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Crl.O.P.No.13770 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.13770 of 2023

and

Crl.M.P.No.8445 of 2023

1. Prabakaran

2. Ganesh

3. Subramaniyan

... Petitioners

Vs.

1. The State Represented by,
The Inspector of Police,
Chengalpattu Taluk Police Station,
Chengalpattu – 603 002.

2. Mr. Shanmugam Gramani

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and to quash the final report in C.C.No.56 of 2023 on the file of the 1st Respondent at the Additional Mahila Court, Chengalpet.

For Petitioner : Mr.L.Thiyagaiya

For Respondent : Mr. Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)



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ORDER

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This Criminal Original Petition has been filed to call for the records and to quash the final report in C.C.No.56 of 2023 on the file of the 1st Respondent at the Additional Mahila Court, Chengalpet.

2. The learned counsel appearing for the petitioner submitted that, on the basis of the complaint given by 2nd respondent, FIR in Crime No.602 of 2022 was registered for the offences under Sections 294(b), 323, 324 and Section 4 of TN Prohibition of Harassment of Women Act, 2002. After investigation, 1st respondent filed final report for the very same offences against the petitioners. It is his further submission that, there is also a complaint given by one Abirami, who is the wife of the first petitioner. On that basis, FIR in Crime No.601 of 2023 was registered for the offences under Sections 294(b), 323, 324 and 506(2) of IPC. There was a dispute between the parties with regard to pathway and that was the cause for giving complaint against each other. The FIR allegations and final report do not make out case for prosecuting the petitioners for the offence under Section 4 of TN Prohibition of Harassment of Women Act, 2002. Therefore, present petition is filed.



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3. It is the further submission of the learned counsel for the petitioner that, it is a case of case and case in counter, Investigation Officer has to follow provisions of P.S.O. 588A . However, without following the procedure contemplated in P.S.O. 588A, final report is filed.

4. In response, learned Government Advocate (Crl. Side) submitted that, parties had exchanged blows between each other and some both the parties had suffered injuries. In the case concerned in C.C.No. 56 of 2023, Dhanalakshmi, Shanmugam and Lokesh Babu were treated by Dr.Sathish Rajan. Dhanalakshmi was admitted in the hospital. Shanmugam and Lokesh Babu had been treated as out-patient.

5. The learned Government Advocate (Crl. Side) produced the copies of the accident register. It shows that, Shanmugam suffered abrasion in forehead measuring 0.5cm x 0.3 cm and abrasion in the right foot 0.5 cm x 0.3 cm. Dhanalakshmi suffered contusion in back of her head measuring 3 x 3 cm and abrasion in the left forearm measuring 2 x 2 cm and also in the right ankle measuring 1 x 1 cm. Lokesh Babu suffered abrasion in the right elbow measuring 2 x1 cm and abrasion in the left elbow measuring 2 x 1 cm.



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6. The learned Government Advocate (Crl. Side) submitted that, there are enough materials to prosecute the petitioners under Sections 294(b), 323, 324 of IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002. Therefore, he prays for dismissal of the petition.

7. Considered the rival submissions and perused the records. It is seen from the FIR allegations that, defacto complainant with his wife, son and daughter-in-law went to remove the broken tamarind tree for removing the branches which fell due to Mandus Storm. Accused had started attacking them with stones and wooden log. As a result, they suffered injuries and got admitted in the Hospital. Investigation in this case is completed and final report was also filed.

8. The statement of the defacto complainant shows that, on 12.12.2023, accused had beaten them with stones and wooden log and that, they scolded them with filthy language. Similar statement was also given by Dhanalakshim, Lokesh Babu and Karthikeyam. Independent Witnesses Anitha and Dilli also corroborate the statement of the defacto complainant. As already stated, the copy of the accident register of Dhanalakshmi, Shanmugam and Lokesh Babu show that, they suffered injuries.



9. Thus from the materials produced and the statement of the witnesses, this Court is of the view that, there are enough materials available for prosecuting the petitioner for offences under Sections 294(b), 323, 324 of IPC.

10. With regard to the submission of the learned counsel for the petitioner that, Section 4 of TN Prohibition of Harassment of Women Act, 2002 is not made out, it is pertinent to refer to the Section.

[4. Penalty for harassment of woman. - Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theater, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees.]

Section 2(a) defines what is harassment

[(a) "harassment" means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force.]



11. As per this section, definition of harassment includes an act which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force. As stated earlier, Dhanalakshmi suffered injury in an accident. Therefore, this Court is of the view that, prima facie material is available for prosecuting the offence under Section 4 of TN Prohibition of Harassment of Women Act, 2002 also. Further, this Court in **V. Karthikeyan And Others vs State By S.I.** held that, PSO 588(A) has no statutory force and also that it is only directory and not mandatory. Non compliance of PSO 588(A) is not a ground for quashing the criminal case. It is pertinent to refer to the relevant portion of the judgment.

17. Once this conclusion is arrived at, the judgment of the apex Court steps in and there could be no difference then between P.S.O. 145 and P.S.O. 588A Chapter II of the Code of Criminal Procedure invests the police with the statutory rights to receive and record information of the commission of a cognisable crime and carry on investigation, before a prosecution is launched. Police Standing Orders cannot override the provision of the Code of Criminal Procedure. In State of Punjab v. Rajkumar, after considering the nature and purpose of R. 16.38 of the Punjab Police Rules, the Supreme Court held :

"The rules were not intended to replace and cannot certainly override the provisions of the Criminal Procedure Code. In State of Punjab v. Charan Singh, 1981 SCC Cri 407 : (1981 Cri LJ 712) it was declared



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that R. 16.38 cannot govern criminal prosecution, against the members of the police as it could not override the provisions of the Code of Criminal Procedure. The Punjab Police Act, under S. 12, made a provision for the Inspector General of Police, subject to the approval of the State Government to frame such orders and rules, as stated in the said section, and the Punjab Police Rules were framed in the exercise of the powers conferred under S. 12 and S. 7 which dealt with the appointment, dismissal, etc. of inferior officers. This provision appears akin to S. 9 of the Madras District Police Act. The net result is that P.S.O. 588A will have to be held as only directory and not mandatory. P.S.O. 588A is nothing more than administrative instructions and it cannot have the force of law. The non-following of the procedure prescribed under P.S.O. 588A will not constitute an illegality to quash the impugned prosecutions. The law laid down by the Supreme Court, coupled with the lack of power under S. 9 of the Tamil Nadu District Police Act to issue P.S.O. 588A as a statutory mandate, would answer the question involved and here reference to a Division Bench, does not arise.

18. Administrative instructions in P.S.O. 588A issued on the basis of the decision of P. N. Ramaswami, J. in Ramakrishnayya's case, commend observance, but merely because the provisions of the order have not been followed in a particular case by the Investigating Agency, that would not constitute illegality to quash the prosecutions launched. The decisions rendered by P. N. Ramaswami, J. in [Ramakrishnayya v. State](#), 1954 MWN Cr 9; David Annoussamy, J. in [Ekambaram v. Sundaramurthy](#), 1989 (1) Crimes 458 and S. T. Ramalingam, J. in [Pandurangan v. State](#) by Inspector of Police, Thirukazhukundaram, 1987 LW Cri 400 have dealt with the procedure to be followed in cases and counter, taken on file either on the basis of two final reports or one final report and not her private complaint.



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19. The question of prejudice, if any, to the case of the petitioners in both these petitions, due to non-observance of P.S.O. 588A will be a question of fact, to be canvassed and considered, after evidence is brought on record. On the score of a possible prejudice, trial cannot be halted or avoided.

11. For the aforesaid reasons, this Criminal Original Petition is dismissed.

22.06.2023

Internet: Yes
Index: Yes/No
Sma

To:

1. The Inspector of Police,
Chengalpattu Taluk Police Station,
Chengalpattu – 603 002.
2. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
sma

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