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CRL.OP.(MD)No.19233 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.11.2022

DELIVERED ON : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.19233 of 2022

and

CRL.MP.(MD).No.12986 of 2022

Sumathi

: Petitioner

Vs.

1. State through
Inspector of Police,
All Women Police Station,
Andipatty, Theni District.
2. The Superintendent of Police,
Theni District.
3. Arulkumaran
4. Saroja
5. Murugesan
6. Meena

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to direct the Respondents 1 and 2 to do further investigation in Crime No.27/2022 on the file of the Judicial Magistrate, Andipatty.

For Petitioner

: Mr.K.Vijayanand

For Respondents

: Mr.R.Meenakshi Sundaram

Additional Public Prosecutor for R1 & R2

ORDER



CRL.OP.(MD)No.19233 of 2022

This Criminal Original Petition has been filed to direct the Respondents 1 and 2 to do further investigation in Crime No.27/2022 on the file of the Judicial Magistrate, Andipatty.

2. Mr.K.Vijayanand, learned Counsel for the Petitioner submitted that the Petitioner had approached this Court under Section 482 Cr.P.C., seeking further investigation in Cr.No.27/2022 in which, the first Respondent had filed final report which was taken on file by the learned Judicial Magistrate, Andipatty and numbered as C.C.No.325/2022.

3. It is the case of the Petitioner that her husband had settled his land in favour of his sister viz., Rani Yogeswari, situated in Pannaikadu near Kodaikannal about 40 years back, but the possession is still with the Petitioner and her husband. They were cultivating the land. Subsequently, dispute arose between the sister and her husband, based on which, the Complaint was lodged by the sister-in-law/Rani Yogeswari before Thandikudi Police Station. Apprehending arrest, the Petitioner and her husband moved application for Anticipatory Bail and till such time, they were staying in the third Respondent's house at Kathirnarasingapuram near Andipatty. The third Respondent was a friend of Petitioner's brother viz., Raja. The Petitioner and her family were residing in the house of the third



CRL.OP.(MD)No.19233 of 2022

Respondent from 10.09.2020 for about 11 days. During that time, when the Petitioner's daughter was taking bath, the third Respondent had taken photographs of her without her knowledge and consent and was threatening her for having sex with him. On 09.10.2020, the third Respondent tied thali on the daughter of the Petitioner and took photograph saying that he had obtained divorce from his wife and to avoid paying maintenance to his wife, which is pending before the Magistrate Court concerned. The Respondents 4 to 6 threatened the Petitioner's daughter to live with third Respondent for some time. Otherwise they will release all the photos in social media which will result in ending her life. The Petitioner and her husband had lodged a Complaint with the first Respondent. The first Respondent had registered the case in Crime No.27/2021 for the offence under Sections 354 C, 294 (b), 506(1) of IPC r/w. Section 4 of the Prohibition of Harassment of Women Act and Section 67 of Information Technology Act, 2000 against the Respondents 3 to 6. The first Respondent had investigated the case and laid final report in which the names of the Respondents 4 to 6 were removed and also removed the Provisions of law with regard to the Sections 294 (b), 506(1) of IPC r/w. Section 4 of the Prohibition of Harassment of Women Act and Section 67 of Information Technology Act, 2000. Without proper investigation, not enquiring the



CRL.OP.(MD)No.19233 of 2022

Witnesses suggested by the Petitioner and her daughter/victim and also without issuing notice to the defacto Complainant the learned Judicial Magistrate had taken cognizance of the offences under Sections 354 (D) and 509 of IPC. Therefore, the Petitioner had sought further investigation. Since the learned Magistrate had taken cognizance, he cannot Order further investigation. Before dropping the charges which was earlier in the FIR, the learned Judicial Magistrate ought to have issued notice to the informant. The learned Magistrate had not done so. Therefore, the apprehension of the Petitioner herein as Complainant that if the trial is proceeded with, it would cause miscarriage of justice and also give a chance to the Accused to escape from the criminal case. Therefore, the learned Counsel for the Petitioner seeks to direct further investigation.

4.In support of his contention, the learned Counsel for the Petitioner relied on the following rulings:

(I) **(2007) 13 SCC 71** in the case of ***Sanjay Bansal and Another Vs. Jawaharlal Vats and Others.***

(II) **(2019) 17 SCC 1** in the case of ***Vinubhai Haribhai Malaviya and Others Vs. State of Gujarat and another.***



CRL.OP.(MD)No.19233 of 2022

5.The learned Additional Public Prosecutor had vehemently opposed the line of the arguments of the learned Counsel for the Petitioner stating that the learned Magistrate has ample powers to issue summons to those who are not in the charge sheet. Based on such summons, the learned Magistrate has ample powers to hold enquiry and proceed further, before proceeding with the trial.

6.Point for Consideration:

Whether further investigation in Crime No.27/2022 on the file of the Judicial Magistrate, Andipatty, is to be held?

7.It is the contention of the learned Counsel for the Petitioner that the Witnesses mentioned by the victim/the daughter of the Petitioner were not examined by the Investigation Officer resulting in dropping the names of the Respondents 4 to 6 from the final report. Considering the fact that the final report had been laid by the first Respondent, the second Respondent/Superintendent of Police is directed to nominate a Senior Official not below the rank of Deputy Superintendent of Police to proceed with the further investigation by withdrawing the C.D file from All Women Police Station, Andipatty, Theni District in Cr.No.27/2022, thereby recording statement of the victim, daughter of the Petitioner and any other



CRL.OP.(MD)No.19233 of 2022

witnesses mentioned by the Complainant and the victim to lay the further report before the Court of the learned Judicial Magistrate, Andipatty.

8. The learned Judicial Magistrate, Andipatty shall not proceed with the trial in C.C.No.325/2022 till the further report is made available to the Court of the learned Judicial Magistrate.

9. Before taking cognizance of the offence, the learned Magistrate has to issue notice to the defacto complainant and to the victim, if there is any dropping of charges in the FIR or dropping of the names of the Accused from the Charge sheet, he has to follow the procedure under Section 319 Cr.P.C. He has to hear the defacto complainant and other witnesses if at all the charges already mentioned in the FIR are dropped in the charge sheet or the names of the Accused mentioned in the FIR are excluded. Only after hearing the Complainant and the Complainant's Witnesses, the learned Magistrate shall pass appropriate Order either taking cognizance or recording statement of Witnesses or proceeding further.

With the above direction, **this Criminal Original Petition is disposed of.** Consequently, connected Miscellaneous Petition is closed.

30.06.2023



CRL.OP.(MD)No.19233 of 2022

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

dh

To

1. The Judicial Magistrate,
Andipatty.
2. The Inspector of Police,
All Women Police Station,
Andipatty, Theni District.
3. The Superintendent of Police,
Theni District.
4. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL.OP.(MD)No.19233 of 2022

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in

CRL.OP.(MD)No. 19233 of 2022

30.06.2023