



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	18.09.2020
Date of Order	27.11.2020

WEB COPY

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.OP(MD)No.9651 of 2017

and

Crl.MP(MD)Nos.6591 and 6592 of 2017

S.N.Marbin Britto : Petitioner/Sole Accused

Vs.

1.State represented by
The Inspector of Police,
Kollancode Police Station,
Kanyakumari District.
(Crime No.340 of 2016) : R1/Complainant

2.Mrs.Shoba : 2nd Respondent/
De-facto Complainant

Prayer: Criminal Original Petition filed under section 482 of the Criminal Procedure Code, to call for the records in C.C No.113 of 2016 on the file of the Judicial Magistrate No.II, Kuzhithurai and quash the same and pass such further or other orders.

For Petitioners : Mr.V.Sasikumar

For 1st Respondent : Mr.R.Srinivasan
Government Advocate
(Criminal side)

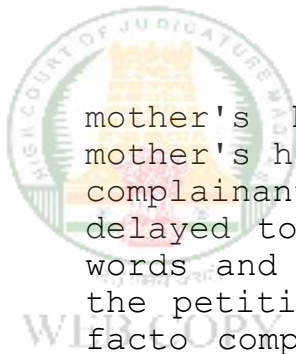
For 2nd Respondent : Mr.R.Sivakumar

O R D E R

(Thro' VC)

This Criminal Original Petition is filed seeking for a direction to quash the case in CC No.113 of 2016 on the file of the Judicial Magistrate No.II, Kuzhithurai.

2.According to the prosecution, the petitioner and the de-facto complainant's husband are brothers and they have no smooth relationship between them. Due to his safety, the petitioner living in a rental house with his wife and children and his brother and the de-facto complainant are living along with the mother in the



mother's house and on 27.09.2016, the petitioner came to his mother's house at 9.45 pm and pressed the calling bell, the de-facto complainant opened the window to see the petitioner and purposely delayed to open the door and therefore, the petitioner used filthy words and assaulted her and hence, the petitioner's mother shouted the petitioner and took him into her house and thereafter, the de-facto complainant went to her mother's house with her children at Arumanai and on the next day I.e., on 28.09.2016, she was admitted in the Arumanai Arun Hospital as in-patient and gave a complaint on 30.09.2016.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.The learned counsel appearing for the petitioner/sole accused submitted that the petitioner did not commit any offence and on 27.09.2016, the petitioner came to his mother's house and talked with his mother and due to property dispute, the brother of the petitioner came and assaulted him and the petitioner gave the complaint to the police as against his brother and a case was registered as against his brother and in order to escape from the above case, the 2nd respondent gave a false complaint against this petitioner and as per the prosecution case, the occurrence took place on 27.09.2016 at 10.00 pm, but the 2nd respondent gave the complaint only on 30.09.2016 and no proper explanation was given for the delay in giving the complaint to the police against this petitioner and there is no material and evidence available in this case to show that this occurrence happened and if the entire case is based on no material and allowing the case to proceed further will be a waste of judicial time and no purpose would be served in allowing the case to go further and there was no prima facie case made out as against the petitioner and prays that the criminal original petition may be allowed.

5.On the other hand, on the side of the 2nd respondent, it is argued that due to property dispute, on 27.09.2016 at 10.0 pm the petitioner/accused came to his mother's house and assaulted the 2nd respondent and the 2nd respondent went to her mother's house and admitted in a private hospital at Arunmanai and she was discharged from the above hospital on 30.09.2016 and then, the 2nd respondent gave the complaint as against the petitioner on 30.09.2016 and hence, the delay in giving the complaint was properly explained and in the course of investigation by recording of all the statements of eye witnesses and the occurrence witnesses, it is very clear that in order to wreck vengeance with the brother of the petitioner, the petitioner came to the house of his mother in which his brother residing and assaulted the 2nd respondent and there was no delay or lapse on the part of the investigation and the petitioner filed this quash petition belatedly and the petitioner himself admitted his presence at the time of occurrence and the petitioner is only an



facie case is made out and prays that this criminal original petition may be dismissed.

6.It is admitted that this petitioner and the 2nd respondent's husband are brothers. The petitioner states that on 27.09.2016 at 10.00 am, he went to his mother's house to meet his mother and due to property dispute, his brother came and assaulted him and he gave the complaint as against his brother and a criminal case was registered as against his brother and in order to escape from the above case, the 2nd respondent gave a false complaint against him and he did not commit any offence. From the above version of the petitioner, it reveals that at the time of occurrence, the petitioner was in the place of occurrence. Further, the contention of the petitioner is that as per the prosecution case, the 2nd respondent was admitted in the hospital on 28.09.2016 and discharged on 29.09.2016, but the statement was recorded from the 2nd respondent only on 30.09.2016, as if she was in the private hospital as an in-patient and to escape from the complaint given by the petitioner, the 2nd respondent gave a false complaint to the police and hence, no prima facie case is made out and prays that the criminal original petition may be allowed.

7.But on the other hand, the learned counsel appearing for the 2nd respondent submitted that the 2nd respondent admitted in the private hospital on 28.09.2016 and she was discharged on 30.09.2016 and hence, the 2nd respondent gave the complaint on 30.09.2016 and hence, proper explanation was given for the delay in giving the complaint and prays that this criminal original petition may be dismissed.

8.In this case, the 2nd respondent was admitted in Arun Private hospital at Arumanai and to prove the same, the AR copy was produced on the side of the 2nd respondent. On perusal of the AR copy, it reveals that the 2nd respondent was admitted on 28.09.2016 and discharged on 30.09.2016. On the side of the petitioner to prove that the 2nd respondent was discharged on 29.09.2016, the 161(3) statement of the Doctor, who gave treatment was produced. On perusal of 161(3) statement of the Doctor, who gave treatment to the 2nd respondent, it reveals that the 2nd respondent was admitted on 28.09.2016 and discharged on 29.09.2016. Further, the learned counsel appearing for the petitioner/accused submitted that the husband of the 2nd respondent was arrested in connection with a case in Crime No.336 of 2016 on 29.09.2016 at 9.00 am and it was intimated to the 2nd respondent on 29.09.2016, but the present complaint was registered as if the 2nd respondent was in the Arun Hospital on 30.09.2016 and the statement was recorded in the said Arun hospital when she was as an in-patient and the 2nd respondent gave this complaint in order to escape her husband from the complaint given by this petitioner and the explanation offered for filing the complaint by the 2nd respondent is not at all

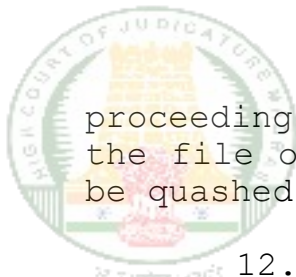


acceptable and prays that the criminal original petition may be allowed.

9. In this case, the date of occurrence is 27.09.2016 at 10.00 pm. It is admitted on the side of the petitioner that he has gone to his mother's house on 27.09.2016 at 10.00 pm to see his mother. Further, on the prosecution side, it is stated that due to property dispute, the brother of the petitioner assaulted him and for that, he gave a complaint and a criminal case was registered as against the 2nd respondent's husband and he was admitted in the Government Hospital, Kuzhithurai on 27.09.2016 and discharged on 06.10.2016 and the 2nd respondent has not given any complaint to the police immediately, but she gave the complaint only on 30.09.2016.

10. In this case, even though the occurrence took place on 27.09.2016, the 2nd respondent has given the complaint only on 30.09.2016. The 2nd respondent has not given the complaint immediately. It is stated on the side of the 2nd respondent that after the occurrence, she went to her mother's house and in the next day only, she went to the private hospital at Arumani and then, she was admitted as in-patient in the above hospital and discharged only on 30.09.2016 and hence, she gave the complaint only on 30.09.2016. It is pertinent to note that the arrest intimation of the 2nd respondent's husband was intimated to the 2nd respondent on 29.09.2016. But the 2nd respondent has not chosen to give the complaint on 29.09.2016 against this petitioner. The 2nd respondent gave the complaint against the petitioner only on 30.09.2016. When the 2nd respondent was admitted in the private hospital, she has not taken any steps to give the complaint to the police or the hospital authority has not sent any intimation to the police regarding the admission of the 2nd respondent. It is admitted on both sides that there was property dispute between the petitioner and the 2nd respondent's husband. The petitioner gave the complaint on 28.09.2016 as against his brother and a case was registered as against his brother and the arrest of the 2nd respondent's husband was intimated to the 2nd respondent on 29.09.2016 and then only the 2nd respondent gave the complaint as against this petitioner on 30.09.2016 as if she was in the hospital. As per 161(3) statement of the Doctor, who gave treatment to the 2nd respondent, the 2nd respondent was discharged on 29.09.2016. Hence, the argument put forth on the side of the petitioner stating that to take revenge as against this petitioner and in order to escape from the complaint given by the petitioner, the 2nd respondent gave a false complaint as against this petitioner is acceptable.

11. For the reasons stated above, this court is of the considered view that the reasons stated by the petitioner in this criminal original petition is acceptable and accordingly, no case is made out as against this petitioner in connection with the case in



proceedings in connection with the case is in C.C No.113 of 2016 on the file of the Judicial Magistrate No.II, Kuzhithurai is liable to be quashed and accordingly, it is quashed.

12.In fine, this criminal original petition is allowed and the entire proceedings pertaining to the case in CC No.113 of 2016 on the file of the Judicial Magistrate No.II, Kuzhithurai is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

er

To:

- 1.The Judicial Magistrate No.II,
Kuzhithurai.
- 2.The Inspector of Police,
Kollancode Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-23444[F] dated 01/12/2020)

Crl.OP(MD)No.9651
of 2017

27.11.2020

NA (CO)

NR (08/12/2020) 5P : 5C