



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.09.2020
PRONOUNCED ON : 18.09.2020

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CORAM:

THE HONOURABLE **MR.JUSTICE R.PONGIAPPAN**
CrI.O.P. (MD)No.7821 of 2020
and
CrI.M.P. (MD) .No.3736 of 2020

Sharmila .. Petitioner / Accused No.1

Vs.

M.Balusamy .. Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records related to the impugned complaint in Special S.C.No.1 of 2015, pending on the file of the District and Sessions Court, Madurai and to quash the same as illegal.

For Petitioner : Mr.R.Babu Jaganath

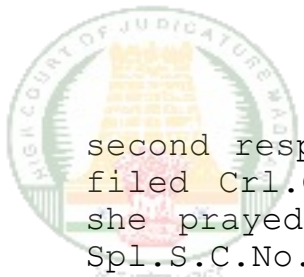
For Respondent : Mr.T.K.Gopalan

O R D E R

This Criminal Original Petition has been filed to call for the records related to the impugned complaint in Special S.C.No.1 of 2015, pending on the file of the Principal District and Sessions Court, Madurai and to quash the same as illegal.

2. Initially, the respondent herein, while at the time of filing the private complaint under Section 192 and 200 of Cr.P.C., r/w Section 2 (d), 2 (e) and 30 of Human Rights Protection Act, 1993, before the learned Judicial Magistrate No.IV, Madurai, in respect of the petition mentioned complaint in Special S.C.No.1 of 2015, for the alleged offence punishable under Sections 166, 445, 448 and 506 (ii) I.P.C. r/w Section 2 (d) and 2(e) of Human Rights Protection Act, 1993, had added two persons as Accused Nos.1 and 2, in which, the Accused No.1 is Sharmila, who is the present petitioner in this case and daughter-in-law of the respondent herein.

3. The second accused namely, Selvarani is the Sub Inspector of Police, Koodalpudur Police Station, Madurai. While at the time of pendency of the proceedings with the Principal District and Sessions Court, Madurai, on the above referred Selvarani /



second respondent in Spl.S.C.No.1 of 2015, the above said Selvarani filed Crl.O.P.(MD).No.13641 of 2016, before this Court, in which, she prayed to call for the records of the impugned complaint in Spl.S.C.No.1 of 2015, on the file of the Principal District and Sessions Court, Madurai, which is now under consideration.

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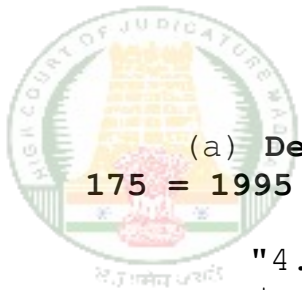
4. During the pendency of the above said Criminal Original Petition, both the second accused viz., Selvarani and the respondent / complainant herein entered into a compromise and upon which, the proceedings initiated against the said Selvarani was quashed. Further, at the time of quashing the proceedings, this Court directed the learned Principal District and Sessions Judge, Madurai, to dispose of the case in Spl.S.C.No.1 of 2015, within a period of four months from the date of receipt of a copy of the above said order.

5. In the meantime, the petitioner herein filed a Discharge Petition and the same was dismissed by the learned Principal District and Sessions Judge, Madurai. Aggreived over the said dismissal order, the petitioner herein filed Crl.R.C.(MD).No.814 of 2019, before this Court, in which, she prayed to set aside the dismissal order passed by the learned Principal District and Sessions Judge, Madurai. On 31.10.2019, while at the time of disposing of the said revision, this Court came to the conclusion that the Trial Court after gone into the materials in depth and after analysing the same, dismissed the petition filed by the petitioner. In the said order, it was observed that the order passed by the learned Principal District and Sessions Juge, Madurai, is a well considered one.

6. Only, thereafter, on seeing the result of Crl.R.C.(MD).No.814 of 2019, by suppressing the same, the petitioner is before this Court with the present petition, which is, filed under Section 482 of Cr.P.C. So, it cannot be said that the said application has been filed in good faith for the obvious reason that a *prima facie* case is made out against the petitioner. The present petition filed by the petitioner is nothing but amounts to an attempt for second revision. Therefore, this Court has no hesitation in holding that interest of justice which is *sine qua non* for exercise of power under Section 482 of Code of Criminal procedure does not require interference with the criminal proceedings as against the petitioner. The present petition although labelled as one under Section 482 of Code of Criminal Procedure, amounts to an attempt for second revision against the order of the learned Principal District and Sessions Judge, dated 20.03.2019, which is not permitted by the Code of Criminal Procedure.

7. At this juncture, it is appropriate to consider the following decisions of our Hon'ble Apex Court and this Court:

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(a) **Deepti alias Arati Rai v. Akhil Rai & Ors, [JT 1995 (7) SC 175 = 1995 (5) SCC 751]:**

"4. ... It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by sessions court is not maintainable and that inherent power under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. As we find that the order passed by the High Court is not legal and just it will have to be set aside."

(b) **Laxmi Bai Patel Vs. Shyam Kumar Patel [JT 2002 (3) SC 409]:**

"3. Before taking up the merits of the case, it would be proper to consider the exercise of jurisdiction under Section 482 Cr.P.C. of the High Court in the facts and circumstances of the case. In a case where the sessions court exercising revisional power under Section 397(3) Cr.P.C. has dismissed the revision petition by the aggrieved party, a second revision petition about acceptance of the same party is barred. The position is well-settled that in such a case power under Section 482 Cr.P.C. can be exercised by the High Court in rare cases and in exceptional circumstances where the court finds that permitting the impugned order to remain undisturbed will amount to abuse of process of the court and will result in failure of justice. The Court in the case of **Dharampal & Ors. v. Ramshri (Smt.) & Ors. [JT 1993 (1) SC 61]**, held:

" Section 397(3) bars a second revision application by the same party. It is now well-settled that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision at the instance of Respondent 1. On this short ground itself, the impugned order of the High Court can be set aside." "

(c) **Dharampal Vs. Ramshri [1993 (1) SCC 435 = 1993 SCC (Cri) 333 = AIR 1993 SC 1361]:**

"6. ... It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of Respondent 1. On this short ground itself, the impugned order of the High Court can be set aside."

(d) **Rajathi Vs. C.Ganesan [1999 SCC (Cri) 1118 = 1999 (6) SCC 326 = AIR 1999 SC 2374 = 1999 Cri.L.J. 3668]:**



"10. In **Krishnan v. Krishnaveni (1997 (4) SCC 241 : 1997 SCC (Cri) 544)**, this Court explained the scope and power of the High Court under Section 482 of the Code. The question before the Court was if in view of the bar of second revision under sub-section (3) of Section 397 of the Code was prohibited, whether inherent power of the High Court is still available under Section 482 of the Code. This Court said as under: (SCC p.248, para 10)

"10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has *suo motu* power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings.'' ''

8. Therefore, by following the above referred judgments decided by the Hon'ble Apex Court as well as by various High Courts, I am of the considered opinion that the petitioner has filed this Criminal Original Petition with malice after suppressing the entire previous incidents. Therefore, this application filed by the petitioner is dismissed. Under such circumstances, there shall be a direction to the learned Principal District and Sessions Judge, Madurai, to dispose of the case pending in Spl.S.C.No.1 of 2015, as early as possible, preferably, within a period of three months, after return of normalcy of the existing Covid - 19 situation or the date on which, the functioning of the regular Court commenced and

<https://hccourtscorpus.com/petitions>



proceedings.
closed.

Consequently, the connected miscellaneous petition is

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

tsg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal District and Sessions Court, Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.O.P. (MD)No.7821 of 2020
18.09.2020

VB (28.09.2020) 5P 3C