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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2022

PRONOUNCED ON: 01.08.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.367 of 2022

Chandra : Petitioner

Vs.

1.The Inspector of Police,
Manamadurai Police Station,
Sivagangai District. : 1st Respondent/Complainant

2.Mothish

3.Susidharan : Respondents 2 and 3/Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to call for the records pertaining to the order dated 29.10.2021, in Cr.No.420 of 2020, passed by the learned Judicial Magistrate, Manamadurai and set aside the same and consequently direct the learned Judicial Magistrate, Manamadurai to take cognizance against all the accused in the F.I.R., in Crime No.420 of 2020, on the file of the first respondent.

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For Petitioner : Mr.M.Ramu

For Respondents : Mr.S.Manikandan
Government Advocate (Criminal Side)
for R.1

: Mr.M.Jegadeesa Pandian
for R.2

ORDER

The Criminal Revision Case is directed against the order dated 29.10.2021, passed by the learned Additional District Munsif-cum-Judicial Magistrate, Manamadurai, taking cognizance of the case against the three accused under Sections 294(b), 323 and 506(ii) I.P.C., and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 in Cr.No.420 of 2020, on the file of the Manamadurai Police Station, Sivagangai District.

2. The petitioner is the defacto complainant in Cr.No.420 of 2020, on the file of the first respondent Police. On the basis of the complaint lodged by the petitioner, F.I.R., came to be registered in Cr.No.420 of 2020 against five persons under Sections 147, 294(b), 323, 506(ii) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The first respondent, after completing the investigation, has laid a final report under Section 173 Cr.P.C., dated 25.07.2020 against three accused for the alleged offences under Sections 294(b),

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323, 506(ii) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and thereby deleting the respondents 2 and 3. After receiving the final report, the Judicial Magistrate has issued a notice dated 12.05.2021, directing the petitioner/defacto complainant to offer her objections if any, for the deletion of the respondents 2 and 3 from the charge sheet. The petitioner, after receipt of the said notice, has entered into appearance and filed a protest petition on 08.10.2021. The learned Magistrate, after conducting enquiry and upon perusing the materials available on record, has passed the impugned order dated 29.10.2021, rejecting the protest petition and thereby accepting the final report filed by the first respondent and ordered for taking cognizance of the case against three accused under Sections 294(b), 323 and 506(ii) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Aggrieved by the said order, the defacto complainant has come forward with the present revision.

3. The main contention of the petitioner is that a specific overt act was attributed against the respondents 2 and 3 in the complaint, that the petitioner's son Prabhu had sustained bleeding injuries as he was attacked by the respondents 2 and 3, that the petitioner's son Prabhu was taken to Government Hospital, Manamadurai on 06.05.2020 and for further treatment, he was referred to Government Medical College Hospital, Sivagangai on 07.05.2020 and that after treatment, he was discharged on 12.05.2020, that the accident report clearly

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mentioned that five known persons had attacked the petitioner's son Prabhu and that the first respondent police, in collusion of the other accused and the respondents 2 and 3 had created statements recorded under Section 161 Cr.P.C., in such a way to relieve the respondents 2 and 3, that the injured Prabhu had categorically given a statement to the police, who was taking treatment in emergency ward, that he was attacked by the respondents 2 and 3 with wooden log and that the first respondent has not acted in a fair manner and acted against the petitioner's complaint.

4. The learned Counsel for the petitioner would submit that the learned Magistrate has failed to consider that all the statements enclosed with the final report, as if the same were typed on 08.05.2020, but the injured Prabhu was hospitalised and was taking treatment till 12.05.2020 and that when the injured Prabhu was taking treatment as in-patient, it is not known as to how the first respondent has prepared a statement, as if the same was given by the injured Prabhu, that the learned Magistrate ought not to have entertained the final report filed by the first respondent without adding the respondents 2 and 3 as accused, and that the learned Magistrate failed to consider the biased activities of the first respondent.

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5. The case of the petitioner is that there existed a land dispute between her family and the family of the accused, that on 06.05.2020 at about 05.30p.m., when the petitioner was standing along with his son and daughter in front of their new house, all the accused came to that place and abused them in filthy language, that when the petitioner's son Prabhu had questioned about their abusing, the respondents 2 and 3 had attacked the said Prabhu with wooden log and caused bleeding injuries on his face and legs, that when the petitioner had intervened, the first accused had pushed her down by dragging her saree, that the accused Priya had dragged the hair of the petitioner, that the accused Rajendran by abusing in filthy language had directed the other accused to kill them, by kicking on her chest and that since Prabhu was having severe bleeding injuries, he was immediately taken to Manamadurai Government Hospital by her another son Muthukumar and that all the accused by throwing stones, had caused criminal intimidation.

6. The first respondent, after completing the investigation, has laid the final report alleging that there existed disputes between two families with respect to 2 feets of land belonging to the petitioner, allegedly available with the accused, that when the petitioner, her son Prabhu and daughter Mahalakshmi were in the property to take electricity supply to their new house, the accused 1 to 3 had abused the petitioner in filthy language and the accused 1 and 2 had

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attacked the witness Prabhu with wooden log and caused simple injury, that when the petitioner had intervened, the accused 1 and 2 had attacked her with hands and caused simple injuries, that the third accused had dragged the hair of the petitioner and all the accused had caused criminal intimidation and that therefore, the accused 1 and 2 had committed the offences punishable under Sections 294(b), 323, 506(ii) I.P.C., and under Section 4 of TNPHW Act and the third accused had committed the offences punishable under Sections 294(b), 323 and 506(ii) I.P.C.

7. As rightly pointed out by the learned Counsel for the respondents 2 and 3, the first respondent police has examined the witness Prabhu, while he was taking treatment as in-patient at Government Hospital, Sivagangai. Moreover, as rightly pointed out by the learned Counsel for the respondents 1 to 3, except the petitioner all the witnesses gave statements implicating the involvement of the accused 1 to 3 and the complaint was lodged by the petitioner by implicating the respondents 2 and 3 by exaggerating the incident. The learned Magistrate, on considering the complaint, final report and the statements recorded under Section 161 Cr.P.C. and the objections raised by the petitioner has given a finding that the reasons given by the Investigating Officer for deleting the respondents 2 and 3 are acceptable and there is no material or evidence to suggest that the Investigating Officer has acted in bias.

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8. On considering the entire materials available on record, this Court is of the clear view that the impugned order passed by the learned Magistrate, accepting the final report filed by the first respondent and thereby rejecting the protest petition cannot be found fault with. No doubt, in the accident register extract with respect to injured Prabhu, it has been stated that five known persons had allegedly assaulted with wooden sticks, stones and bare hands. It is evident from the medical records that the injured Prabhu was taking treatment as in-patient till 12.05.2020 and the Medical Officer who had attended him has certified that the injuries suffered by him are of simple in nature.

9. As rightly contended by the learned Counsel for the respondents 2 and 3, the petitioner has not shown any other material or evidence to show prima facie for the involvement of the respondents 2 and 3 in the alleged occurrence. During trial, if it appears from the evidence that the respondents 2 and 3 were also involved in the commission of the offence, then the learned Magistrate can very well invoke Section 319 Cr.P.C. and proceed against them, but at the same time, the learned Magistrate has to bear in mind that the power under Section 319 Cr.P.C., is discretionary and an extraordinary power and the same has to be exercised sparingly and only in the cases where the circumstances of the case warrants. Considering the above, this Court concludes that the above Criminal

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Revision Case is absolutely devoid of merits and the same is liable to be dismissed.

10. In the result, the Criminal Revision Case is dismissed.

01.08.2022.

Index : Yes/No

Internet : Yes/No

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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,
   Manamadurai.

2. The Inspector of Police,
   Manamadurai Police Station,
   Sivagangai District.

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

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

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K.MURALI SHANKAR, J.

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PRE-DELIVERY ORDER MADE IN

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