

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.02.2020

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.26594 of 2017

and

CrI.M.P.Nos. 15289 & 15290 of 2017

V.Sathishkumar

... Petitioner

Vs.

1 The State by

The Inspector of Police,
Mohanur Police Station,
Mohanur, Namakkal District.
(Crime No.13 of 2015)

2. Priya

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records concerned in S.C.No.109 of 2017 on the file of the Chief Judicial Magistrate, Namakkal, Namakkal District and quash the same in so far as the petitioners are concerned.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.M.Mohamed Riyaz (For R1)
Additional Government Pleader
Mr.D.Shivakumaran (For R2)

ORDER

This petition has been filed by accused No.4 to quash the proceedings against him in S.C.No.109 of 2017 on the file of the Chief Judicial Magistrate, Namakkal.

2. Heard Mr.C.Prakasam, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.D.Shivakumaran, learned counsel appearing for the second respondent.

3. The learned counsel for the petitioner has submitted that the second respondent is the wife of accused No.1 and the accused No.2 is the petitioner's father. He further submitted that as per the FIR, accused No.1 is having illicit intimacy with the accused No.3 and when the same was questioned by the second respondent, accused Nos.1 to 3 have assaulted her and attempted to commit murder. In the FIR, nowhere she has stated that this petitioner was present in the scene of occurrence. He further submitted that after registering the FIR, the second respondent has filed a suit in O.S.No.183 of 2015 on the file of the Sub Court, Namakkal, in which she has filed an application in I.A.No.623 of 2015 seeking interim injunction and in support of the said application, the second respondent herein has filed an affidavit and in the said affidavit also, she has not stated that the petitioner herein has participated in the aforesaid crime. On the contrary, he has categorically stated that the accused Nos.1 to 3 alone assaulted her and that being so, the petitioner has not committed any offence. He further submitted that only in the statement recorded under Section 161(3) Cr.P.C., the second respondent implicated the petitioner herein and in the said statement also, she has not stated that the petitioner herein also assaulted her and on the contrary, she has stated that the petitioner herein instigated accused No.1 to close her today itself. Apart from the said allegations, no other allegation has been made. He further submitted that since the petitioner happens to be the brother of accused No.1, with an intention to harass him, as an after that, in the statement which was recorded under Section 161 (3) Cr.P.C, purposely and willfully roped the petitioner and therefore, he prayed to quash the proceedings against the petitioner.

4. Per contra, the learned counsel for the second respondent has submitted that the FIR is not an encyclopedia in which, all the particulars need not be mentioned. He further submitted that merely because certain facts omitted to mention in the FIR that it will not prevent the eye witnesses to tell the true facts during investigation. He further submitted that in the said statement which was recorded on the next day i.e., on 16.01.2015, she has given an explanation for not implicating the petitioner in the complaint. He further submitted that not only the second respondent but also other eyewitnesses also categorically stated that the petitioner was present at the time of occurrence and he instigated the accused No.1 to commit murder of the second respondent and therefore at this stage, the proceedings against the petitioner need not to be quashed.

5. The learned Additional Public Prosecutor appearing for the first respondent has adopted the arguments advanced by

the learned counsel for the second respondent. He also prayed to dismiss the petition.

6. A perusal of the complaint given by the second respondent dated 15.01.2015 shows that nowhere she has stated that the petitioner herein also participated in the aforesaid crime. She has not even stated that this petitioner was present in the scene of occurrence.

7. It is also to be pointed out that, she filed a suit in O.S.No.183 of 2015 on the file of the Sub- Court, Namakkal and also filed an application in I.A.No.623 of 2015 seeking interim injunction. In support of the said application, she filed an affidavit dated 27.04.2015 wherein she has categorically stated that the accused Nos.1 to 3 alone assaulted and attempted to commit murder her. In that affidavit also, she has not stated that the petitioner herein was also presented at the time of occurrence and instigated the accused No.1 to murder her. Therefore the statement which was said to have been recorded on 16.01.2015 under Section 161 (3) of Cr.P.C implicating the petitioner cannot be taken for consideration. If really she has stated in her 161 statement recorded on 16.01.2015 implicating the petitioner, she would have mentioned the said fact in the affidavit which was filed before the civil Court on 27.04.2015. Therefore, no reliance can be placed on the said statement which implicates the petitioner herein.

8. For the aforesaid reasons, this Court is of the view that there is no prima facie case to proceed against the petitioner herein. The continuance of the proceedings against the petitioner would amount to abuse of process of the Court. Hence the proceedings against the petitioner in S.C.No.109 of 2017 on the file of the Chief Judicial Magistrate, Namakkal District are liable to be quashed.

9. In the result, the Criminal Original Petition is allowed. The proceedings against the petitioner herein in S.C.No.109 of 2017 on the file of the Chief Judicial Magistrate, Namakkal District are quashed. The trial Court is directed to proceed against the other accused persons and dispose of the case in accordance with law. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

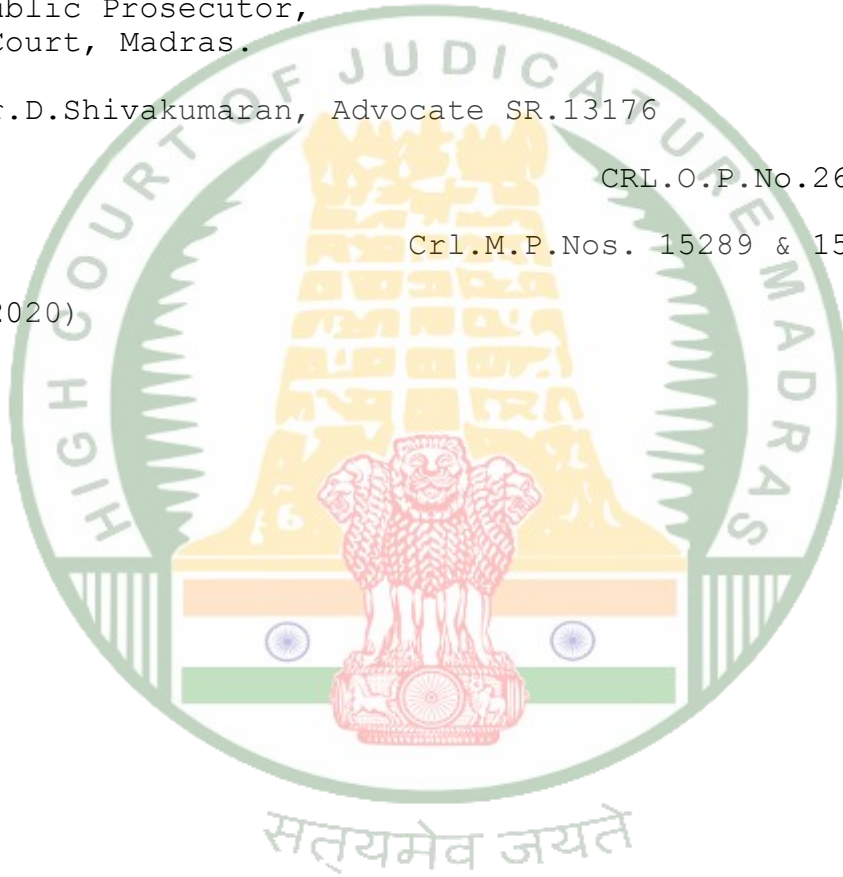
1. The Chief Judicial Magistrate,
Namakkal, Namakkal District.
2. The Inspector of Police,
Mohanur Police Station,
Mohanur, Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Shivakumaran, Advocate SR.13176

CRL.O.P.No.26594 of 2017
and

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PA(CO)
CB(27/05/2020)



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