



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.2466 of 2022

and

Crl.M.P(MD)No.1816 of 2022

WEB COPY

Ashok Kumar

... Petitioner/Accused No.2

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch,
Dindigul.
(In Crime No.41 of 2021)

... 1st Respondent/Complainant

2.Kalavathi

... 2nd Respondent/
De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the case registered in First Information Report in Crime No.41 of 2021 on the file of the first respondent and quash the same.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.B.Thanga Aravindh

Government Advocate (Crl.Side) for R.1

Mr.R.M.Makesh Kumaravel for R.2

ORDER

Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the defacto complainant.

2. The petitioner is figuring as A.2 in Crime No.41 of 2021 registered on the file of District Crime Branch, Dindigul. Even before the Criminal Original Petition was taken up for disposal, the learned counsel appearing for the defacto complainant submitted that the defacto complainant had already filed Crl.O.P(MD)No.1526 of 2022 and a direction has been given for expediting the investigation. He, therefore, submitted that this Criminal Original Petition is not maintainable. I cannot agree with this contention. No doubt, this Court has directed the first respondent to file the final report within a stipulated time. But then, that direction was given behind the back of the petitioner herein. The petitioner was not a party to the said Criminal Original Petition. The right of an accused to knock the doors of this Court by invoking its inherent powers to



quash a criminal prosecution can never be denied. Whether the petitioner is given relief or not, is a different matter, but then, the right to move this Court has to be necessarily upheld. Such a valuable right available to an accused cannot be taken away by citing an order that was obtained behind his back. Therefore, I hold that this Criminal Original Petition is maintainable. In this case, the father of the defacto complainant had passed away on 12.02.2012. He was under treatment in ARS Hospital in Madurai from 11.02.2012. The father of the defacto complainant is said to have died at Madurai on 12.02.2012. According to the defacto complainant, the certificate given by the petitioner cannot be true.

3. In my view, there is no contradiction between the stand of the defacto complainant and the contents of the certificate. A person can be in some Hospital and he can still be under the care of another Doctor, who is not a part of the institution. In this case, the petitioner had certified that Rajunaidu passed away on 12.02.2012. That is factually correct. It is possible, that based on the certificate issued by the petitioner, the brother of the defacto complainant had obtained the death certificates one from Dindigul Municipality and another from Madurai Corporation.

4. According to the defacto complainant, her brother had misused them and also committed forgery. These are matters to which the petitioner is not a party. Therefore, this is a case in which the petitioner must be treated as a witness and not as an accused. The complainant can fight her battle with brother and the other accused. She can spare the petitioner herein. I do not quash the impugned FIR. The investigation can very well go on. I only direct the first respondent to treat the petitioner as a witness. The petitioner, through his counsel, gives an undertaking before this Court that he will fairly state all the facts that were within his knowledge. The petitioner will not try to screen or shield the first accused.

5. Recording the undertaking of the petitioner, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mga



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police,
District Crime Branch,
Dindigul.

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

+1 CC to M/s.J.LAWRANCE, Advocate (SR-4302[F] dated 04/02/2022)

+1 CC to M/s.R.M.MAKESH KUMARAVEL, Advocate (SR-4319[F] dated
04/02/2022)

Crl.O.P(MD)No.2466 of 2022

and

Crl.M.P(MD)No.1816 of 2022

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