



Crl.O.P.(MD)No.14028 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.14028 of 2019

and

Crl.M.P(MD).No.8539 of 2019

1.Selvam

2.Sumathi

3.Karthik

4.Logesh

5.Rameshkumar

6.Rajathi

: Petitioners/Respondent/
Accused

Vs.

K.Muthukrishnan

: Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 08.02.2019 passed in Cr.R.C.No.28 of 2018 on the file of the learned II Additional



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District & Sessions Judge, Tiruchirappalli reversing the order dated 10.05.2018 passed in C.C.No.28 of 2018 on the file of the learned Judicial Magistrate, Musiri, Trichy District, by allowing this Criminal Original Petition.

For Petitioners : Mr.S.Vinayak

For Respondent : Mr.S.Muthukrishnan

ORDER

The subject matter of the challenge in the present petition pertains to the order passed by the learned II Additional District & Sessions Judge, Tiruchirappalli, in Cr.R.C.No.28 of 2018, dated 08.02.2019.

2.The respondent filed a private complaint before the learned Judicial Magistrate, Musiri, under Section 200 of Cr.P.C and the same was taken on file in C.C.No.29 of 2018. The allegation made in the complaint is that the accused person attacked the complainant and also slapped his wife and threatened the complainant with dire consequences.



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3.Considering the allegations made in the complaint, the sworn statement of the complainant was recorded and the complaint was taken cognizance under Sections 341, 323 and 506 (ii) IPC.

4.The learned Magistrate thereafter, proceeded to examine as to whether summons must be issued to the accused persons or complaint has to be dismissed on the ground that there are no sufficient materials for proceeding further. The learned Magistrate, on considering the materials found that there was no ground for proceeding further and hence, dismissed the complaint through an order dated 10.05.2018.

5.Aggrieved by the above order, the complainant filed a revision before the II Additional District and Sessions Judge, Tirunelveli, and the same was taken on file in Crl.R.C.No.28 of 2018. The learned Sessions Judge, through the order dated 08.02.2019 allowed the petition and set aside the order passed by the learned Magistrate and directed the complaint to be taken on file and to proceed in accordance with law. Aggrieved by the same, the present Criminal Original Petition has been filed under Section 482 Cr.P.C.



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6.Heard Mr.S.Vinayak, learned counsel for the petitioners and Mr.S.Muthukrishann, learned counsel appearing for the respondent.

7.The learned counsel for the petitioners submitted that the criminal complaint was a clear case of abuse of process of law, since the complainant was trying to indirectly achieve what he was not able to directly achieve through various other proceedings. The learned counsel further submitted that there was already a police protection granted to the petitioners to ensure that the land that was assigned to the petitioners, who are landless poor, is permitted to be enjoyed by them. In spite of such an order, repeated attempts were made by the complainant to trespass into the property and this resulted in a false private complaint given before the learned Magistrate, which was rightly dismissed. The learned counsel submitted that the learned Sessions Judge, went wrong in interfering with the order passed by the learned Magistrate.

8.Per contra, the learned counsel for the respondent submitted that the petitioners are attempting to connect two cases, which do not have



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any commonality and the case of hand involves an attack made on the respondent and his wife and the threat exerted against them. The allegations made in the complaint made out a cognizable offence and the learned Magistrate went wrong in dismissing the complaint by rendering findings, which ought to have been done only after conducting trial. This order passed by the learned Magistrate was rightly interfered by the learned Sessions Judge and the matter has been remanded back to the file of the learned Magistrate and the order does not suffer from any illegality and the learned counsel urged this Court to dismiss this petition.

9.This Court carefully considered the submission made on either side and materials available on record.

10.In the considered view of this Court, there is no requirement for this Court to get into the merits of the case at this stage by considering the rival claims that have been put forth before this Court. This Court is now concerned about the procedural irregularity that has taken place when the complaint was dealt with by the learned Magistrate. The nature



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of allegations that have been spelt out in the complaint and spoken by the complainant in her sworn statement, can be established only in trial. At the time of taking cognizance and issuing process, the Court will only be concerned only about the *prima facie* materials, which makes out an offence.

11.The learned Magistrate, based on the allegations made in the complaint, broadly had 2 options. The first option was to convert the complaint under Section 156 (3) Cr.P.C by calling upon the complainant to file an affidavit before the Court and directing the police to investigate the case. The other option was that even after taking cognizance, the learned Magistrate could have called for the report from the police under Section 202(1) Cr.P.C and thereafter, take a decision as to whether the complaint deserves to be dismissed or the process must be issued to the accused persons.

12.In stead of resorting to any one of the above procedure, the Magistrate erroneously rendered the finding on the merits of the case and



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the Magistrate failed to take into consideration the fact that what is required at that stage was only *prima facie* material and nothing more.

13.This Court does not find any illegality or infirmity in the order passed by the learned Sessions Judge while remanding the matter to the file of the learned Magistrate.

14.In the present case, it will be appropriate for the learned Magistrate to adopt the procedure under Section 202 (1) Cr.P.C since the learned Magistrate is not satisfied with the available materials. Considering the allegations, the learned Magistrate can postpone the issue of process against the accused persons and can direct the investigation to be made by the Police Officer, for the purpose of deciding, whether or not there is sufficient ground for proceeding. On receiving the report, it will be left open to the learned Magistrate to take a decision either under Section 203 of Cr.P.C or under Section 204 of Cr.P.C. By adopting this procedure, the available materials in this case will become clearer before taking a decision to issue process and there will be sufficient ground for the Magistrate to take appropriate decision by assigning proper reasons.



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15.In view of the above discussion, this Court does not find any ground to interfere with the order passed by the learned Sessions Judge in Crl.RC.No.28 of 2018, dated 08.02.2019. The learned Magistrate is directed to proceed further in the manner indicated by this Court and take a decision within a period of 8 weeks from the date of receipt of a copy of this order.

16.With the above direction, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petition is closed.

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To

1. The II Additional District & Sessions Judge,
Tiruchirappalli.
2. The Judicial Magistrate, Musiri,
Trichy District.



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N.ANAND VENKATESH, J.,

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