



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 18.09.2019**

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CORAM:

**THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

**Crl.O.P. (MD) .No.16986 of 2017**

**and**

**Crl.M.P. (MD) No.11179 of 2017**

Radhakrishnan

...Petitioner/Petitioner

Vs.

1) Santhanaselvan

2) Manimegalai

3) Murugan  
Thasildar,  
Taluk Office,  
Tharagampatti,  
Kadavur Taluk, Karur District.

4) Chakaravarthi,  
Village Administrative Officer,  
Veeranampatti Post,  
Melapahuthi Village,  
Kadavur Taluk,  
Karur District.

5) Rajasekar,  
Assistant Village Administrative Officer  
Veeranampatti Post,  
Melapahuthi Village,  
Kadavur Taluk, Karur District.

6) The Sub Inspector of Police,  
Chinthamanipatti Police Station,  
Kadavur Taluk,  
Karur District.

... Respondents/ Respondents

**PRAYER:** Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the docket order passed in C.C.No.144 of 2017 dated 15.09.2017 on the file of the Judicial Magistrate No.I, Kuzhithalai insofar as not issuing summons to A3 to A6 namely the respondent 3 to 6 herein and direct the Judicial Magistrate No.I, Kuzhithalai to take cognizance and issue notice to respondents 3 to 6 herein.



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For Petitioner : Mr.V.Illanchezian  
For R3 : Mr.S.Prabha,  
For Mr.S.Gokulan  
For R6 : Mr.S.Chandrasekar,  
Additional Public Prosecutor  
For R1,2,4 & 5 : No appearance

**ORDER**

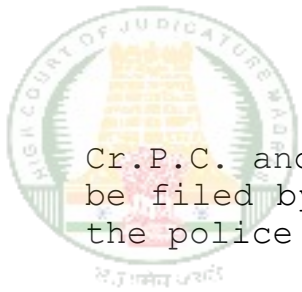
This Criminal Original Petition has been filed challenging the order passed by the Court below refusing to take cognizance of the complaint as against A3 to A6.

2. The learned counsel for the petitioner submitted that the petitioner filed a private complaint before the Court below against the respondents for offences under Sections 147, 294(b), 323, 354, 441, 427, 107, 108 and 506(i) of I.P.C r/w Section 4 of Women Harassment Act. The learned counsel submitted that initially a complaint was given before the sixth respondent and since no action was taken, the same was reported before the Superintendent of Police and in spite of the same, no action was taken. Therefore, the petitioner was constrained to file a private complaint before the Court below.

3. The learned counsel for the petitioner submitted that the complaint read along with sworn statement recorded by the Court below from two of the witnesses, clearly makes out a cognizable offence against all the accused persons. Therefore, the Court below ought to have taken cognizance against all the accused persons.

4. The learned counsel appearing on behalf of the respondents 1 to 5 submitted that the specific allegations that have been made in the complaint only pertains to the overt act committed by A1 and A2. The learned counsel submitted that the wife of the petitioner, from whom the sworn statement was recorded by the Court below, has improved the case and the Court below has rightly come to a conclusion that there is a *prima facie* case only as against Accused Nos.1 & 2. Therefore, the learned counsel submitted that there is no ground to interfere with the order passed by the Court below.

5. The learned Additional Public Prosecutor appearing on behalf of the sixth respondent submitted that the sixth respondent police ought not to have been made as an accused in this case. The learned counsel further submitted that, if there is inaction on the part of the police in not registering an F.I.R. based on the complaint given by the petitioner, the petitioner has to work out his remedy by filing an appropriate petition under Section 156(3) of



Cr.P.C. and work out his remedy. Instead, a private complaint cannot be filed by adding the police as an accused only on the ground that the police refused to register an F.I.R in this case.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. A careful reading of the complaint shows that there are specific allegations made against A1 & A2 and the overtact has been specifically attributed to these two accused persons. Only general allegations have been made against the other accused persons. The wife of the petitioner, from whom the sworn statement has been recorded by the Court below, has also spoken about certain overtact of A3. The Court below on considering the *prima facie* materials, has proceeded to take cognizance of the complaint and issue process under section 204 of Cr.P.C only as against A1 & A2.

8. This Court does not find any illegality or infirmity in the procedure followed by the Court below and the Court below is only at the stage of considering the *prima facie* materials. This complaint has to be dealt with in accordance with Chapter 19(B) of Cr.P.C and the case is at a very nascent stage. Unfortunately, the entire complaint has been stalled by the petitioner and there is no progress in this case. It is reported that the case is now at the stage of appearance of A1 and A2 before this Court. The Court below will have to now record the evidence on the side of the complainant under Section 244 of Cr.P.C. and the accused persons (A1 and A2) will have the right to cross examine. Thereafter, the Court below will have to see whether the charges will have to be framed or the accused person will have to be discharged under Section 245 of Cr.P.C. If the accused persons are not discharged, thereafter, the Court below has to follow the procedure under Section 246 of Cr.P.C. If in the course of the proceedings, the Court below is able to get any materials as against the other accused persons, it will always be open to the Court below to add them as an accused in exercise of its powers under Section 319 of Cr.P.C.

9. This Court is of the considered view that the respondent police ought not to have been added as an accused in the complaint. The mere fact that an F.I.R. was not registered on the complaint given by the petitioner, does not automatically make the police as an accused in this case. The private complaint itself came to be filed only due to the inaction on the part of the respondent police in not registering an F.I.R. Therefore, there was no reason for the Court below to take cognizance of the complaint as against A6.

10. In view of the above discussion, this Court does not want to interfere with the order passed by the Court below on 15.09.2017. The Court below is directed to proceed further with the complaint in accordance with the procedure as indicated herein above and complete the proceedings as expeditiously as possible.



11. Accordingly, this Criminal Original Petition is disposed of. Consequently, connected Crl.M.P.(MD) No.11179 of 2017 is closed.

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Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.I,  
Kuzhithalai.
2. The Sub Inspector of Police,  
Chinthamanipatti Police Station,  
Kadavur Taluk,  
Karur District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1CC TO MR.V.ILLANCHEZIAN, Advocate Sr. No.87605

+1CC TO MR.S.GOKULRAJ, Advocate Sr. No.87501

Order made in  
**Crl.O.P. (MD) .No.16986 of 2017**

Dated: 18.09.2019

KG(CO)

TR(16.10.2019) 4P 6C