



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2020

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.101 of 2020

and

Crl.MP(MD)No.931 of 2020

Dr.S.Arunadevi : Petitioner/De-facto Complainant

Vs.

1.The Inspector of Police,
All Women Police Station,
Tiruverumbur,
Trichy District.
In Crime No.2 of 2018

: 1st Respondent/Respondent/
Complainant

2.Dr.A.Pasupathi :2nd Respondent/Respondent/Accused

Prayer: Criminal Revision has been filed under section 397 r/w 401 of Criminal Procedure Code, against the order passed by the Additional Mazhila Court, Trichy, in Crl.MP No.13807 of 2019 in C.C.No.33 of 2018, dated 10.01.2020.

For Petitioner : Mr.C.Susikumar for
M/s.M.Subash Babu

For 1st Respondent : Mr.APG.Ohm Chairma Prabhu
Government Advocate
(Criminal side)

For 2nd Respondent : M/s.Tamilmalar
for Mr.T.Lajapathy Roy

O R D E R

This Criminal Revision is directed against the order passed by the Additional Mahila Court, Trichy, in Crl.MP No.13807 of 2019 in C.C.No.33 of 2018, dated 10.01.2020.

2.The petitioner has preferred a complaint against the accused and on the basis of the complaint, a case was registered by the Inspector of Police, All Women Police Station, Thiruverumbur, in Crime No.2 of 2018 under sections 294(b), 354 and 506(i) IPC and subsequently, final report has been filed for the offence under sections 294(b), 354(A) and 506(i) IPC. The petitioner/de-facto complainant filed a petition under section 173(8) Cr.P.C, which was



dismissed on 20.06.2016. Thereafter, the petitioner/de-facto complainant filed Crl.O.P(MD)No.18087 of 2019 under section 216 Cr.P.C for alteration of the charge sheet. As per the direction of this court, the petitioner filed a petition in Crl.M.P No.13807 of 2019 before the Additional Mahila Court, Tiruchirappalli. The said petition was dismissed on 10.01.2020. Aggrieved over the same, the petitioner is before this court.

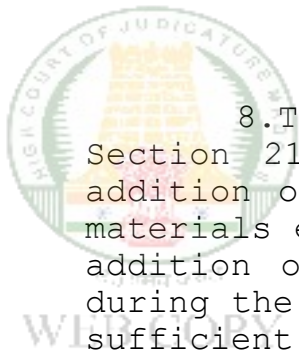
3.Heard both sides and perused the materials available on record.

4.It is mainly argued on the side of the petitioner/de-facto complainant that there are sufficient materials and evidence in the charge sheet to prove the ingredients of section 4 of Women Harassment Act, however, the trial court without going into the merits, has simply dismissed the petition as not maintainable and the Hon'ble Apex Court has repeatedly held that either the victim or the prosecution can file petition or the court can change or alter the charge at any time and prays that the impugned order passed by the trial court has to be set aside.

5.On the other hand, the learned counsel appearing for the 2nd respondent/accused submitted that the court alone has power to frame additional charges or to alter it neither the prosecution nor person interested has *locus standi* to file petition for framing additional charges and the trial court has rightly dismissed the petition filed under section 216 of Cr.P.C, as it does not contemplate any application being filed either by the accused or any witness including the de-facto complainant, it only provides the power of the court to alter the charge or add any charge already framed and prays for dismissal of the criminal revision.

6.It is seen from the records that based on the complaint received from the petitioner/de-facto complainant, the first respondent police registered a case in Crime No.2 of 2018 on 23.01.2018 for the offence under sections 294(b), 354-A and 506(i) IPC. After completion of the investigation, final report has been filed on 18.04.2018 against the accused. The learned trial Judge after careful scrutiny of the materials available on record, has taken cognizance of the case in C.C No.33 of 2018 under sections 294 (b), 354(A), 506(i) IPC. Further, the trial Judge, after compliance of the mandatory procedures as enunciated under the Code of the Criminal Procedure, has framed the charges against the accused on 04.05.2018 and issued summons to the witnesses.

7.It is further seen from the records that the petitioner/de-facto complainant was examined in chief on 13.12.2019 as PW1 and Ex.P1 was marked and PW1 was cross examined on the same day by the defence side. Thereafter, the petitioner filed a petition in Crl.M.P.No.13807 of 2019 in C.C No.33 of 2018 under section 216 of Cr.P.C for alteration of charges framed against the accused.



8.The Hon'ble Apex Court repeatedly opined with regard to the Section 216 of Cr.P.C that the court can exercise the power of addition or modification of charges only when there are sufficient materials exist before the court. In other words, the alternation or addition of charge must be based on the evidence if any recorded during the course of trial. When the court satisfies that there are sufficient ground to presume that the accused has alleged to have committed the offence, the court can alter the charges at any time before the pronouncement of judgment. The provision under Section 216 of Cr.P.C is an enabling provision for the court to exercise its power.

9.On coming to the instant case on hand, the petitioner/de-facto complainant cannot file any petition directly before the trial court for alternation of charges under section 216 of Cr.P.C, as it does not contemplate any application being filed either by the prosecution of any witness including the de-facto complainant and it only provides the power of the court to alter the charge or add any charge already framed. Hence, this court is of the view that the petition filed by the petitioner under section 216 of Cr.P.C is not maintainable and the impugned order passed by the trial court is correct.

10.For all the reasons stated above, this criminal revision fails and the same is **dismissed**. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Additional Mahila Court,
Trichy.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate SR-10732.

+1 CC to M/s.M.SUBASH BABU, Advocate SR-11183.

Order made in
Cr1.R.C(MD)No.101 of 2020
09.03.2020

CS (18.08.2020) 3P 4C