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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.01.2020
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.6202 of 2016
and
Crl.M.P. (MD) No.3087 of 2016

1.Manikandan
2.Jeyaveeran

... Petitioners/Accused 1 & 2

Vs

1.The Inspector of Police,
Sellur Police Station,
Madurai District.
(Crime No.397/2016)

... 1st Respondent/Complainant

3.Meena

... 2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records in Crime No.397 of 2016 on the file of the respondent police and quash the same.

For Petitioners : Mr.P.Senguttuarasan

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

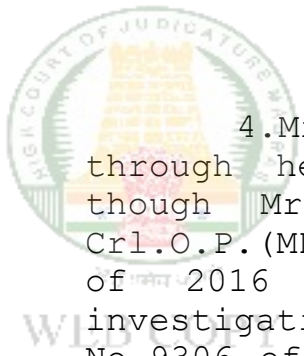
For R2 : Mr.R.Karunanidhi

ORDER

Heard the learned counsel appearing for the petitioners, learned counsel appearing for the intervenor and the learned Government Advocate (Crl.side).

2.Mrs.Meena/Second respondent herein is the defacto complainant in Crime No.397 of 2016 registered on the file of the Sellur Police Station for the offences under Section 294(b), 323, 354 and 506(i) of IPC.

3.Crl.O.P. (MD) No.6202 of 2016 was filed for quashing the said FIR. A learned Judge of this Court admitted Crl.O.P. (MD) No.6202 of 2016, dated 21.04.2016 and in Crl.M.P. (MD) No.3087 of 2016, granted interim stay. It is relevant to mention here that interim stay was not confined to a limited period.



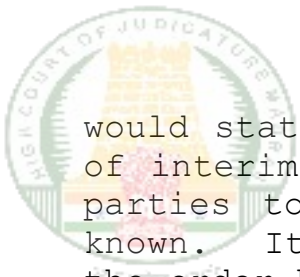
4. Mrs. Meena/second respondent herein entered appearance through her counsel Thiru. R. Karunanidhi on 01.06.2016. Even though Mrs. Meena entered appearance through her counsel in CrI.O.P. (MD) No. 6202 of 2016, she chose to file CrI.O.P. (MD) No. 9306 of 2016 for directing the respondents to complete the investigation in Crime No. 397 of 2016. In the said CrI.O.P. (MD) No. 9306 of 2016, the petitioners herein were not made as parties. By order dated 17.06.2016, a direction was given for concluding the investigation within a period of three months. After issuing contempt notice, Mrs. Meena filed contempt petition (MD) No. 1594 of 2016 against Thiru. Iyya Durai, Inspector of Police, Sellur Police Station. When the contempt petition was taken up for hearing, the learned Government Advocate (CrI.side) made a submission that final report was already filed in the case and it has been taken on file in C.C. No. 1906 of 2016 before the Judicial Magistrate No. 2, Madurai. Recording the said submission, the Contempt Petition came to be closed on 19.01.2017.

5. Not satisfied with the same, CrI.O.P. (MD) No. 9173 of 2019 came to be filed for expediting the trial in C.C. No. 18 of 2017. The said petition was disposed of on 10.09.2019 and the learned trial Judge was directed to dispose it of within a period of three months from the date of receipt of a copy of this order. It is at this stage, CrI.O.P. (MD) No. 6202 of 2016 filed by the accused came up for final disposal.

6. I can only express my shock and surprise over the conduct of the defacto complainant as well as the concerned police officials. I called upon the learned Government Advocate (CrI.side) to pass on the file. It could be seen there from that interim order granted by this Court on 24.04.2016 was received by the Inspector of Police, D3 Sellur Police Station on 28.04.2016 itself. Thus, the concerned Inspector of Police had full knowledge about the grant of interim stay of the investigation by this Court. When the defacto complainant herein namely Mrs. V. Meena, filed CrI.O.P. (MD) No. 9306 of 2016, he ought to have informed this Court about the non maintainability of CrI.O.P. (MD) No. 9306 of 2016. At least when contempt petition (MD) No. 1594 of 2016 was filed, this fact could have been informed to the Court.

7. I can only come to the conclusion that the concerned Inspector of Police wanted to favour the defacto complainant and that is why, even though the Inspector of Police was fully aware of the grant of interim stay, he chose to deliberately suppress the said fact from this Court. Without being aware of the grant of interim stay in CrI.O.P. (MD) No. 6202 of 2016, directions have been passed by this Court on subsequent occasions.

<https://hcservices.ecourts.gov.in> 8. The learned counsel appearing for the defacto complainant



would state before this Court that she was not aware of the grant of interim stay. If only the petitioners herein had been made as parties to the subsequent proceedings, the fact could have been known. It is obvious that the defacto complainant wanted to get the order behind the back of the petitioners herein.

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9. I cannot reconcile to the fact that an interim stay granted by a learned Judge of this court could be rendered so casually infructuous due to collusion between the Jurisdictional Inspector of Police and the defacto complainant. Therefore, interest of justice requires that the clock is put back. Since filing of the final report as well as cognizance of the offence in C.C.No.1906 of 2016 on the file of the Judicial Magistrate No.2, Madurai, have taken place is a clear breach of the interim order granted by this Court, I have no hesitation to quash the subsequent proceedings. C.C.No.1906 of 2016 on the file of the Judicial Magistrate No.2, Madurai, stands quashed. The matter is restored to the FIR stage.

10. As rightly pointed out by the learned counsel appearing for the defacto complainant, the contentions raised by the accused are rather factual in nature and that, therefore, it is not open to this Court to quash the FIR by exercising its inherent powers. I agree with this contention.

11. The learned counsel appearing for the accused pointed out that they had also lodged a case against the defacto complainant herein and that, while the case against them culminated in a final report, the case given by them was conveniently referred as "Mistake of fact". The learned counsel appearing for the accused would state that they have now filed a private complaint. This submission is placed on record.

12. It appears that the person who was the incumbent Inspector of Police, had since retired. Therefore, I am of the view that the present Inspector of Police will be able to conduct a fair and impartial investigation. Therefore, even while declining to quash the FIR in Crime No.397 of 2016 on the file of the Sellur Police Station, the criminal original petition is disposed of with the above said directions. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)



1.The Judicial Magistrate No.II, Madurai.

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2.The Inspector of Police,
Sellur Police Station,
Madurai District.

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

+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-2240[F] dated 21/01/2020

CrI.O.P(MD)No.6202 of 2016
and
CrI.M.P.(MD)No.3087 of 2016
21.01.2020

DB(CO)
TR(17.02.2020)4P 5C