



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.R.C(MD)No.321 of 2022

and

Cr1.M.P(MD)No.4063 of 2022

WEB COPY

Pichumani ... Petitioner/Defacto Complainant

Vs.

1.The Sub-Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.
(Crime No.83 of 2018) ... 1st Respondent/Complainant

2.Godwin Ruskin
3.Bennettick Peeter
4.Jayakumar
5.Jenkins Rethinaraj
6.Bibinraj ... Respondents 2 to 6/Accused 1 to 5

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records pertaining to the order passed in C.M.P.No.1926 of 2020 in C.C.No.10 of 2019 dated 22.11.2021 on the file of the learned Judicial Magistrate No.II, Padmanabhapuram and to set aside the same.

For Petitioner : Mr.S.C.Herold Singh

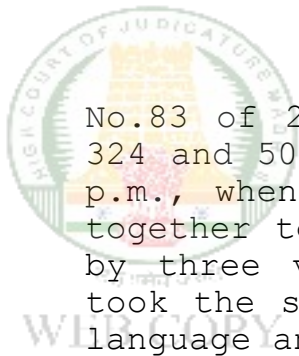
For R - 1 : Ms.M.Aasha
Government Advocate (Criminal Side)

ORDER

This revision has been filed challenging the order passed in C.M.P.No.1926 of 2020 in C.C.No.10 of 2019 dated 22.11.2021 on the file of the learned Judicial Magistrate No.II, Padmanabhapuram, thereby dismissed the petition filed under Section 216 of Cr.P.C to add other charges.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent and perused the materials available on record.

3.The petitioner is the defacto complainant and the respondents 2 to 6 are accused persons viz., A.1 to A.5. On the complaint lodged by the petitioner, the first respondent registered the case in Crime



No.83 of 2018 for the offences under Sections 147, 148, 452, 323, 324 and 506(ii) of I.P.C alleging that on 09.04.2018 at about 07.00 p.m., when the worship was going on, the accused persons conspired together to create law and order problem and to cause nuisance came by three vehicles, trespassed into the Church. The first accused took the shaker, which is used to beat the drum and uttered filthy language and threatened the petitioner, questioning that why he filed a case against the first accused and attacked the petitioner at his left cheek, leading to bleeding injuries swelling in the cheek. Due to that, the teeth of the petitioner was also broken. Asfar as the second accused is concerned, he removed the rod of the mike stand and attacked one Ratnamani, who was standing along with the petitioner. Likewise accused Nos.3 to 5 attacked the petitioner and another indiscriminately. However, the first respondent failed to register the case for the offence under Section 326 of I.P.C. The first respondent lodged final report and the same has been taken cognizance in C.C.No.10 of 2019 on the file of the learned Judicial Magistrate No.II, Padmanabhapuram. Before the commencement of trial, the petitioner filed a petition in Crl.M.P.No.1927 of 2020 in C.C.No.10 of 2019 under Section 216 of Cr.P.C to add the charge under Section 326 of I.P.C on the basis of the statement recorded under Section 161(3) of Cr.P.C.

4.The trial Court dismissed the petition on the ground that the petition is not maintainable. Admittedly, the petitioner filed a petition under Section 216 of Cr.P.C before commencement of trial. Only after examining prosecution witnesses, if any ingredients made out to constitute the offence under Section 326 of I.P.C, the petition can be entertained under Section 216 of Cr.P.C. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, this Criminal Revision Case is dismissed. However, the trial Court is directed to frame charge under Section 326 of I.P.C as against the accused persons after examining prosecution witnesses, if any ingredients made out to attract the offence under Section 326 of I.P.C. Consequently, connected Miscellaneous Petition is closed.

Sd/-

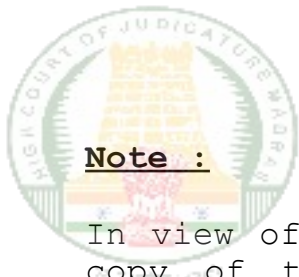
Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

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

Copy to:

The Section Officer,Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-15521[F] dated 31/03/2022)

**Crl.R.C(MD)No.321 of 2022
30.03.2022**

MGJ(11.04.2022) 3P 7C