

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	21.02.2020
Date of Judgment	11.06.2020

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THE HONOURABLE MRS.JUSTICE **T.KRISHNAVALLI****Cr1.RC(MD)No.505 of 2015****and****MP(MD)No.1 of 2015**

1.S.P.Velmurugan
2.S.Palniraja
3.Tamilrasi
4.Saranyadevi
5.Venkatesan

: Petitioners/Accused 1 to 5

Vs.

S.Saraswathi Suda

: Respondent/Complainant

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the order, dated 28.08.2015 passed in Cr.MP No.3783 of 2015 in C.C.No.120 of 2015 by the District Munsif-cum-Judicial Magistrate, Bodinayakanoor.

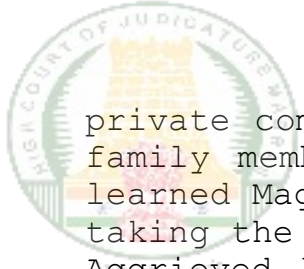
For Petitioners : Mr.R.Suriyanarayanan

For Respondent : Mr.K.Guhan

J U D G M E N T

This criminal revision is directed against the order, dated 28.08.2015 passed in Cr.MP No.3783 of 2015 in C.C.No.120 of 2015 by the District Munsif-cum-Judicial Magistrate, Bodinayakanoor, Theni District.

2.The complainant/respondent is the wife of the 1st petitioner and she has given a police complaint against the petitioners before the All Women Police Station, Bodinayakanoor, Theni District. Based on the said complaint, a criminal case has been registered against the petitioners in Crime No.3 of 2015. The learned Judicial Magistrate, Bodinayakanoor has taken the complaint on file as C.C No.54 of 2015 against the 1st petitioner/husband for the offence under sections 323, 498-A, 506(i) IPC, whereas the learned Magistrate removed the petitioners 2 to 6 from the said case as per the final report filed by the police. The complaint filed a



private complaint in C.C.No.120 of 2015 against her husband and his family members before the Judicial Magistrate, Bodinayakanoor. The learned Magistrate allowed the petition filed by the complainant by taking the cognizance of the offence based on the private complaint. Aggrieved by the said order, the petitioners/A1 to A5 are before this court.

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

4. It is mainly argued on the side of the petitioners/A1 to A5 that the learned Magistrate did not apply his mind, while taking the cognizance of the offence passed on the private complaint and the court below simply stated the in his order that the prima facie case was made out against the accused without assigning any reason and prays for setting aside the impugned order passed by the court below.

5. On perusal of the records, it is seen that the first petitioner is the husband of the respondent and other petitioners are in laws of the respondent. The respondent has given a complaint before the All Women Police Station, Bodinayakanur, Theni District, which was registered in Crime No.3 of 2015. The learned Judicial Magistrate, Bodinayakanur, has taken the case on file as C.C No.54 of 2015 against the first petitioner alone for the offence under section 323, 498-A, 506(ii) IPC and removed the petitioners 2 to 5 from the said case after perusing the final report filed by the police. The petitioner was acquitted in the said case on 27.04.2019. It is further seen from the records that the respondent filed a private complaint on 03.07.2015, which was taken on file by the Judicial Magistrate, Bodinayakanur, as Cr.M.P.No.3783 of 2015 in C.C No.120 of 2015. Subsequently, the learned Magistrate has taken cognizance of the offence against the petitioners for the offence under section 129(b), 323, 498(A), 147, 506(i) IPC and section 4 of TNHW Act. It is to be noted that while taking cognizance of the offence against the petitioner the the trial court has simply stated in his order that prima facie case made out against the accused persons.

6. It is well settled law that the court has to record the reasons, while taking cognizance of the offence based on the private complaint. On coming to the instant case on hand, the learned Judicial Magistrate has not applied his mind and passed the non-speaking order, which is not correct. Hence, this court is of the considered view that the argument put forth on the side of the petitioners stating that the order passed by the trial court is not correct is acceptable.

7. In view of the above facts, this court is of the considered view that the matter has to be remitted back to the trial court for passing orders afresh purely on merits and in accordance with law.



8. In the result, this criminal revision is **allowed**. The order, dated 28.08.2015 passed in Cr.MP No.3783 of 2015 in C.C No.120 of 2015 by the District Munsif-cum-Judicial Magistrate, Bodinayakanoor, Theni District, is set aside. The case is remitted back to the trial court namely learned Judicial Magistrate Court, Bodinayakanur and the trial court is directed to dispose of the Cr.MP No.3783 of 2015 in C.C No.120 of 2015 afresh purely on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

To

1. The District Munsif-cum-Judicial Magistrate,
Bodinayakanur.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The All Women Police Station,
Bodinayakanur, Theni District.

Cr1.RC(MD) No.505 of 2015

11.06.2020

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