

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.28186 of 2015
and M.P.No.1 of 2015

Prabhakaran,
S/o.Mariyappan

... Petitioner

Versus

1.The Inspector of Police,
Suramangalam Police Station,
Salem District.

2.R.Mallika,
W/o.Rajagopal

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.37 of 2015 in C.C.No.99 of 2014 dated 28.07.2015 on the file of the Additional Mahila Court, Salem by allowing this criminal original petition.

For Petitioner : Mr.Uday Kumar
for Mr.Karan and Uday

For R1 : K.Prabakar
Additional Public Prosecutor

For R2 : Mr.Ashwim Kumar
Legal Aid Counsel

O R D E R

This petition has been filed to set aside the order passed in Crl.M.P.No.37 of 2015 in C.C.No.99 of 2014 dated 28.07.2015 on the file of the Additional Mahila Court, Salem.

2. The gist of the case is that the second respondent/defacto complainant's husband Rajagopal, Late Muthu and Ramaligam are brothers. There was some dispute in respect of sharing the properties between them. On 03.09.2013 at about 9.30 pm, when the defacto complainant had gone to attend the nature's call, Lakshmi/wife of Late Muthu, Kalidass/son of Late Muthu, Prabhakaran and Ramesh/son-in-law of Late Muthu

came to the second respondent house and attacked her due to which she sustained injuries. Thereafter, she was admitted in Government Hospital, Salem and took treatment as inpatient. The information was sent to the Police and after the investigation the police filed the charge sheet against the said Kalidass, Lakshmi and Ramesh for offence under Sections 294(b), 323, 324 of IPC excluding the name of Prabhakaran. Therefore, the second respondent gave representation to the Superintendent of Police on 24.12.2013 to include the name of the petitioner in the proceedings. Since no action was taken she filed CrI.M.P.No.37 of 2015 in C.C.No.99 of 2014 on the file of the Additional Mahila Court, Salem, which was allowed on 28.07.2015.

3. The learned counsel for the petitioner submitted that the said defacto complainant viz., Mallika had given a representation before the Superintendent of Police on 24.12.2013, to include the name of the petitioner herein, who is the brother-in-law of Kalidass/A1 and son-in-law of Lakshmi/A2 in the proceedings. Since no action was taken, when the trial was in progress, she filed a petition under Section 319 of Cr.P.C to include the name of the petitioner. On 28.07.2015, the Lower Court allowed the petition filed by the second respondent and arrayed this petitioner as accused. He further submitted that there was some property dispute and there is clear motive to implicate the petitioner as accused since the petitioner was working as a Government Servant. The Hon'ble Apex Court in several cases clearly held that to array the person as an accused under Section 319 of Cr.P.C, mere prima facie evidence is not sufficient.

4. In this case, the only contention of the defacto complainant as well as the finding of the Trial Court is that in the Accident Register, four persons are stated to have assaulted the defacto complainant. But, after investigation, only three persons are named as accused. The further contention is that the FIR is based on the oral statement. The respondent police arrayed only three persons in the FIR despite four persons name mentioned by the defacto complainant, the same is reflected in the Accident Register.

5. The learned counsel for the petitioner further submitted that recording of Accident Register is only for the limited purpose to show the injuries sustained at the relevant time and to aid investigation. To this limited purpose Accident Register to be considered. The Doctor who treated the victim, the defacto complainant stated only three persons attacked her. Further, in the evidence, P.W.1, defacto complainant has given general statement against the accused not specifying the overt act against each of the accused and overt act so attributed does not correspond to the injury sustained as seen in the Accident Register.

6. In view of the same, the contention of the defacto complainant is merely an exaggeration to somehow implicated the petitioner in the proceedings. He further submitted that Al/Kalidass in this case was brutally attacked with grinding stone and lost two teeth, he was also admitted in the Government Hospital. The same could be seen from the Accident Register, as well from the Doctor Statement who treated the said Kalidass. From the FIR in Crime No.454 of 2013. If the petitioner was present in the scene of occurrence and assaulted the defacto complainant, he would have been shown as a witness in Crime No.454 of 2013, which culminated into C.C.No.399 of 2014.

7. The learned counsel for the defacto complainant submitted that the oral statement of the defacto complaint was recorded and thereafter, FIR was registered, at the time of recording the statement and registering FIR, the Police not included left the name of the petitioner herein and the petitioner was not arrayed as accused, the 161(3) statements were recorded to suit the case and hence, the petitioner was not made as an accused. The petitioner assaulted the defacto complainant and same was mentioned to the Doctor, in the Accident Register it is mentioned that four persons attacked her. Further, she immediately gave representation to the Superintendent of Police and filed petition under Section 319 Cr.P.C and during the examination as P.W.1 in her evidence, she had stated about the role played by the petitioner. The defacto complainant/P.W.1 is yet to be cross examined.

8. In view of the same, the Lower Court arrayed the petitioner as an accused in this case. In support of this contention, he relied on the judgment of the Apex Court in Sugerevee Kumar Vs. State of Punjab, reported in 2019 Sc Online (SC 390).

9. The learned Public Prosecutor submitted that this case is a counter case to Crime No.454 of 2013, in this case investigation completed and charge sheet filed in C.C.No.399 of 2014 for the other offence under Section 326 Cr.P.C after full fledged trial acquitted the defacto complainant by judgment dated 15.07.2019. Since the defacto complainant being a lady the Crime No.455 of 2013, transferred to the Judicial Magistrate, Salem, which is still pending trial. He further submitted that the Doctor in his statement clearly stated that in this case the victim was attacked by three persons and in the Accident Register, it is mentioned as four persons. The second respondent/defacto complainant filed a petition under section 319 of Cr.P.C and also examined herself as PW.1, the Lower Court on considering the evidence and materials on record had arrayed the petitioner as an accused.

10. Considering the rival submissions and perusal of the materials, it is seen that the Doctor in his statement clearly stated that the second respondent was attacked by three persons and also considering the fact that an F.I.R was filed in the year 2013 and after that in the year 2015 the second respondent has filed the petition to include the name of the petitioner in C.C.No.99 of 2014. There is a counter case in Crime No. 454 of 2013 which culminated into C.C.No.399 of 2014. The defacto complainant herein is acquitted in that case. The counter case is of serious in nature, admittedly in that case petitioner is not an witness since he was not present during the occurrence. The Hon'ble Apex Court has held that mere prima facie material will not suffice to array a person as accused under Section 319 Cr.P.C., there should be sufficient materials. In this case, there is no sufficient materials against the petitioner. In view of the same, this Court is inclined to allow the quash petition by setting aside the order of the Trial Court in Crl.M.P.No.37 of 2015 in C.C.No.99 of 2014 dated 28.07.2015. The Trial Court is directed to conclude trial in C.C.No.99 of 2014 within a period of three months from the date of receipt of a copy of this order or after lifting of the lockdown and regular functioning of the Courts, which is earlier.

11. With the above direction, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

12. This Court places its appreciation to the Legal Aid Counsel Mr.Ashwin Kumar for making thorough preparation and putting forth his arguments strenuously.

Sd/-
Assistant Registrar

//True Copy// सत्यमेव जयते
Sub Assistant Registrar

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To:

- 1.The Additional Mahila Court,
Salem.
2. The Inspector of Police,
Suramangalam Police Station,
Salem District.

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3.The Public Prosecutor,
Madras High Court.

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and M.P.No.1 of 2015

AJS (CO)
CB(05/11/2020)



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