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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2021

PRONOUNCED ON: 08.10.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NO.10099 OF 2015

AND

CRL.M.P.NO.1 OF 2015

A.Devaneethi

... Petitioner/Accused

.Vs.

1. State rep. by
The Inspector of Police
T-12, Poonamallee Police Station
Poonamallee
(Crime No. 1041 of 2001)

...Respondent-1/Complainant

2. B.Evelin Jebaselvi

... Respondent-2/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No. 638 of 2006 pending on the file of the learned Judicial Magistrate No.II, Poonamallee in Cr.No. 1039 of 2001 on the file of the first respondent and quash the same.

For Petitioner : Mr.S.Shankar

For 1st Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

For 2nd Respondent : Mr.C.R.Malarvannan

ORDER

This Petition has been filed by the accused in C.C.No. 638 of 2006 on the file of the learned Judicial Magistrate No.II, Poonamallee, seeking to quash the said calendar case.



2. The petitioner is an advocate. A complaint had been given by the second respondent to the first respondent, who registered First Information Report in Cr.No. 1039 of 2001 under Sections 341, 506(ii) IPC read with Section 4 of Tamilnadu Prohibition of Woman Harassment Act of 1998. The first respondent filed a final report on 29.08.2004 dropping further action. The learned Judicial Magistrate No.II, Poonamallee, also recorded the said final report by an order dated 27.10.2004. Thereafter, the first respondent had given a letter to the learned Judicial Magistrate No.II, Poonamallee, on 07.09.2006 seeking copies of the records. On 15.09.2006, a petition under Section 173(8) Cr.P.C., was filed by the first respondent for further investigation. On 21.09.2006, the learned Judicial Magistrate No.II, Poonamallee, passed a detailed order in the said petition directing the First Information Report report to be re-opened and granting permission to the Investigating Officer to re-investigate the entire issue. The first respondent thereafter conducted further investigation and recorded the statements of nine witnesses and thereafter filed a final report charging the accused/petitioner herein with commission of offence under Sections 341, 506(ii) IPC read with Section 4 of Tamilnadu Prohibition of Women Harassment Act, 1998. The said final report was taken cognizance by the learned Judicial Magistrate No.II, Poonamallee, who thereafter issued summons to the petitioner herein.

3. When the matter was taken up for hearing on 06.09.2021, it was informed that the petitioner/accused had been questioned on the charges. This Court therefore directed that the trial can continue.

4. The main ground on which the calendar case is sought to be quashed is that the first respondent had originally filed final report dropping further action and thereafter had filed an application seeking to re-investigate the complaint and the learned Judicial Magistrate No.II, Poonamallee, had also granted such permission and that the final report was thereafter filed and it is complained that such acts are violative of Section 362 Cr.P.C., which provides that a Court should not alternate a Judgment. It was also contended that after the final report had been accepted by the Judicial Magistrate No.II, Poonamallee, it cannot be thereafter once again re-opened.

5. Reliance was also placed on AIR 1996 SC 1619 [Common Cause Registered Society Vs. Union of India & Others] for the proposition that the petitioner, as an accused, is entitled for speedy trial. It was pointed out that the complaint was given in the year 2001 and finally taken cognizance only in the year 2006. It was therefore stated that the further progress of the calendar case should be quashed.



6. All these contentions were strongly refuted by the learned Additional Public Prosecutor who contended that the learned Judicial Magistrate has every right to direct re-investigation on application filed by the Investigating Officer and the procedure followed was lawfully correct. It was also pointed out that the petitioner being an Advocate, original witnesses did not come forward to give statements but thereafter, the witnesses actually gave statements, and it is evident that a cognizable offence had been made out and therefore a final report had been filed which had been taken cognizance after following due procedure by the learned Judicial Magistrate. The learned Additional Public Prosecutor therefore stated that trial should be conducted and that the present petition should be dismissed.

7. The learned counsel for the second respondent also stated the facts and further pointed out that notice had been issued to the second respondent to adduce evidence and therefore urged that the Court should not interfere at this stage.

8. I have carefully considered the arguments.

9. The complaint had been given by the second respondent alleging offence under Section 341 and 5069(ii) IPC and under Section 4 of Tamilnadu Prohibition of Women Harassment Act, 1998. These are serious offences and will have to be meticulously examined by the Investigating Officer.

10. In the instant case, the petitioner is an advocate and has sought privilege on that account. I would not grant him that privilege. So far as the calendar case and this Court is concerned, he is an accused. When a report had been filed that action had been dropped, further investigation is permitted if materials surface or witnesses come forward to give statements. This was what had previously happened.

11. In the instant case, the Investigating Officer after following due procedure and after getting necessary permission from the Court had conducted further investigation and recorded statements of nine witnesses. They have spoken about the incident which happened. The facts will have to be decided during the course of trial. The petitioner will necessarily have to face trial. The charges cannot be brushed away.

12. In M/s. Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra and others [2021 SCC Online 315], the Hon'ble Supreme Court had very clearly laid down that the Courts should not interfere with the progress of any investigation or trial and that such interference should only be an exception. It had also been laid down that the Courts should be very circumspect



while exercising powers under Section 482 Cr.P.C.

13. In the instant case, the petitioner is charged with serious offences of Section 341 and 506(ii) IPC and more particularly also under Section 4 of Tamilnadu Prohibition of Women Harassment Act. I am confident that the learned Judicial Magistrate No.II, Poonamallee, will give four opportunity to the petitioner to put forth his case, but the petitioner has to face trial, he has no other alternative.

14. With respect to the contention that under Section 362 of Cr.P.C., a final Judgment cannot be reopened, the said statement has no application to the facts of the case. The first respondent had dropped further action but Section 173(8) specifically provided for such instances wherein on an application filed by the Investigating Officer, the Court can pass orders to re-open the First Information Report and to direct further investigation. The order of the learned Judicial Magistrate, accepting the final report as dropped is not a judgment as stated under Section 362 of Cr.P.C.

15. With respect to the reliance placed by the learned counsel for the petitioner in AIR 1996 SC 1619 [Common Cause Registered Society Vs. Union of India & Others], I would point out that the petitioner has actually put a temporary halt to the trial proceedings by filing the present petition, which has been now pending in this Court for the past 6 years and it would only be in his interest that he faces trial and directions are issued to the learned Judicial Magistrate No. II, Poonamallee, to conduct the trial and conclude the same within a specified period.

16. In view of the above reasons, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

17. A direction is given to the learned Judicial Magistrate No.II, Poonamallee, to commence the trial proceedings and conclude the same on or before 31.01.2022. The petitioner/accused is directed to co-operate during the trial process. He must keep in mind that as a member of the legal fraternity, he has to uphold the dignity of the judicial system. He also has the open of degrading the same. It would be in his interest that he participates in the trial proceedings. The prosecution is directed to produce the witnesses without any delay and the second respondent is also directed to co-operate.

18. A direction is given to the learned Judicial Magistrate No.II, Poonamallee, to conclude the trial on or before 31.01.2022.



19. With the above observation, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsg

1. The Judicial Magistrate No.II,
Poonammallee.
2. Do Thro Chief Judicial Magistrate,
Tiruvallur.
3. The Inspector of Police,
T-12, Poonamallee Police Station,
Poonamallee.
4. The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.C.R.Malarvannan, Advocate, S.R.No.53308

CrI.O.P.No.10099 of 2015
And
CrI.M.P.No.1 of 2015

GPL(CO)
CS/25/10/2021