

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.17324 of 2019
and Crl.MP.Nos.8706 & 8707 of 2019

1. R.Vinod
2. A.Arun
3. Mani @ Manikandan ... Petitioners

Vs.

1. The State rep by
The Inspector of Police,
R-7, K.K.Nagar Police Station,
Chennai.
(Crime No.1611/2017)
2. Jamuna ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to case in C.C.No.2440 of 2018 on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For Petitioner : Mr.S.Prabakaran, Senior Counsel
for Mr.I.C.Vasudevan

For Respondents
For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor.

For R2 : Mr.D.Alexis Sudhakar

ORDER

This petition has been filed to quash the criminal proceedings C.C.No.2440 of 2018 on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai, thereby taken cognizance for offences under Sections 294(b), 506(i), 509 of IPC r/w Section 4 of Tamil Nadu Prohibition of Women Harassment Act, as against the petitioners.

2. On the complaint lodged by the second respondent, the first respondent police registered a case in Crime No.1611 of 2017 for the offences under Sections 294(b), 506(i), 509 of IPC r/w Section 4 of Tamil Nadu Prohibition of Women Harassment Act, as against three persons. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.2440 of 2018, on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai. The petitioners are arrayed as A1 to A3.

3. The learned Senior Counsel appearing for the petitioners submitted that there is absolutely no ingredients or materials to make out a case for the offences as alleged by the prosecution. Even as per the case of the prosecution, the occurrence said to have been taken place not in the public vicinity and not in the public place. Therefore, the provisions under the Tamil Nadu Prevention of Women Harassment Act would not attract as against the petitioners. Further there is no averments with regard to the actual words uttered by the petitioner. The learned Senior Counsel further submitted that insofar as the first accused is concerned, even in the FIR, there is no allegations as against him and no one has spoken about the first accused. Therefore, he prayed to quash the above proceedings.

4. Per contra, the learned counsel appearing for the second respondent/defacto complainant submitted that though the name of the first petitioner was not mentioned in the FIR, there are specific allegations as against the first petitioner and they have jointly committed the crime that too against the woman. As such, the prosecution right charged the petitioners for the offences punishable under Sections 294(b), 506(i), 509 of IPC r/w Section 4 of Tamil Nadu Prohibition of Women Harassment Act and prayed for dismissal of this petition.

5. The learned Additional Public Prosecutor would submit that the petitioners are arrayed as accused 1 to 3 in C.C.No. 2440 of 2018 on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai and the same is pending.

6. Heard Mr.S.Prabakaran, learned Senior Counsel appearing for the petitioner, Mr.D.Alexis Sudhakar, learned counsel appearing for the second respondent and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent police.

7. There are totally three accused and the petitioners are arrayed as A1 to A3. According to the case of the prosecution, the second respondent is the aunt of the first petitioner and on 18.01.2017, the second and third petitioner harassed the second respondent by scolding her while she was visiting his house. There is specific allegations as against the second and third petitioners herein.

8. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no

jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

9. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

10. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the

proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

11. As far as the first petitioner/first accused is concerned, even according to the case of the prosecution, there is no averment or material to attract the offence under Sections 294(b), 506(i), 509 of IPC r/w Section 4 of Tamil Nadu Prohibition of Women Harassment Act. Therefore, the first petitioner is concerned this Criminal Original Petition is allowed and the entire proceedings in C.C.No.2440 of 2018 on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai, is quashed as against the first petitioner/ first accused alone.

12. Insofar as the second and third accused are concerned, there are specific allegations and averments and also materials to attract the offences as alleged by the prosecution. Hence the above judgments are squarely applied to the case on hand. Accordingly, this Criminal Original Petition is dismissed as against the second and third petitioners. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

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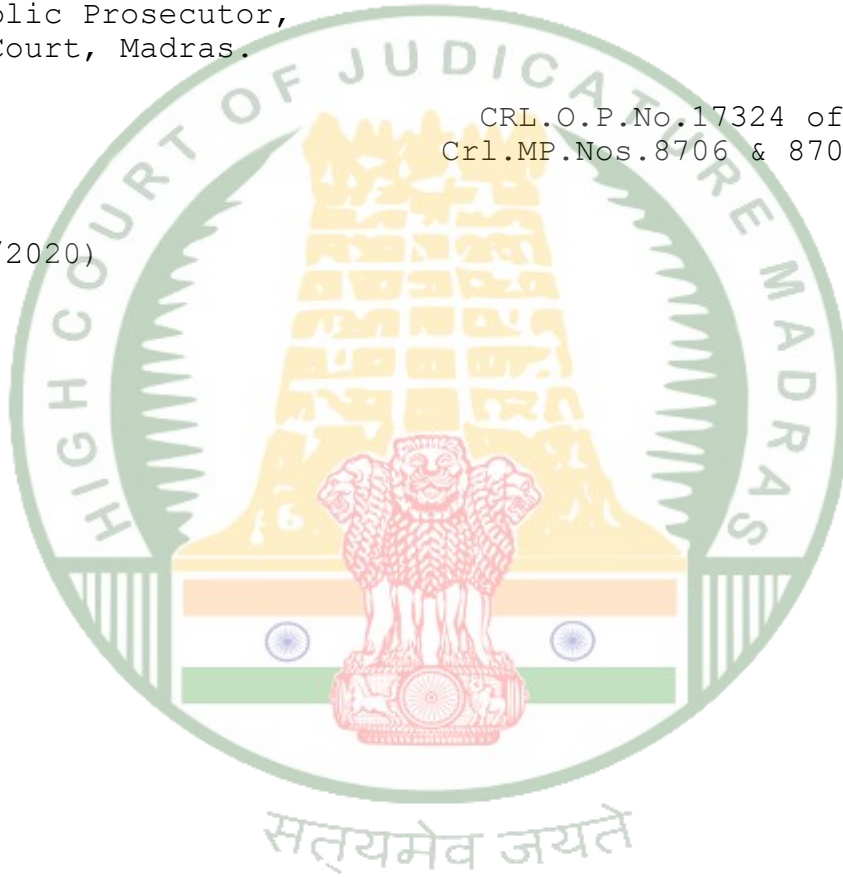
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To

1. XXIII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
R-7, K.K.Nagar Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.17324 of 2019 and
Crl.MP.Nos.8706 & 8707 of 2019

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