



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.O.P.(MD)No.15405 of 2017 and

CRL.M.P.(MD)Nos.10239 & 10240 of 2017

1. Nelson
2. Sornam
3. Shivamanikandan
4. Ponmani Abirami

... Petitioners/Accused Nos.1 to 4

Vs.

1. The Sub-Inspector of Police,
Anjugramam police station,
Anjugramam,
Kanyakumari District. ...Respondent

2. P.Rajesh ... Respondent/Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the private complaint in C.C.No.137 of 2017 on the file of the Judicial Magistrate No.III, Nagercoil filed under Section 156(3) of Cr.P.C. and quash the same as illegal.

For Petitioners
For R-1

: Mr.T.Lajapathi Roy
: Mr.A.Robinson,
Government Advocate(Crl. Side).

O R D E R

This criminal original petition has been filed for quashing the proceedings in C.C.No.137 of 2017 on the file of the Judicial Magistrate No.III, Nagercoil.

2. One Rajesh is the defacto complainant in this case. When the case was taken up for disposal, the learned counsel appearing for the petitioners pointed out that when Rajesh and five others filed Cr1.O.P.(MD)NO.13383 of 2016 for quashing Crime No.17 of 2016, Sornam, the second petitioner herein had given her no objection for allowing the said criminal original petition. As a result, the criminal original petition filed by Rajesh and others were allowed on 25.02.2020. The order dated 25.02.2020 in Cr1.O.P.(MD) No.13383 of 2016 is as follows:-

"7.The learned counsel for the petitioner on instructions fairly states that the first petitioner would not prosecute the case against the defacto complainant and her family.



8.The learned counsel for the defacto complainant states that the second respondent herein had already filed Crl.O.P.(MD)No.15405 of 2017 before this Court and as and when it is listed, the first petitioner, through his counsel will give his no objection for allowing the same and for quashing the complaint filed by him against the defacto complainant and her family members.

9.In this view of the matter, recording the said undertaking given by the learned counsel for the petitioners, the impugned First Information Report in Crime No.17 of 2016 on the file of the All Women Police Station, Nagercoil, stands quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.''

3. When this criminal original petition was listed for disposal, Rajesh opposed the allowing of petition. He would claim that he did not give any such undertaking as recorded by this Court.

4. I cannot approve of the somersault made by Rajesh. The order allowing Crl.O.P.(MD)No.13383 of 2016 was passed as early as on 25.02.2020. Rajesh also stated that he was aware of the said order. If Rajesh had not given the undertaking as recorded in paragraph No.8 of Crl.O.P.(MD)No.13383 of 2016, he should have taken out an application for recall of the same. But he did not take such steps.

5. I am therefore of the view that after securing a favourable order at the hands of the Court, he cannot wriggle out of the solemn undertaking given before this Court through his counsel. I know Mr.Ramasamy and when he states that he took instructions from Rajesh and only thereafter, he made the statement before the Court. I certainly believe the same.

6. Continuance of the impugned proceedings is not warranted. The proceedings impugned in this criminal original petition are quashed. This criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To:

1. The Sub-Inspector of Police,
Anjugramam police station,
Anjugramam,
Kanyakumari District.

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

Crl.O.P. (MD) No.15405 of 2017
19.01.2021

ES (CO)

KB (05.02.2021) 3P 3C