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Crl.O.P.Nos.22099 & 22374 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.01.2023
Pronounced on	03.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.Nos.22099 & 22374 of 2019 and
Crl.M.P.No.11457 of 2019

Crl.O.P.No.22099 of 2019

C.Kasthuriraj

... Petitioner / accused

1.The State Represented by
The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai.

... First Respondent / Complainant

2.Smt.B.Kavitha

... Second Respondent/ Defacto
Complainant

PRAYER : This Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and set aside the order dated 08th July 2019 passed in Crl.M.P.no.7393 of 2019 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.A.Ramesh, SC for
Mr.G.R.Hari



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Crl.O.P.Nos.22099 & 22374 of 2019

For Respondents : Mr.A.Gopinath,
Government Advocate (Crl. Side) for R1
: Mr.T.Mohan, SC for
Mr.Rajkumar Pandian for R2

Crl.O.P.No.22374 of 2019

B.Kavitha

... Petitioner / Defacto Complainant

Vs.

1.The Commissioner of Police,
Chennai City Police,
Vepery, Chennai 600 007.

2.The Deputy Commissioner of Police,
Anna Nagar District,
Anna Nagar, Chennai 600 040.

3.The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai 600 040.

... Respondents 1 to 3

4.C.Kasturi Raj

... Fourth Respondent / Accused

(R4 impleaded *vide* order dated 19.09.2019 made in
Crl.M.P.No.13520 of 2019)

PRAYER : This Criminal Original Petition has been filed under Section 482
of Cr.P.C., to direct the third respondent police to register the FIR based on
the petitioner's complaint dated 06.06.2019.

For Petitioner : Mr.T.Mohan, SC for
Mr.Rajkumar Pandian

For Respondents : Mr.A.Gopinath,
Govt. Advocate (Crl. Side) for R1 to R3
: Mr.A.Ramesh, SC for
Mr.G.R.Hari for R4



Crl.O.P.Nos.22099 & 22374 of 2019

COMMON ORDER

WEB COPY The Criminal Original Petition in Crl.O.P.No.22099 of 2019 has been preferred by Mr.C.Kasthuriraj / Accused to call for the records and set aside the order dated 08th July 2019 passed in Crl.M.P.No.7393 of 2019 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

2. The Criminal Original Petition in Crl.O.P.No.22374 of 2019 has been preferred by Mrs.B.Kavitha / Defacto Complainant to direct the third respondent police to register the FIR based on the petitioner's complaint dated 06.06.2019.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent police and the learned counsel for the private respondent in both the Criminal Original Petitions.

4. For the sake of convenience, the parties are referred as per their order in Crl.O.P.No.22099 of 2019.



5. On the complaint given by the defacto complainant / second respondent under Section 156(3) of Cr.P.C., before the V Metropolitan Magistrate, Egmore, Chennai, an order has been passed to register an FIR. The said order dated 08.07.2019 is put to challenge by the petitioner who is the respondent in the complaint.

6. The crux of the complaint is that the second respondent joined as an Accountant in the petitioner's firm M/s.Firm Foundation Housing (P) Ltd., in the year 2003. The petitioner is the Managing Director of the said Company. From the year 2011 onwards, the petitioner started to approach the second respondent in an inappropriate and unsolicited manner. He was in the habit of sending sexually coloured messages, even though the second respondent avoided to respond his messages. He also requested her not to disclose such messages to anyone. Since the second respondent being his employee, she could not take any strong actions. On 26.05.2018, the petitioner attended the second respondent's brother's wedding reception and on the said night, he sent a message that the second respondent was looking really beautiful. The petitioner was in the habit of making physical closeness with her whenever she approached him for getting signatures in the papers. On 11.05.2019, the



petitioner bluntly demanded the second respondent to adjust him. Since the second respondent did not yield to his demands, she was dismissed from the Company. On these allegations, a petition under Section 156(3) was filed before the Magistrate along with an affidavit of the second respondent. In the affidavit itself she has stated that since the police did not take any action on the complaint given by her, she has filed the petition under Section 156(3) of Cr.P.C.

7. The learned counsel for the petitioner submitted that the impugned order passed on the said petition is a cryptic one which does not speak about any justification for directing the first respondent to register the FIR; even prior to this complaint, the second respondent has misappropriated the company's fund by abusing her position as an Accounts Officer; she has issued fake vouchers and falsified the accounts by making false entries; she has utilized the funds of the Company to purchase the properties in the name of her family members and enriched herself; Mr.Sarvendiran, Vice President of the said Firm has lodged a complaint on 27.05.2019; the second respondent's complaint is only a counter blast of the said complaint and has been given with false allegations.



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7.1. The learned counsel for the petitioner further submitted that the allegations made in the complaint are inherently improbable for the reason that the second respondent continued her service in the firm even after the alleged sexual harassment which were made from the year 2011; if the said harassment was true, she would not have continued her service with the petitioner's Company; the bald assertions made by the second respondent cannot make out a case against the petitioner; she has given a complaint just to escape from the pending criminal case against her; on the face of it, the records will not make out any case against the petitioner; but the learned Magistrate has not properly appreciated the materials and passed a cryptic order to register the complaint. In support of the above submissions, he cited the following judgments:

(i) In the case of Priyanka Srivastava Vs. State of Uttar Pradesh, reported in (2015) 6 SCC 287.

(ii) In the case of N.Amsaveni Vs. R.Loganathan in Crl.O.P.No.15729 of 2019 dated 08.08.2019.

(iii) In the case of M.N.Ojha Vs. Alok Kumar Srivastav, reported in (2009) 9 SCC 682.



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(iv) In the case of M.Balaji Vs. State of Tamil Nadu in Crl.O.P.No.2343

of 2019 dated 28.06.2019.

(v) In the case of Vineet Kumar Vs. State of Uttar Pradesh, reported in (2017) 13 SCC 369.

(vi) In the case of Ramesh Rajagopal Vs. Devi Polymers, reported in (2016) 6 SCC 310.

(vii) In the case of E.Babyammal Vs. Sub-Inspector of Police, reported in 2016 SCC Online Mad 32974.

(viii) In the case of Anbazhagan Vs. State represented by Inspector of Police, Pallikaranai Police Station, Kancheepuram, reported in 2012 (1) MWN (Cr.) 154.

(ix) In the case of Gouresh Mehta Vs. The State rep. by Sub Inspector of Police, Cyber Crime Cell, CCB Egmore, Chennai, reported in 2010 SCC Online Mad 5348.

8. The learned Government Advocate (Crl.Side) appearing for the respondent police submitted that the complaint discloses a cognizable offence; the learned Magistrate having satisfied about the contents, has passed an order directing the first respondent to register the complaint; the petitioner is the



proposed accused and he has no *locus standi* to file a petition at this stage; he is not entitled to any opportunity of hearing at the stage of pending investigation; an order passed under Section 156(3) is a final order, on which, the petitioner is not entitled to maintain a petition under Section 482 of Cr.P.C. In support of his submissions, the learned Government Advocate cited the following decisions:

(i) In the case of Sivakama Sundari Ravi Vs. State by Inspector of Police in Crl.O.P.No.26695 of 2006 dated 26.02.2007.

(ii) In the case of Anju Chaudhary Vs. State of Uttar Pradesh and Another reported in (2013) 6 SCC 384.

(iii) In the case of B.Jayachandran Vs. State Rep. by the Inspector of Police in Crl.O.P.No.22163 of 2009 dated 15.10.2009.

(iv) In the case of K.Sundaaravelu Vs. The Deputy Commissioner of Police, reported in 2007(1) MWN (Cr.) 427.

9. The learned counsel for the defacto complainant has adopted the submissions of the learned Government Advocate and added that the petition is a pre-matured one, because the stage of cognizance by the Court would arise only after filing the final report. It is further submitted that only after



investigation is allowed to be done, the real facts would come to light. In support of the above contention, he cited the decision held by the Hon'ble Supreme Court in the case of HDFC Securities Limited and Others Vs. State of Maharashtra and Another, reported in (2017) 1 SCC 640.

10. Before advertng to the merits of the petition, it is to be noted that even before the petition was taken on file, the petition was listed on the point of maintainability. Since the impugned order has been passed under Section 156(3) of Cr.P.C., and it is a final order, a maintainability point was raised as to how the petitioner is eligible to maintain the proceedings under Section 482 Cr.P.C. and after hearing the petitioner, this Court ordered to take the petition on file.

11. Coming to the other submissions made by the parties, the first and foremost submission is that the impugned order is a cryptic one and it does not have any reason for arriving at a conclusion for giving a direction to register the FIR. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court held in the case of Priyanka Srivastava Vs. State of Uttar pradesh and Others reported in (2015) 6 SCC 287. The attention of this Court



was drawn to paragraph Nos.22 and 31 of the said judgment which reads as under:

“22. [In Anil Kumar v. M.K. Aiyappa](#)[3], the two-Judge Bench had to say this:

*"11. The scope of [Section 156\(3\)](#) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under [Section 156\(3\)](#) and held that where jurisdiction is exercised on a complaint filed in terms of [Section 156\(3\)](#) or [Section 200](#) CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under [Section 156\(3\)](#) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under [Section 156\(3\)](#) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge*



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which, in our view, has stated no reasons for ordering investigation."

.....

"31. We have already indicated that there has to be prior applications under [Section 154\(1\)](#) and [154\(3\)](#) while filing a petition under [Section 156\(3\)](#). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under [Section 156\(3\)](#) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under [Section 156\(3\)](#). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."



WEB COPY **12.** But in the case in hand, it cannot be strictly said that the second respondent did not comply the provision under Section 154(1) and 154(3) of Cr.P.C., because her very allegation is that the police refused to take up the complaint and she addressed her grievance before the higher police officials and they also did not take her complaint seriously. On perusal of the impugned order, it is seen that the Court has arrived at the conclusion that the averment in the complaint made out a cognizable offence and in view of the *prima facie* nature of the complaint, the investigation is essential.

13. Even though the learned Magistrate has not dealt the allegations made in the complaint to come to the above conclusion, it is recorded that he had perused all the papers. But it is insisted by the learned counsel for the petitioner that mere recording of the word perusal in the order is not sufficient unless the reasons to suspect the commission of offence is recorded. No doubt the second respondent has made various allegations by alleging the manner in which she had been sexually harassed on various occasions. She has stated about the sexually coloured messages sent to her on different occasions and the physical contacts made by the petitioner while she was interacting with the



petitioner by bringing the office files. The above allegations are sufficient enough to make out a case for sexual harassment in the work place or any other related offence. In fact, the second respondent has also produced the script of the messages sent by the petitioner and it was produced as a document along with the petition filed under Section 156(3) of Cr.P.C. So it cannot be said that the allegations made by the second respondent are bald and the Court has given direction without any basis.

14. Though it is correct to state that the Court has to record the reasons basing on the allegations how it got satisfied about the *prima facie* case, that would benefit the petitioner only if the complaint given by the second respondent is bald and the learned Magistrate has mechanically passed an order to register an FIR without appreciating the baldness in the complaint. The order has been given with more clarity. Had it recorded the reasons as to why the Court got satisfied about the *prima facie* case that could have been a better order, but that cannot be the reason to set aside the order even when the complaint contains the material particulars. Hence it cannot be said that the order has been passed without application of mind.



15. The learned counsel for the petitioner submitted that the second respondent has suppressed the earlier case registered against her for misappropriating the funds of the Company and she had given the complaint just in order to wreak her vengeance.

16. Since the petitioner states some motive for giving the complaint and call the complaint as a counter blast, that can be put to test only when a detailed investigation is made. Even though the earlier complaint was made by the petitioner against the second respondent, the complaint of the second respondent on its own seen to have got *prima facie* case irrespective of her motive, if any. So it is premature to come to any conclusion on the materials produced by the petitioner at this stage. Since the complaint of the second respondent discloses the cognizable offence, it is right for the learned Magistrate to order to register the FIR and investigate. On the conclusion of the investigation also if no sufficient materials are collected or the complaint appears to be a motivated one, then the petitioner is at the liberty to initiate appropriate proceedings. It is too early to come to any conclusion without allowing the first respondent to investigate into the matter. Hence I do not find any reasons to interfere with the order passed by the learned Magistrate.



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17. Since the order of the learned Magistrate dated 08.07.2019 made in Crl.M.P.No.7393 of 2019 is going to be confirmed due to the reasons stated above, the other Criminal Original Petition filed by the second respondent / defacto complainant in Crl.O.P.No.22374 of 2019 is superfluous and not necessary. Since the order of the learned Magistrate stands good and the first respondent police has got the duty to abide by the order of the Court, the other petition in Crl.O.P.No.22374 of 2019 is closed.

18. In the result, the Criminal Original Petition in Crl.O.P.No.22099 of 2019 is dismissed and the order passed by the learned V Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.7393 of 2019 dated 08.07.2019 is confirmed and in view of the same, the Criminal Original Petition in Crl.O.P.No.22374 of 2019 is closed. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Speaking / Non Speaking Order
Neutral Citation : Yes/No
gsk

03.02.2023



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R.N.MANJULA, J

gsk

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To

- 1.The Commissioner of Police,
Chennai City Police,
Vepery, Chennai 600 007.
- 2.The Deputy Commissioner of Police,
Anna Nagar District,
Anna Nagar, Chennai 600 040.
- 3.The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai 600 040.
- 4.The Public Prosecutor,
High Court, Madras.

Crl.O.P.Nos.22099 & 22374 of 2019 and
Crl.M.P.No.11457 of 2019

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