



Crl.RC.No.1055 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

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&

Crl.MP. Nos.8440 & 8441 of 2023

1. N. Aravindharaj @ Aravind
2. N. Naveen @ Navisan

...Petitioners

vs.

1. The Inspector of Police
Marakanam Police Station
Villupuram District.
Crime No.79 of 2022
2. Mohan Doss

...Respondents

PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code, 1973 against the order dated 06.08.2022. passed in C.M.P. No.2840 of 2022 in PRC No.24 of 2022 by the Judicial Magistrate II, Tindivanam.

For Petitioners : Mr.S. Karthikeyan

For R1 : Mr. J. Subbiah
Government Advocate (Crl. Side)

For R2 : Mr. R. Sankarasubbu
for Mr.S. Satheesh Kumar



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ORDER

WEB COPY The present Criminal Revision Petition is filed against the order dated 06.08.2022., passed in C.M.P. No.2840 of 2022 in PRC No.24 of 2022 by the Judicial Magistrate II, Tindivanam.

2. The petitioners are the accused 2 and 3 in PRC No.24 of 2022. The respondent (Inspector of Police, Marakkanam Police Station) registered FIR in Crime No.79 /2022 against 8 accused for the offences punishable under Sections 147, 148, 294(b), 323, 324, 506(2) and 307 IPC based on the complaint of one Mohandoss. The police after concluding the investigation filed a final report against all the accused except A2 and A3 shown in the FIR. In 161(3) Cr.P.C. Statement, the complainant Mohandoss had mentioned that A2 and A3 though were present in the scene of offence, neither assaulted him nor abused him in filthy language. Based on this particular statement, A2 and A3 were not included as accused in the final report.

3. Aggrieved over the same, the complainant filed Crl.M.P.No.2840/22 protesting the final report. The learned Judicial Magistrate II, Tindivanam, vide her orders dated 06.08.2022 had made the following observations:



"On perusal of records available before this Court, it is revealed that the defacto complainant mentioned A2, A3 in his statement. Further, A2 Aravindh, A3 Naveen involved in the offence, is revealed by the confession statement of co-accused. Considering the above facts, prima facie case is made out as against A2, A3 also. Hence, this court is taken on file the accused along with A2, A3 as PRC."

4. Aggrieved over the orders passed by the learned Judicial Magistrate II, Tindivanam, the 2nd and 3rd accused in PRC No.24/2022 have filed the present Criminal Revision Petition.

5. Heard Mr.S. Karthikeyan learned counsel appearing for the petitioners, Mr. J. Subbiah, learned Government Advocate (Crl. Side) appearing for the 1st respondent and Mr. R. Sankarasubbu, learned counsel appearing for the 2nd respondent.

6. Mr.S. Karthikeyan learned counsel appearing for the petitioners contended that though in the statement recorded by the police under Section 161(3) Cr.P.C. the complainant had clearly stated that the 2nd and 3rd accused did not commit any offence, the Magistrate had erroneously included the present revision petitioners as accused 2 and 3 in PRC



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7. Per contra, Mr.Mr. R. Sankarasubbu, learned counsel appearing for the complainant/injured had contended that the complainant had sustained grievous injuries and in his complaint he had clearly stated that both the accused had assaulted him. However the police, for the reasons best known to them, had not included these two accused in the final report filed by them.

8. At the outset it may be pointed out that the FIR was given by the complainant Mohan Doss on the same date of occurrence i.e. on 20.02.2022. There is no delay in lodging the complaint with the police by the complainant. Therefore the evidentiary value of complaint is greater under Section 8 of the Indian Evidence Act than the statement recorded under Section 161(3) Cr.P.C. Moreover, the complaint by the complainant is his previous statement and it can be used for corroboration under Section 157 of the Indian Evidence Act and also for contradicting the complainant under Section 145 of the Indian Evidence Act. On the other hand, the statement recorded under Section 161(3) Cr.P.C cannot be used for chief examination because of the embargo in



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Section 162 Cr.P.C., which states that such a statement cannot be used for any purpose. Section 161(3) Cr.P.C statement hence can be used only for establishing contradiction as per the later part of Section 145 of the Indian Evidence Act. Considering the scheme of Sections 161, 162 Cr.P.C and Sections 145 and 155(3) of Indian Evidence Act, it can be concluded that proof of a contradiction does not constitute "evidence" in the strict sense and it only enables the court to assess the credibility of a witness.

9. In the instant case, since the complaint has been signed by the complainant, the same can be marked as an exhibit. The statement recorded under Section 161(3) Cr.P.C. can never be marked as an exhibit and it can, at the most, be used for contradictions as observed earlier and therefore, the Magistrate was right in including A2 and A3 in the PRC case based on the complaint of the complainant. Therefore, I do not see any reason to interfere with the orders passed by the Magistrate.

10. In the result,



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i. the Criminal Revision Petition is dismissed. No costs.

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Consequently, connected Criminal Miscellaneous Petitions are closed.

ii. The order dated 06.08.2022 passed in C.M.P. No.2840 of 2022 in PRC No.24 of 2022 by the Judicial Magistrate II, Tindivanam, is confirmed.

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Index : yes/no

Speaking /Non speaking Order



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To
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1. The Inspector of Police
Marakanam Police Station
Villupuram District.
Crime No.79 of 2022
2. The Judicial Magistrate II, Tindivanam.
3. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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