

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2020

CORAM :

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.581 of 2020 & Crl.M.P. Nos. 4444 & 4445 of 2020

Kalaiaarasi

Petitioner

vs.

1 The State represented by
the Inspector of Police
Adhiyaman Kottai Police Station
Dharmapuri District

2 Manjula

3 Siddhammal

Respondents

Criminal Revision under Sections 397 and 401 Cr.P.C. seeking to set aside the order dated 30.10.2019 made in C.M.P. No.2867 of 2019 in C.C.No.38 of 2014 on the file of the Judicial Magistrate Court No.II, Dharmapuri.

For petitioner

Mr. V. Sakkarapani

For R1

Mrs. P. Kritika Kamal

Govt. Advocate (Crl. Side)

ORDER

Challenging the order dated 30.10.2019 in C.M.P. No.2867 of 2019 in C.C. No.38 of 2014 that was passed by the Judicial Magistrate No.II, Dharmapuri, under Section 319 Cr.P.C., arraying Kalaiaarasi, the petitioner herein as co-accused, this criminal revision has been preferred.

2 Heard Mr. V. Sakkarapani, learned counsel for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the first respondent police.

3 On the statement recorded in the Government Hospital from Selvaraj (de facto complainant), the police initially took the complaint on file in CSR No.382 of 2013 and after preliminary enquiry, registered a regular FIR in Cr. No.323 of 2003 on 02.12.2013 for the offences under Sections 294(b), 323

and 324 IPC against Siddhammal (A.1), Kalaiarasi (A.2) and Manjula (A.3).

4 After completing the investigation, the police filed a final report in C.C. No.38 of 2014 before the Judicial Magistrate No.II, Dharmapuri, only against Siddhammal (A.1) and Manjula (A.3) for the offences under Sections 294(b), 323 and 324 IPC. Charges for the said offences were framed against Siddhammal (A.1) and Manjula (A.3) and they pleaded not guilty.

5 Trial began with the examination of Selvaraj (de facto complainant) as P.W.1. In his evidence, Selvaraj spoke about the involvement of Siddhammal (A.1), Kalaiarasi (A.2) and Manjula (A.3) in the attack that was mounted on him in the course of the incident. At that juncture, the learned Assistant Public Prosecutor filed a petition in C.M.P.No.2867 of 2019 under Section 319 Cr.P.C., for including Kalaiarasi (A.2) as an accused.

6 After hearing the objections raised by the accused, the trial Court, by the impugned order dated 30.10.2019, allowed the protest application in C.M.P. No.2867 of 2019, challenging which, as stated above, Kalaiarasi (A.2) has preferred the present criminal revision.

7 The learned counsel for the petitioner took this Court through the Section 161(3) Cr.P.C. statements of certain other witnesses who have not implicated Kalaiarasi (A.2) in the offence. He further contended that when the police had conducted a thorough investigation and had not included the name of Kalaiarasi (A.2) in the final report, the trial Court ought not to have included her as co-accused.

8 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the petitioner.

9 This Court gave its anxious consideration to the rival submissions.

10 Selvaraj had sustained certain injuries on 24.11.2013 and was admitted in the hospital. Since it was a medico-legal case, intimation was given to the police, who came to the hospital and recorded the statement of Selvaraj.

11 Selvaraj, in his statement, has stated that he had purchased a house from one Padmini and had gone to that house with his wife on 24.11.2013; while they were returning home, Manjula (A.3) picked up a quarrel with him and abused him by saying that when she intends to buy that house, how he can buy

it; she was joined in this quarrel by Siddhammal (A.1) and Kalaiarasi (A.2), who also joined the chorus in abusing him in filthy language; in the course of that quarrel, Manjula (A.3) slashed him with a blow on his left fore arm, Siddhammal (A.1) slapped him on his right cheek and Kalaiarasi (A.2) hit him from behind; for the injuries sustained by him, he was admitted in the hospital and a complaint was given to the police while he was under treatment.

12 Thus, the complaint clearly implicates Kalaiarasi (A.2) also and discloses her overt acts. In this background, when the police filed the final report, they, for the reasons best known to them, excluded the name of Kalaiarasi (A.2) in it. When the person named in the FIR by the de facto complainant is excluded in the final report, a duty is cast upon the Court to inform the same to the de facto complainant and give him an opportunity to file a protest application. This was not done in this case. Selvaraj was oblivious of the fact that Kalaiarasi (A.2) was not included as an accused in the final report. The incident took place on 24.11.2013 and Selvaraj was examined several years later. In his examination, he narrated the whole incident and also the overt acts of Kalaiarasi (A.2). Therefore, this is not a case in which the Magistrate had exercised his powers under Section 319 Cr.P.C. in a cavalier manner. Hence, this Court does not find any infirmity in the impugned order warranting interference by this Court and this criminal revision is liable to be dismissed.

13 The learned counsel for the petitioner submitted that the personal appearance of the petitioner before the trial Court may be dispensed with. Acceding to his submission, the personal appearance of the petitioner before the trial Court shall be dispensed with, on condition that she shall appear before the trial Court immediately after the on-going lock down is lifted and the accused are permitted to enter into Courts and execute a bond under Section 88 Cr.P.C. for Rs.10,000/- without sureties and on further condition that she shall file an affidavit before the trial Court that she will not dispute her identity and that, her counsel will cross-examine the witnesses when they are examined in chief, as held by the Supreme Court in Vinodh Kumar Vs State of Punjab [2015 (1) MLJ (Cr1) 288]. Further, the petitioner shall be present before the trial Court for receiving copies under Section 207 Cr.P.C., for answering charges, for questioning under Section 313 Cr.P.C. and on the date of judgment. For other hearings, if the petitioner files an application under Section 317 Cr.P.C., the same shall be liberally considered. If the petitioner adopts any dilatory tactics, the trial Court shall insist upon her presence. If the petitioner absconds, a fresh FIR can be registered against her under Section 229-A IPC.

In fine, this criminal revision stands dismissed in the above terms. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

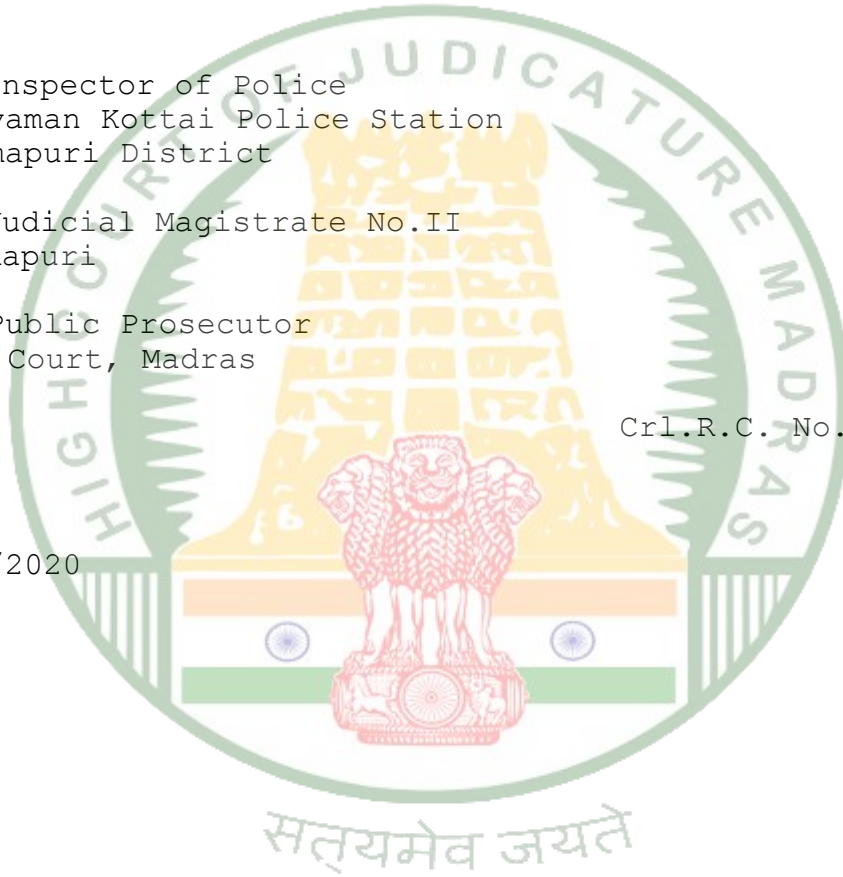
cad

To

- 1 The Inspector of Police
Adhiyaman Kottai Police Station
Dharmapuri District
- 2 The Judicial Magistrate No.II
Dharmapuri
- 3 The Public Prosecutor
High Court, Madras

Crl.R.C. No.581 of 2020

LN(CO)
KKV/06/08/2020



WEB COPY