



Crl.R.C.(MD).No.928 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2022

CORAM

**THE HONOURABLE MR. JUSTICE G.ILANGO VAN**

Crl.R.C.(MD).No.928 of 2021  
and Crl.M.P.(MD).No.11071 of 2021

N.Sahila

.. Petitioner

*Vs.*

N.Sudhakar

.. Respondent

(Since original Respondent died, his legal heir was substituted as per order of this Court dated 05.07.2022 in Crl.M.P.(MD).No.6719 of 2022 in Crl.R.C.(MD).No.928 of 2021)

**PRAYER:** This Civil Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.IV, Madurai in Cr.M.P.No.3946 of 2021 in C.C.No.83 of 2012 vide order dated 23.11.2021 and set aside the same and consequently, discharge the petitioner from all the charges mentioned in the said case.

For Petitioner : Mr.R.Anand

For Respondent : Mr.S.M.A.Jinnah

### **ORDER**

This criminal Revision Case has been filed against the order passed by the learned Judicial Magistrate No.IV, Madurai, in Cr.M.P.No.3946 of



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2021 in C.C.No.83 of 2012 vide order dated 23.11.2021

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2.This revision case has been preferred against the order of dismissal that was passed by the trial Court in Crl.M.P.No.3946 of 2021, which was filed by the revision petitioner seeking discharge from the offences, stating that she was working as police official during the above said alleged occurrence and as per law, sanction under Section 197 Cr.P.C. is required for initiating and continuing the criminal prosecution. That petition came to be dismissed by the trial Court. Against which, this revision has been preferred.

3.The brief facts are as follows:

One Narayanasamy is the complainant in C.C.No.11 of 2008. He was retired as Headmaster. On 11.01.2007 at about 07.00 p.m. when he was standing in front of his complex, the accused person came there and enquired with regard to some storing of sand. She abused him in filthy language and assaulted with latti. The accused also outraged the modesty of his wife. When that was objected, his son was also assaulted. After some time some 7 or 8 police constables came in a Jeep and also caused assault. He was taken to the police station and there, he was severely assaulted by them. A false case has also been registered against the complainant and his son. At the time of remand they disclosed the entire occurrence to the



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remanding Magistrate. They were admitted in the prison hospital from 14.01.2007 to 18.01.2007. Over the above said occurrence complaint was given. Since there was no proper action Crl.O.P.(MD).No.1968 of 2007 was filed before this Court and in pursuance of the above said order, the private complaint has been filed making the allegations with the accused person for the offence punishable under Sections 294(b), 323, 324, 448, 506(ii) and 2(d) and 2(e) of the Human Rights Protection Act and for compensation.

3. When the above said complaint was taken on file on the side of the complainant several witnesses have been examined and the case is about to be posted for framing of charges. At this juncture the above said petition was filed by this petitioner.

4. Heard both sides.

5. Even though the revision has been preferred against the order that was passed by the trial Court in Crl.M.P.No.3946 of 2021, which was filed under Section 245 Cr.P.C. seeking discharge, at the time of hearing, the counsel for the petitioner has stated that the learned Judicial Magistrate No.IV, Madurai, has no jurisdiction to entertain the complaint and take up



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the trial. Since the jurisdiction issue was not raised either before the trial Court or in the grounds of revision, the revision petitioner was allowed to file additional grounds of revision. In pursuance of the above said permission, she has also filed the additional grounds.

6.The issue with regard to the sanction under Section 197 Cr.P.C. was already dealt with by this Court on the previous occasion in Crl.O.P. (MD).No.4118 of 2009, dated 19.08.2009. The very same petitioner moved the above said original petition on the very same ground. But that was dismissed. So second petition on the very same ground is not at all maintainable. Probably on that reason only it appears that the above said additional grounds have been filed.

7.The short point has been raised by the learned counsel for the revision petitioner. According to him, reading of complaint shows that the complainant wants the accused to be punished under Section 2(d) and 2(e) and 30 of Protection of Human Rights Act. According to him, the Principal District Judges in Districts are empowered to take up the matter. No doubt that the revision petitioner is right on that point. But he went a step further stating that the entire proceedings should be quashed on the ground that the



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trial Court ought not to have examined the witnesses, since under Section 30 of the Protection of Human Rights Act is exclusively triable by the Court of Sessions.

8.Per contra, the learned counsel for the respondent submitted that the crime is of the year 2008 and several attempts have been made by the revision petitioner to stall the proceedings during the pendency of the entire criminal proceedings. Original complainant reported to be dead. In his place his son was impleaded as a party. According to him, there is no objection on the side of the accused person with regard to the jurisdiction of the trial Court. After completing the pre-trial proceedings only, it was taken cognizance in C.C.No.83 of 2012 and the now the charges are going to be framed and if the trial Court finds that it has no jurisdiction to try the offence, then it is well within his power to take appropriate further action. So according to him, the belated attempt on the part of the petitioner, should not be allowed.

9.As I mentioned earlier, the learned counsel for the petitioner wants the entire evidence that was recorded during the pre-trial proceedings must be struck of. For that purpose he would rely upon the Judgment of this



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Court in the case of ***Rev. Sister Flora Correspondent, St. Teresa Primary School, West Marianathapuram, Dindigul and another Vs. S.Babiolo Viancy*** reported in ***2017 SCC Online Mad 16887*** and in the case of ***R.Lakshmi Vs. J.Susila*** reported in ***2017 SCC Online Mad 37152***.

10.In *R.Lakshmi's case* it has been observed that the Magistrate has no power to entertain the complaint and if any penal provision has been added to the complaint filed under Section 2(d) and 2(e) of the Protection of Human Rights Act, then it shall undergo the process of committal proceedings.

11.This Court has relied upon the Judgment of ***Andra Pradesh High Court in the case of A.Goverdhan Reddy Vs. Superintendent of Police, Allahabad***, reported in ***1998 Crl.LJ 561*** with a direction to approach the concerned Court under the provisions of Protection of Human Rights Act, 1993. The private complaint that was filed by the complainant was quashed. But here the facts are entirely distinguishable in nature. Because in the above said case in *R.Lakshmi's Case*, no penal provision has been attracted. On that ground only the above said private complaint was quashed by this Court. But as pointed out by the Andra Pradesh High Court in



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*A.Goverdhan Reddy's case*, if the penal provisions are added, then it has to undergo the usual process of committal, this view has also been taken by this Court on the earlier occasion also.

12.The counsel on record for the petitioner is not right in stating that the entire proceedings must be quashed and the evidence must be stuck off. Such a course is not at all available. No doubt taking cognizance as C.C. without adopting the committal procedure is an irregularity. What sort of irregularities vitiates the proceedings has been set out in Section 460 Cr.P.C., but here absolutely no prejudice has been caused to the revision petitioner in recording the statement of witnesses. The Magistrate is duty bound to record the statement of the witnesses in a private complaint, when it is exclusively triable by Court of Sessions, only after recording the statement of the complainant the committal proceedings to be taken. According to the respondent no illegality or irregularity has been committed by the trial Court.

13.He would rely upon the following Judgments.

(I) Dhano Vs. State Reported in 2009 (107) DRJ 149,

(ii) Neeraj Gupta Vs. Pardeep Kumar reported in 2019 SCC online



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P&H 3115,

WEB COPY (iii) State (NCT of Delhi) Vs. Suresh Gautam Reported in (2019) 261

DLT 513, and

(iv) Azad Singh Dagar Vs. The State reported in 2015 SCC online 10984.

14. So it appears that the charges are not framed so far. So the revision petitioner cannot argue that because of the above said proceedings he has been seriously prejudiced. So I am of the considered view that neither on the main ground that are mentioned in the ground of revision or in the additional ground, the revision is maintainable. So accordingly, this revision got to be dismissed, of course, by directing the trial Court to undertake the committal process as per the procedure and complete the same within a month from the date of receipt of a copy of this order.

15. With the above said directions, this revision petition stands **dismissed**. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

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To

- 1.The Judicial Magistrate No.IV, Madurai.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.



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**G.ILANGO VAN,J.**

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