



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.10698 of 2016

and

Crl.M.P.(MD)Nos.5266 and 5267 of 2016

1.Murugan
2.Rajamohan

... Petitioners / Accused 1 & 2

-vs-

1.The state of Tamil Nadu,
represented by its Inspector of Police,
Suchindrum Circle, Kanyakumari District.
(Crime No.87 of 2015) ... 1st Respondent / Complainant

2.Nadarajan ...2nd Respondent / Defacto Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records relating to the proceedings in P.R.C.No.25 of 2015 on the file of the Judicial Magistrate No.III, Nagercoil, and to quash the same in so far as the petitioners/accused 1 and 2 are concerned.

For Petitioners : Mr.H.Lakshmi Shankar

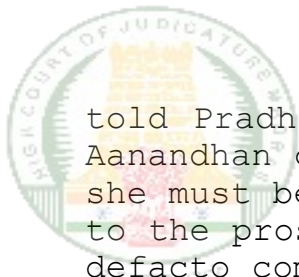
For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

For R2 : Mr.R.Russel Raj

O R D E R

The petitioners are figuring as accused in P.R.C.No.25 No.2015 on the file of the learned Judicial Magistrate No.III, Nagercoil, for the offences under Sections 147, 148, 307, 506(ii), 120(b), 427 of IPC. The defacto complainant in this case is the second respondent herein namely Nadarajan.

2.The case of the defacto complainant is that his son Aanandhan was in love with the daughter of the first petitioner herein. Pradhiksha, the daughter of the first petitioner and Aanandhan were determined to marry each other. The first petitioner



told Pradhiksha that it is open to her to leave the home and marry Aanandhan on her own. Pradhiksha is said to have been insisted that she must be given her 1/3rd share in the properties. This, according to the prosecution, furnished the motivation for doing away with the defacto complainant.

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3.The second petitioner Rajamohan is said to be closely associated with the first petitioner. They had engaged the other accused as mercenaries to kill the defacto complainant. With this object in view, the first petitioner purchased a ambassador car bearing registration No.TNX 3084 in the name of Manikandan. Rajamohan is said to have facilitated the transaction. On the occurrence date, ie., on 11.02.2015, the second accused was following the defacto complainant who was riding a two wheeler. The ambassador car bearing registration No.TNX 3084 was coming in the opposite direction. A3 was driving the vehicle. A4 and A5 were inside the car. Uttering the offending words that the defacto complainant should die, they dashed the car against the two wheeler. The defacto complainant fell down. The accused are said to have left the car and took to their heels and escaped from the spot.

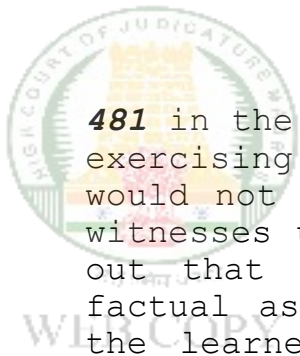
4.Thereafter, the defacto complainant was admitted in the hospital. The first respondent recorded his statement and registered Crime No.87 of 2015. Then, the matter was investigated and final report was filed against the petitioners and five others for the offences under Sections 147, 148, 307, 506(ii), 120(b), 427 of IPC. Cognizance was taken and since the case is triable in the Sessions Court, the matter is pending for committal. At this stage, this Criminal Original Petition was filed for quashing the impugned proceedings.

5.Heard the learned counsel on either side.

6.The learned counsel for the petitioner submitted that the prosecution case is inherently improbable and the same ought to be quashed to secure the ends of justice.

7.Per contra, the learned counsel for the complainant submitted that all the ingredients for attracting the offences under Section 307 of IPC are very much present in this case. The prosecution has clearly set out the motive for committing the crime in question. The first petitioner wanted to do away with the defacto complainant. That is why through the second petitioner, he engaged mercenaries. He also pointed out that following the occurrence, the bike was broken into pieces and it came under the car and therefore the car could not be moved from the spot.

8.The learned Government Advocate as well as the learned counsel appearing for the defacto complainant placing reliance on the decision of the Hon'ble Supreme Court reported **2019(1)MWN Cr1**



481 in the case of **Allaudin Vs State of Bihar** pointed out that while exercising the jurisdiction under Section 482 of Cr.P.C., this Court would not have any jurisdiction to appreciate the statement of the witnesses under Section 161 of Cr.P.C. The learned counsel pointed out that this Court will not be justified in probing into the factual aspects of the matter. The Government Advocate as well as the learned counsel appearing for the defacto complainant wanted this Court to dismiss this Criminal Original Petition as devoid of merits.

9.I carefully considered the rival contentions. I went through the statement of Pradhiksha L.W.6, daughter of the first petitioner. She would clearly state that she was in love with the son of the defacto complainant. She would also admit that her father had given green signal for going ahead with the marriage. But then, the first petitioner had made it clear that she will have to marry Aanadhan on her own and that she will not have the blessings of the family and that he will not perform the marriage. The first petitioner's daughter had insisted that she must be given her share in the property.

10.According to the first petitioner's daughter, the second petitioner Rajamohan is closely associated with the first petitioner and that the first petitioner would always go by his advice. The second petitioner is said to have had a serious dispute with the defacto complainant. They were originally close to each other but then they had fallen out due to misunderstanding over some real estate affairs. The petitioners 1 and 2 decided that the defacto complainant should be done away with. According to L.W.6, the entire occurrence was a clear attempt to murder.

11.I went through the statement of the defacto complainant recorded under Section 161 Cr.P.C as well as the contents of the First Information Report. The defacto complainant would claim that on 11.02.2015 at about 3.15 p.m., he was riding his two wheeler bearing registration No.TN 74 S 1833. He was passing by Sivanthi Aathithanar College. A2 Rajamohan was closely following him from behind and he was also talking over mobile phone. At that time, the ambassador car bearing registration No.TNX 3084 was coming from the opposite direction. A3 was driving the car. A4 and A5 were inside the car. They dashed the car against the defacto complainant's two wheeler. According to the defacto complainant, they dashed the car even while shouting that the defacto complainant should die. A3 to A6 hurled the defacto complainant on a thorny bush nearby. Even before he could notice who they were, they left the car and fled from the spot. A2, Rajamohan is said to have stopped for a while and left after criminally intimidating the defacto complainant.

12.The learned counsel for the defacto complainant submitted that the two wheeler got inside the car and therefore, the car could not be moved. But in the rough sketch, there is no reference to the presence of the two wheeler.



13.The learned Government Advocate would draw my attention to the statement of L.W.2, Jeyachandran who claims that the two wheeler was broken into three pieces. I wanted to know whether the vehicles were sent to the Motor Vehicle Inspector for obtaining the report regarding damage. Interestingly, neither the car nor the two wheeler was sent to the Motor Vehicle Inspector to report on the damage. Even from the statement of Prathiksha, L.W.6, one can see that the defacto complainant was having a serious grouse against the second petitioner Rajamohan. In the memorandum of grounds, it is stated that the defacto complainant owes substantial money to the second petitioner. Thus, the defacto complainant could hit two fruits with one stone.

14.I find the entire case projected by the prosecution to be utterly improbable. The decision of the Hon'ble Supreme Court of India reported in **1992(1) Supp (1) SCC 335** in the case of **State of Haryana and others Vs. Bhajan lal and others** has laid down a set of parameters for quashing any prosecution. One of the parameters is that if the Court comes to the conclusion that the case of the complainant or the prosecution is inherently improbable, then it is certainly a ground for quashing the prosecution.

15.The motive itself is highly suspect. The first petitioner had clearly told his daughter that it is very much open to her to leave the home and get married. But Prathiksha, the first petitioner's daughter, did not want to leave the home with empty hands. She wanted to carry a slice of the property of the first petitioner. Therefore, when the first petitioner was not having any objection over the decision of his daughter to marry the defacto complainant's son, then there is completely absence of motive for the first petitioner to do away with the defacto complainant. Eventhough, the love affair was only between the first petitioner's daughter and the son of the defacto complainant, if at all, the anger of the first petitioner should be directed only against Aananthan, the son of the defacto complainant. That has not happened in this case. I was told by the learned counsel on either side that after this case was filed, the first petitioner's daughter and the defacto complainant's son got married and they are blessed with a child.

16.As rightly pointed out by the learned counsel for the petitioner, the person who is riding a two wheeler (Hero Honda Pleasure Bike) will not be in a position to watch the activities of the person following him from behind. In this case, the defacto complainant is not only able to describe what was happened from behind but also what was happening in front. More than anything else, the defacto complainant suffered only a mere laceration and that is said to be due to fall on thorny bushes.



17.Ofcourse, as pointed out by the learned counsel for the defacto complainant, to make out a case under Section 307 IPC, no injury need to be caused. In this case, the specific allegations of the prosecution is that the attempt to kill the defacto complainant was by engineering an accident. In this case, the result of the accident is rather minuscule. Considering the nature of injuries suffered by the defacto complainant, I am able to note that if really, the petitioners herein wanted to kill the defacto complainant, they could have easily employed far more effective methods. The case projected by the prosecution is absurd. In order to force the first petitioner to give a substantial sum by way of dowry, this case has been invented.

18.The learned Government Advocate pointed out that A3 to A7 are having bad antecedents. It is quite possible that the defacto complainant has enlisted their service and they are also willing to sail along. The enthusiasm shown by the prosecution is further demonstrated by invocation of Section 147 and 148 of IPC. Even according to the defacto complainant, the first petitioner was not on the spot. He was only a party to the conspiracy. The second petitioner was following from behind and he stopped for a while after the occurrence and left. A6 and A7 were also not in the scene of occurrence. The Car was driven by A3 Manikandan. The other occupants were A4 and A5.

19.According to the defacto complainant, a group of three persons had attacked the defacto complainant. To attract the offences under Section 147 and 148 of IPC, the minimum number should be five. The fact that Section 147 and 148 of IPC were invoked in this case and that cognizance was taken by the Court below, betrays total non application of mind on the part of the Court below as well as the prosecution. The medical evidence projected by the prosecution conclusively shows that the defacto complainant suffered only a simple injury. The defacto complainant was originally admitted in Dr.Jeyasekaran Hospital and Nursing Home. He was later admitted to Meenakshi Mission Hospital and Research Center. The wound certificate as well as the other entries indicate that he was a victim of assault and not accident. The original wound certificate reads as follows:

*" Patient alleged to have been involved in a Assault
on 11.02.2015 around 03.15 pm*

Injuries are

20x10 cm Abrasion Right thigh

Minor Abrasion over face

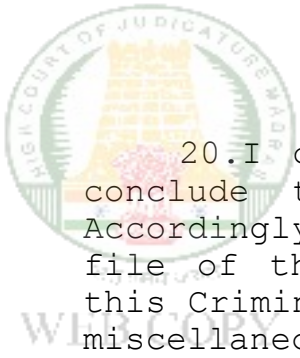
Right thigh contusion with vastus lateralis tear

Liver and Lung contusion

Nature of above mentioned injuries opinion reserved

*Wound certificate issued to Suchindrum Police station on
02.04.2015."*

<https://hcservices.ecourts.gov.in/hcservices/>



20.I carefully considered the entire materials on record. I conclude that the prosecution is an abuse of legal process. Accordingly, the impugned proceedings in P.R.C.No.25 of 2015 on the file of the Judicial Magistrate No.III, Nagercoil is quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.III, Nagercoil.

2.The Inspector of Police,
Suchindrum Circle, Kanyakumari District.

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

+1 CC to M/s.R.RUSSEL RAJ, Advocate (SR-4749[F]

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-4911[F]

Cr1.O.P. (MD) No.10698 of 2016

and

Cr1.M.P. (MD) Nos.5266 and 5267 of 2016

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