



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Criminal Original Jurisdiction

Wednesday, the Sixteenth day of February Two Thousand and
Twenty Two

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD)No.9179 of 2021

IN

CRL OP(MD)NO.2863 OF 2021

V. Mathivanan

S/o. Velayutham Kottavilai Iraviputhur

Post Kanyakumari District.

... Petitioner/3RD PARTY

Vs

1 M.Jegatha

W/o. Mathivanan Keerivilai Agastheeswaram

Taluk Kanyakumari District.

2 The Inspector of Police

All Women Police Station Kanyakumari Police

Station Kanyakumari District.

Cr.No. 1 of 2018.

... 2ND Respondent/Respondent

Prayer :-

To recall the order dt.24.02.2021 made in Crl.OP(MD)No.2863 of 2021 on the file of this Honble Court and pass such further or other orders as this Honble Court.

Prayer in CRL OP(MD).(*)2863 of 2021

Criminal Original petition filed under section 482 of CR.PC to transfer the criminal case in CC NO.13 of 2019 on the file of the Additional Mahila Court, Magistrate Level, Nagercoil, Kanyakumari District to Additional Mahila court, Tirunelveli District, Tirunelveli or any other appropriate court at Tirunelvlei District.

ORDER:- This Petition coming on for orders on this date and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru.C.Kishore, Advocate for the



Petitioner and of Thiru.Ka.Ramakrishnan Advocate for 1st Respondent and Thiru. Sanjay Gandhi, Government Advocate for the respondent No.2, this Court made the following order:

This petition has been filed to recall the order, dated 24.02.2021 in Crl.O.P.(MD)No.2863 of 2021. The petitioner herein is a third party to the case in Crl.O.P.(MD)No.2863 of 2021.

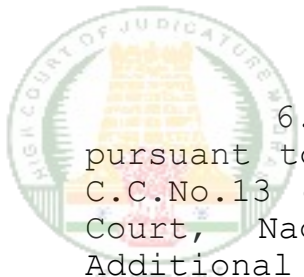
2. Brief substance of the petition in Crl.O.P.(MD)No.2863 of 2021 is as follows:-

The marriage between the petitioner and her husband took place on 02.09.2013. The petitioner was subjected to dowry harassment, she filed a complaint on 31.12.2017 before the respondent police, there the petitioner was assaulted by two advocates and a case in Crime No.1 of 2018 was registered against 7 persons. The petitioner filed a Transfer Petition in Crl.O.P.(MD) No.16703 of 2018. That petition was closed, directing the respondent police to complete the investigation within a specific period. The case was taken on file as C.C.No. 13 of 2019 on the file of the Additional Mahila Court, Magistrate Level, Nagercoil. When the petitioner was summoned to give evidence, she came to know that the names of A6 and A7 were deleted from the charge sheet. The Magistrate has failed to send notice under Section 173 (8) of Cr.P.C and the trial Court has not invoked the provisions under Section 319 of Cr.P.C and is acting in a biased and influenced manner and prayed the criminal case to be transferred to some other Court.

3. This Court ordered the case to be transferred to the Judicial Magistrate (Additional Mahila Court), Tirunelveli and has directed the Judicial Magistrate (Additional Mahila Court), Tirunelveli, to issue notice to the petitioner under Section 173 of Cr.P.C and to decide the issue under Section 319 of Cr.P.C. Against this order, the petitioner has filed this petition.

4. On the side of the petitioner in Crl.M.P.(MD)No.9179 of 2021, it is stated that already the Judicial Magistrate cum Additional Mahila Judge, Nagercoil, has issued notice to the wife / defacto complainant under Section 173 (8) Cr.P.C and he has passed a specific order in Crl.M.P.No.1326 of 2018, dated 22.01.2019. Suppressing the order, the wife / defacto complainant has approached this Court and she filed a petition in Crl.O.P.(MD)No.2863 of 2021. Since the order was obtained after suppressing the material facts, the order, dated 24.02.2021, is to be recalled.

5. The first respondent / defacto complainant has given a false allegation against the Judicial Magistrate, who has already issued notice under Section 173 (8) of Cr.P.C and has passed a speaking order and the first respondent / defacto complainant has misled the High Court by suppressing the material facts.



6. On the side of the petitioner, it is stated in pursuant to the order of the Court, dated 24.02.2021, the case in C.C.No.13 of 2019 on the file of the Judicial Magistrate, Mahila Court, Nagercoil, was withdrawn and was transferred to the Additional Mahila Court (Magistrate Level), Thirunelveli and the same was taken on file as C.C.No.228 of 2021. The first respondent herein has filed a petition raising objections to the charge sheet, the Judicial Magistrate cum Additional Mahila Court (Magistrate Level), Thirunelveli, numbered the petition as Crl.M.P.No.767 of 2021. (*) **The Order in C.C.No. 13 of 2019 dated 13/10/2020**

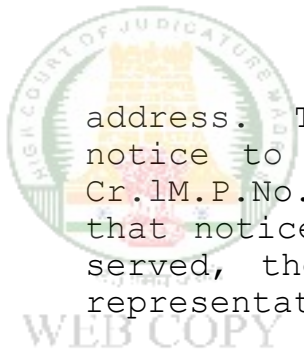
"As per the circumstances of this case and on perusal of records, it is seen that case was under Sections 498(A), 406, 294 (b), 506(ii) of I.P.C and Section 4 of DP Act and Section 4 of TNPWH Act as a continuing offence against her husband and in law. As the occurrence stated by P.W.1, P.W.2, P.W.3 is not the continuously of this offence and cannot be tried along with this case. Hence, this Court is not inclined to invoke Section 319 Cr.P.C as against Reghu and Alagesan in this case."

7. On the side of the petitioner, it is stated that the case is only a matrimonial dispute between the petitioner and the first respondent herein. The advocates/proposed Accused Nos.6 and 7 are no way connected with the case. At the time of police enquiry, two advocates, who appeared for the petitioner, were man handled by the police and those advocates have filed a complainant against the police. Only to take vengeance against the advocates, the complaint in this case was drafted by the police. Even in the deposition of the first respondent herein / P.W.1, it was stated that there was some wordy quarrel between the advocates and the police and she has admitted that the complainant was written by the police.

8. On the side of the first respondent, it is stated that notice was not served on the first respondent. Notice was not sent to the correct address of the defacto complainant. The Judicial Magistrate cum Additional Mahila Court, Nagercoil, has failed to apply his mind and failed to send notice to the address of the parental house of the defacto complainant. Only the villagers rescued the defacto complainant from the house of the petitioner. The defacto complainant is residing in Keerivilai, Kanyakumari District and no notice was sent to her. The Court failed to verify whether notice was served to the defacto complainant.

9. On the side of the petitioner, it is stated that the defacto complainant was standing in front of the closed doors of the house and there was no question of her being rescued by the villagers.

10. On the side of the petitioner, it is further stated that in the complaint and F.I.R, the address of the first respondent / defacto complainant is stated as Kottavillai, Iraviputhur. Even in the list of witnesses, the same address was mentioned. Witness



address. There is nothing wrong on the part of the Court in giving notice to the available address. In the order of the Court in Cr.L.M.P.No.1326 of 2018, dated 22.01.2019, it is clearly mentioned that notice was sent to the complainant and that though notice was served, the defacto complainant was absent and that there was no representation.

11.It is seen the defacto complainant has filed a petition in Cr.L.O.P.(MD)No.2863 of 2021. As per the order of this Court, the case was transferred to the file of the Additional Mahila Court (Magistrate Level), Thirunelveli and the same was taken on file as C.C.No.228 of 2021.

12.The original complaint was under Sections 498(A), 406, 294 (b), 323, 506 (ii) of I.P.C and under Section 4 of DP Act. Some allegations against the proposed accused Nos.6 and 7 was mentioned in the complaint. P.W.1 has deposed that the complaint was written by the police. The case of the petitioner is that the police manhandled the advocates and that they filed a case against the police and that as a counter blast, the police inserted the name of the advocates in this case.

13.It is seen that the first respondent / defacto complainant has filed a petition, objecting the charge sheet. The petition was numbered as Cr.L.M.P.No.767 of 2021. After enquiry, the Additional Mahila Court (Magistrate Level), **(*)Nagercoil**, has passed an order that the offence against the revision petitioner and proposed accused Nos.6 and 7 are distinct and the Court was not inclined to invoke Section 319 of Cr.P.C. There is no necessity for this Court to discuss the merits of the order in **(*)C.C. No.13/2019** dated 13/10/2020

14.It is seen that in the complaint, the address of the defacto complainant was mentioned as Kottavillai, Iravipudur. In the list of witness, the same address was mentioned. In fact, witness summon was served to the defacto complainant in the above address. She was present and was examined as P.W.1. There is no possibility for a Judicial Magistrate to change the address stated in the complaint. Notice can be sent only to the available address of the defacto complainant. In the order in Cr.L.M.P.No.1326 of 2018, it is clearly stated that notice was sent and served to the defacto complainant.

15.It is clear that the first respondent has suppressed the order in Cr.L.M.P.No.1326 of 2018 and has approached this Court and that an transfer of order was passed in Cr.L.O.P.(MD)No.2863 of 2021.

16. In the above circumstances, the contention raised by the petitioner is sustainable. But, considering the facts and circumstances of the case, considering the fact that transfer of the case again to the previous Court will cause further delay, to avoid multiple transfers, this Court is inclined to dispose of the petition with a direction to the Additional Mahila Court, Thirunelveli, to dispose of the case with in a period of five months



CRL MP(MD)



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from the date of receipt of a copy of this order. This Pe is disposed of accordingly.

Sd/-

Assistant Registrar (Records)

(*)Amended as per order of this Court made in Crl MP(MD)

No.9179 of 2021 in Crl.O.P(MD)No.2863 of 2021 dated 11/08/2022

Sd/-

Assistant Registrar (RTI)

// True Copy //

23/08/2022

Sub Assistant Registrar(CS)

TO

(*)To be Substituted to the order which already despatched on 28.07.2022

1. The Judge, Additional Mahila Court, Tirunelveli.
2. The Judge, Additional Mahila Court, Magistrate level, Nagercoil, Kanyakumari District.
3. The Inspector of Police All Women Police Station Kanyakumari Police Station Kanyakumari District.
4. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai
5. The Registrar(Judicial) Madurai Bench of Madras High Court, Madurai

Copy to:

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

+1 CC to M/S.KA.RAMAKRISHNAN, Advocate, Sr-6901, dated 17/02/2022

+1 CC to M/S.C.KISHORE, Advocate, SR-34283, dated 28/07/2022

ORDER DATED : 16/02/2022

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ORDER

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CRL MP(MD)No.9179 of 2021
in

crl op(MD)no.2863 of 2021
Giving direction and etc.
as stated within.

RK(02/03/2022) 5P 9C

MGJ(28.07.2022) 5P 9C

https://www.mca.gov.in/ 5P 9C