



CRL.O.P.No.23107 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM:

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

Crl.O.P.No.23107 of 2019

and

Crl.MP.Nos.12097 & 15828 of 2019

1. Barani Shanmugam
2. M.venkatesan
3. Karthikesan
- 4.Sathiyaseelan @ Moha
- 5.Rajalakshmi

.. Petitioner/Accused

Versus

- 1 State Rep.by
The Inspector Of Police
PCR Cell, Puducherry.
(Cr.No.1 of 2018)

... 1st Respondent/ Complainant

- 2 Latha

...2nd Respondent / Defacto complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for records and quash the FIR in Crime No.1 of 2018 filed u/s.294(b) 506(i) of IPC and 3(1)(r)(s) of SC/ST Act 2015 r/w 34 IPC on the of the respondent police.



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For Petitioners : Mr.R.John Sathiyam
Senior Advocate for
M/S.M.Govindaraju
For Respondents 1 : Mr.M.V.Ramachandramurthy
Additional Public Prosecutor
(Puducherry)
For Respondent-2 : Mr.K.Kannadhasan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in FIR in Crime No.1 of 2018 filed u/s.294(b), 506(i) of IPC and 3(1)(r)(s) of SC/ST Act, 2015 r/w 34 IPC on the of the respondent police.

2. The petitioners are the accused 1 to 5. The second respondent is the defacto complainant had given a complaint on 30.11.2017 by alleging that she was a divorcee and a single mother for a male child. During the year 2013, the first petitioner started to develop acquaintance with her and thereafter, they started to love each other. The first petitioner is a police constable in Pondicherry Indian Reserve Battalion. They also got married at 'Our Lady of Lourdes Church' at Villianur, Puducherry and they were living as husband and wife. After a point of time he deserted her, when she asked



him about his conduct, he threatened her with dire consequences and abused her. On the above complaint, a case has been registered in Cr.No.1 of 2018 on the file of the All Women Police Station, Villianur. When the investigation was pending in the said case, the second respondent had given a complaint against the first petitioner before the Police Complaints Authority, Puducherry on 24.07.2018. The Police Complaints Authority, Puducherry has passed an order of transferring the case in Cr.No.13 of 2017 from the All Woman Police Station to PCR Cell.

2.1.It is pertinent to note that while the second respondent raised a complaint against the first petitioner before the Police Complaints Authority, Puducherry, she produced a CD containing the conversation between herself and the first petitioner as a proof to show the harassment caused to her by the first petitioner. Pursuant to the order of the Police Complaints Authority, Puducherry dated 24.07.2018, the complaint which was registered in Cr.No.13 of 2017 got renumbered as Cr.No.1 of 2018 on the file of PCR Cell for the offence under Secs.294(b), 506(i) IPC and thereafter, the PCR cell has continued the investigation.

2.2.On 11.01.2019 an alteration report was filed before the learned



Chief Judicial Magistrate, Puducherry to alter the Penal Provisions from Secs.294(b), 506(i) IPC into 294(b), 506(i) IPC, 496 IPC and 3(1)(r)(s) of SC/ST POA Act, 2015 r/w 34 IPC. In the alteration report, it is stated that all the accused 2 to 5 along with the first petitioner herein have abused the second respondent by caste calling and humiliated her. In view of the statement made by the second respondent in the alteration report, the accused 2 to 5 have been implicated.

3. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4. The learned counsel for the petitioners submitted that originally when the complaint was filed by the second respondent before the All Women Police Station, Villianur, there was no mention about the overt-act committed by the all other accused except the first accused; even when she presented the complaint before the Police Complaints Authority, Puducherry, she did not make any allegations against the petitioners 2 to 5; the FIR got renumbered in Cr.No.1 of 2018 of the PCR Cell subsequent to the order passed by the Police Complaints Authority, Puducherry; in fact when Police Complaints Authority, Puducherry has got no power to give



directions or transfer the investigation like that of the regular Court.

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4.1. The learned Counsel for the petitioners had attracted the attention of this Court to one of the Writ Appeal filed by challenging one such direction given by Police Complaints Authority, Puducherry and in which, this Court has held that the Police Complaints Authority, Puducherry has no power of a regular Court to give such directions. The Appeal filed by the interested person by challenging the above order passed in W.A.Nos.30987, 3230 of 2019 and 169 of 2020 were also dismissed by confirming the powers of the Police Complaints Authority, Puducherry by citing the judgment of the Hon'ble Supreme Court rendered in the case of ***Prakash Singh & Ors Vs. Union of India and Ors***; since the second respondent has stated a mutually contradictory allegations and the implication of the accused 2 to 5 in the case has been done as an afterthought and with some ulterior motive, the case against the petitioners should be quashed. The First Information Report has been registered on the order given by the Police Complaints Authority, Puducherry which lacks the power to issue such directions; for that reason also the First Information Report is liable to be quashed.



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5.The learned Government Advocate (crl.side) appearing for the first respondent submitted that the First Information Report which has been already registered got renumbered as Cr.No.1 of 2018 of PCR Cell Puducherry and no new case has been registered in pursuant to the direction of the Police Complaints Authority, Puducherry. During the investigation, the investigation authority got materials to bind the other accused 2 to 5 for having abused the second respondent with caste calling and humiliated her; hence all the petitioners have been included as accused. Further the audio which was submitted as evidence by the second respondent is not yet examined by any experts in order to find out more facts relevant to the case. Since it is a premature petition, the investigation cannot be dropped and it should be allowed to go.

6.The second respondent/ defacto complainant had alleged in her complaint which has been given before the All Women Police Station that herself and the first petitioner fell in love and consequently she got married to him. After sometime the second respondent and the first petitioner developed some misunderstanding and it is alleged that she was subjected to



ill treatment at the hands of the first petitioner. When the complaint was first registered with the All Women Police Station, Villianur, the second respondent did not make any allegations against any other accused other than the first petitioner. The second and third petitioners are the parents of the first accused and the fourth and fifth petitioners are the brothers of the first accused.

7. It is true that the Police Complaints Authority, Puducherry does not have power to issue direction to transfer the investigation. The powers and functions of the Police Complaints Authority have been defined in ***Prakash Singh case***. The Supreme Court held in the case of **Prakash Singh & Ors Vs. Union of India and Ors** by setting out the jurisdiction conferred on the police Complaints Authority, which reads as under:

“6. There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The



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head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any



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action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority“.

In the case in hand, the compliant was not registered after the order passed by the Police Complaints Authority but even before that order.

8. In fact, the second respondent had produced the audio clips and stated that it is relevant to prove the alleged abuse caused on her by the first petitioner. Since the first petitioner is a police constable working in Indian Reserve Battalion, the Police Complaints Authority has assumed the jurisdiction and dealt the matter.

9. It is pertinent to state that even the Police Complaints Authority appears to have got an intention of not exaggerating the events of the case. Probably because that voice audio clip appeared to be a different one and the first petitioner himself expressed his willingness to undergo voice test, the Police Complaints Authority thought it is a fit case to be investigated by the investigation agency or some other agency. There is no mention in the order of the Police Complaints Authority about the involvement of any other accused other than the first petitioner. For the first time when the alteration report was filed before the learned Chief Judicial Magistrate, it



has been stated that the second respondent has given statement that all the petitioners had abused her and humiliated her by caste calling.

10.As rightly pointed out by the learned Counsel for the petitioners the consistent stand of the second respondent herself before the all women police station, Villianur and the Police Complaints Authority is that she was subjected to harassment only at the hands of the first petitioner. Her complaint does not state that at any point of time herself and the first petitioner had lived along with other petitioners as a joint family.

11.In the matters of this nature, it has become a practice or tendency to implicate the family members of the husband also for mounting pressure upon the husband's family or to quench the bitter feeling developed between the couples. Though it cannot be overlooked slightly if the relatives of the husband also involve in causing marital cruelty, caution should be exercised while implicating the relatives of the husband in view of the strained relationship and bitter feelings developed between the couples.

12.With that caution in mind if the materials are perused, it would reveal that the second respondent herself has no motive to implicate the relatives of the husband at any time when she gave the compliant before the



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All Women Police station and the Police Complaints Authority. Hence the subsequent statement made by implicating the petitioners 2 to 5 cannot be considered as spontaneous or natural. Since the above development was sudden and even in the alteration report also, there is no specific allegations against the petitioners 2 to 5 except the generalized allegation, I feel it is unnecessary to keep the proceedings pending against the petitioners 2 to 5. Even if the materials available as against the petitioners 2 to 5 remain uncontroverted that will not make out any case against them.

14.In view of the above stated reasons and taking into consideration of all other attendant circumstances of the case, I feel it is appropriate to invoke the powers of this Court under Section 482 CrPC to quash the proceedings as against the petitioners 2 to 5. However the investigation as against the first petitioner shall go on.

In the result, this Criminal Original Petition is **partly allowed** and the First Information Report revolved against the petitioners 2 to 5 alone is quashed. Since the second respondent is said to have some audio clips alleged to contain the voice of the first petitioner and the first petitioner had also expressed his willingness to undergo voice test. It is obligatory on the



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part of the first respondent to complete the voice test and such test has to be a part of their investigation. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No
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To:

1. The The Inspector of Police
PCR Cell, Puducherry.
2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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