and wife and are residing just opposite to the complainant's house. On 08.03.2014, at about 3.00pm, the

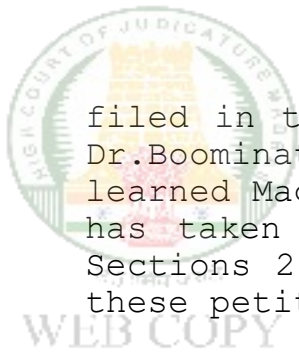


complainant's husband one Dhanaraj called the first petitioner for switching on his computer and misbehaved with her and the same was reported to the complainant and she had requested them to forgive him. However, on 10.03.2014, the complainant and her husband quarrelled with them, abused with filthy words and also assaulted the petitioners. The second petitioner in that incident had suffered serious head injury and was admitted in Devakottai Government Hospital and on their complaint, Devakottai Town Police Station registered a case against the complainant and her husband in Crime No.194 of 2014 on 10.03.2014 for the offence punishable under Sections 294(b), 324, 354 and 506(ii) IPC and after investigation, the Police had filed a final report as against the complainant and her husband before the Judicial Magistrate, Devakottai in CC No.35 of 2015, for the offence punishable under Sections 294(b), 324, and 506 (ii) IPC, on 21.04.2015. On knowing that the final report has been filed against them, this complaint has been filed by the complainant, as a backfire, before the learned Judicial Magistrate on 19.06.2015. According to the petitioners, the complaint is foisted in order to wreak vengeance against them and to defeat the final report pending against them. Admittedly, this private complaint has been filed after 1 year and 3 months from the date of occurrence and the same has been maliciously instituted without any basis and therefore, the complaint is liable to be quashed.

5.Per contra, the learned Counsel appearing for the complainant would submit that the complainant suffered injury on her neck and she was treated at Sri Baalamurugan Nursing Home at Devakottai and she was under treatment for nearly 43 days and her service register would also expose the same. In fact, the present complaint has been filed with the support of the certificate issued by one Dr.Boominathan of Baalamurugan Nursing Home and only after satisfying with the *prima facie* materials, the Magistrate has taken the complaint on file and it cannot be rejected in *limine*. According to the complainant, in support of her complaint, her husband and one Jesuraj, Palani Murugan and Dr.Boominathan were examined before the learned Judicial Magistrate and this is a case for trial. Therefore, this criminal original petition is liable to be dismissed.

6.Heard the learned Counsel on either side and also perused the materials available on record.

7.This complaint has been filed as a counter complaint to the case in Crime No. 194 of 2014. Admittedly, the occurrence in Crime No.194 of 2014 and the present complaint are said to have taken place on 10.03.2014 at about 7.30 am. The complainant and her husband are the accused in Crime No.194 of 2014, wherein the Inspector of Police, Devakottai, has conducted an investigation by examining several witnesses and filed a final report before the learned Judicial Magistrate, Devakottai and the same was also taken on file in CC No.35 of 2015 on 21.04.2015. After the filing of the



filed in the strength of the Medical Certificate issued by the one Dr.Boominathan of Sri Baalamurugan Nursing Home at Devakottai. The learned Magistrate, satisfied with the materials placed before him, has taken the complaint on file for the offence punishable under Sections 294(b), 341, 307 and 506(2) IPC and issued summons against these petitioners.

8.As discussed above, the complaint has been filed in the strength of the Medical Certificate, which is said to have been issued by one Dr.Boominathan. On careful perusal of the medical certificate, it shows that on 10.03.2014 at about 10.00 am, the complainant, who is aged about 54 years, was taken to the hospital by one K. Palani Murugan and it has been reported to the Doctor by the complainant that she is alleged to have been assaulted by two known persons by hand on 13.03.2014 at about 7.30 am in front of her house. The said Dr.Boominathan has also noted down an abrasion about 2 cm length over the front neck and certified that the injury is simple in nature. This certificate was issued by Dr.Boominathan on 20.03.2014 and the complaint was lodged on 19.06.2015 that too after filing of the final report in CC No.35 of 2015.

9.Admittedly, this case falls under medicolegal cases and the Government, time and again, issued several guidelines in handling such cases. The first and foremost duty of the Doctor, who is attending the medicolegal case is that he/she has to record the same in a separate Register and a medicolegal report should be issued. The Doctor is also expected to intimate the medicolegal case to the nearest Police Station and the medicolegal Register should include the time, date and place of occurrence, place of examination and name of the examining Doctor and the details of the injury. The report must be handed over to the Police officials after getting them duly received on the duplicate copy of the same. The records should be kept under lock and key, in the custody of the Doctor concerned or may be kept in the record room of the hospitals, where such facility is available. There is no specified time limit after which the medicolegal report can be destroyed and hence, they have to be preserved.

10.In this case on hand, since the entire case of the complainant rests upon the medical certificate issued by Dr.Boominathan, the learned Counsel for the petitioners attacked the same that it is a fabricated one. The learned Counsel for the complainant / respondent undertook to produce the documents of case sheet and the treatment records provided at Sri Baalamurugan Nursing Home, on 08.04.2013 and at his request the case was adjourned to 15.04.2019. But, till date, the complainant has not come forward to produce the said treatment details including the Registers maintained at Sri Baalamurugan Nursing Home.

11.The complaint in Crime No.194 of 2014, lodged by the first
<https://hsevisitorservices.in/hsevisitorservices/> of serious nature, wherein it is alleged that the



complainant's husband, who is a Teacher and also a neighbour of the petitioners, called the first petitioner in the absence of her husband and misbehaved with her and when she and her husband reported the same to the complainant, they were beaten up, in which, the first petitioner had sustained serious injury, admitted in the hospital and a case was also registered in Crime No.194 of 2014 as against this complainant and her husband and after investigation, final report was also filed as against the complainant and her husband.

12.Now, this private complaint has been filed after 1 year and 3 months from the date of occurrence and that too, after the filing of the the final report in Crime No.194 of 2014, wherein the complainant has been slapped with criminal charges. As per the medical certificate, the complainant is said to have taken treatment before one Dr.Boominathan at Sri Baalamurugan Nursing Home, Devakottai on 10.03.2014 and the certificate issued by the said Doctor is extracted hereunder:

" I Dr.R.Boominathan, M.B.B.S after careful personal examination of the case hereby certify that Tmt.J.Fathima, B.T.Assitant, St.Mary's Girls Higher Secondary School, Devakottai, is suffering from injury neck c hypertension and I consider that a period of absence from duty for 25 days with effect from 10.03.2014 is absolutely necessary for the restoration of her normal health

Station : Devakottai
Date :10.03.2014

XXXXXX
Dr.R.Boominathan
Govt.Gazetted Medical Officer
Reg.No.38914,
No.9, Silambani North Street,
Devakottai - 623302.
Ph:04561 272439."

The certificate dated 20.03.2014 given by the said Doctor, is also extracted hereunder.

Dated : 20.03.2014
10.03.2014
10.00am

*Tmt.Fathima aged 54 years
W/o.Thiru Dhanraj
Ramnagar, Devakottai.*

*ABM Over the Rt cheek
Two black mole over the Rt upper Arm
brought by Mr.K.Palani Murugan,
S/o.Thiru Kesavan*



Alleged to have been assaulted by two known person c hands on 10.03.2014 at 7.30 am in front of her house.

Enquiry: An abrasion about 2 cm length over the front of her neck.

*Nature of injury : Simple
treated as OP*

XXXXXX

20.03.2014

Dr.R.Boominathan

Govt.Gazetted Medical Officer

Reg.No.38914,

No.9, Silambani North Street,

Devakottai - 623302.

Ph:04561 272439."

13. There are over writings and corrections in the certificate dated 20.03.2014 and in fact, the same does not meet the guidelines, which are expected to be followed by the Doctors in medicolegal cases. Admittedly, Dr.Boominathan, who is said to have attended the medicolegal case on 10.03.2014, has not intimated the same to the nearby Police Station. The complainant has also not preferred any complaint before the concerned Police Station, though she is said to have visited the Police Station on 10.03.2014. The copy of the complaint dated 10.03.2014 has not been filed along with the complaint filed before the Judicial Magistrate Court, Devakottai.

14. Though the medical certificate was obtained on 20.03.2014, the complaint was filed only on 19.06.2015. The complainant, who is a Teacher in Government School involved in the offences in Crime No.194 of 2014, wherein FIR has been registered on 10.03.2014. Her husband was also arrested. According to the petitioners, the complainant, in order to avoid the arrest, has obtained medical certificate for leave or extension or commutation of leave on 10.03.2014, as if she suffered injury in neck and hypertension and availed leave from department and she was on medical leave for nearly 3 days to avoid arrest in Crime No. 194 of 2014 and with this certificate, which she has obtained for availing medical leave, she has lodged this complaint against them / the victims in Crime No.194 of 2014. This is a glaring case, where the guidelines contemplated to maintain the registers as required by a Doctor, who attends medicolegal case has not been followed. Though the complainant had undertaken to produce the materials in respect of the treatment and other details before this Court, they had not furnished the same, though sufficient opportunity was provided.

15. The medical profession is considered to be a noble profession. Therefore, the Doctors have the highest responsibility in the society. The medical profession requires advanced education



and training, which calls for continuous updating. At the same time, the Doctor has ethical and legal obligation and he needs to abide by the laws of the land, while discharging the duties. In medical profession, every Doctor would come across medico legal cases and the guidelines for recording the medico legal cases.

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16.The Doctor Mr.Boominathan, also claims to be Government Gazetted Medical Officer, must have known the basic principle to intimate the Medicolegal Cases to the nearest Police Station, but he has not done so in this case. Therefore, this Court is of the view that the certificate issued by Dr.Boominathan of Sri Baalamurugan Nursing Home, without following due procedures in recording the Medicolegal Cases, is not having any legal sanctity to act upon.

17.Admittedly, this complaint has been filed by way of private complaint and in the strength of the medical certificate issued by Dr.Boominathan, after 1 year and 3 months. If this type of complaint can be entertained with such medical certificate, it would ruin the entire criminal justice system and therefore, this complaint is liable to be quashed and accordingly, the proceedings in PRC No.14 of 2015 on the file of the Judicial Magistrate, Devakottai is hereby quashed.

18. Registry is directed to mark a copy of this order to the Medical Council of Tamil Nadu and to the Secretary, Health Department for appropriate action as against the Doctor who has issued the above mentioned certificate, without following the guidelines for handling the medicolegal cases and also for issuing necessary circular to the Registered Medical Practitioners with the guidelines in handling the medicolegal cases.

19.In the result, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

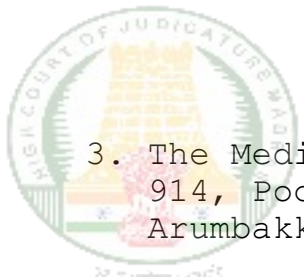
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Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate,
Devakottai.

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



3. The Medical Council of Tamil Nadu,
914, Poonamalle High Road,
Arumbakkam, Chennai 600 106

4. The Secretary Health and Family Welfare Department,
Secretariat, Chennai 9

+1 CC to Mr.S.MUTHUKUMAR, Advocate (SR-75628[F] dated 17/07/2019)

CrIOP(MD)No.3097 of 2016
15.07.2019

dsk

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