



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Friday, the Seventh day of July Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice SATHI KUMAR SUKUMARA KURUP

CRL MP(MD). No.4852 of 2023
in

CRL OP(MD).No.6101 of 2022

Thowlath Nooriya @ Thowlath Nisha

... Petitioner/2nd Respondent/
Defacto Complainant
Vs

1 The Inspector of Police
District Crime Branch Ramanathapuram
Ramanathapuram District.

...Respondent/1st Respondent/Complainant

2 Sakthi Batcha

3 Noor Mohamed ... Respondents/Petitioners/
Accused No.2 &3

Prayer :-

This Petition is filed under section 482 of Cr.P.C to clarify Para No.6 in the order passed dt.13/10/2022 in Crl.OP(MD) No.6101 and 14152 of 2022

Prayer in Crl OP. (MD) .No.6101 of 2022

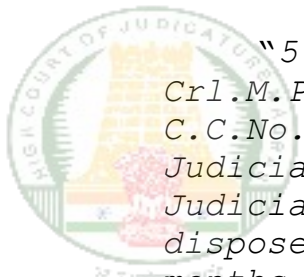
This petition filed under section 482 of Cr.P.C praying to call for the records relating to Charge Sheet in C.C.No.03 of 2022 on the file of Judicial Magistrate No.II, Ramanathapuram

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru.Niranjana S.Kumar, Advocate for the Petitioner and of Thiru.Veeranthiran, Government Advocate (Criminal Side) for the first respondent, this Court made the following order:

The learned Counsel for the Petitioner in recall Petition who is cited as List Witness - 2 in C.C.No.3/2022 on the file of the learned Judicial Magistrate - II, Ramnad and the Crl.O.P.No.14512/2022 was filed by the L.W-2.

2.Crl.O.P.No.6101/2022 was filed by the Accused 2 and 3 in C.C.No.3/2022 seeking to quash the charge sheet in C.C.No.3/2022 on the ground that Accused 2 and 3 had entered into compromise with the *De facto Complainant* viz., Thowlath Nooriya @ Thowlath Nisha.

3.After hearing the learned Counsel for the Petitioner in both Crl.O.Ps and the learned Counsel for the *De facto Complainant*/second Respondent in Crl.O.P.No.6101/2022, this Court on 13.10.2022 had passed the following orders:



"5. In the light of the Recalled Order passed in Crl.M.P.(MD).No.8054/2022 in Crl.O.P.(MD).No.6101/2022, C.C.No.3/2022 is restored on the file for the learned Judicial Magistrate No.II, Ramanathapuram. The learned Judicial Magistrate No.II, Ramanathapuram is directed to dispose of the case, within a reasonable period of three months from the date of receipt of a copy of this Order. The Respondents are directed to produce the witnesses promptly. The learned Magistrate may proceed with the trial by examining the witnesses on day to day basis. The learned Judicial Magistrate may examine the independent witnesses consecutively on two days and Official Witnesses within three or four days, thereby within a period of one week, the entire witnesses can be closed. It is left to the discretion of the learned Judicial Magistrate to examine the witnesses in consultation with the Assistant Public Prosecutor and fix the date to dispose of the case within a period of three months.

6. The Joint Compromise arrived between the Petitioners in Crl.O.P.(MD).No.6101/2022 and the De facto Complainant is not altered. The accused is granted liberty to raise the compromise recorded before this Court during the trial."

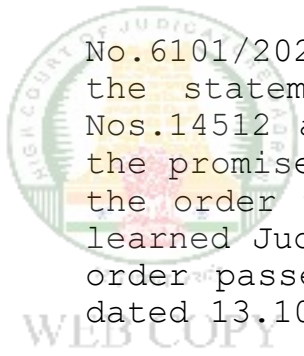
4.Crl.M.P.(MD).No.4852/2023 is filed by Thowlath Nooriya on the ground that the learned Judicial Magistrate - II, Ramanathapuram had not allowed her to enter the Witness Box arrived at a compromise with the Accused.

5.The learned Counsel for the Accused had relied on the Paragraph No.4 of the order passed by this Court in Crl.O.P.(MD).No.14512/2022 and 6101/2022, dated 13.10.2022 which reads as follows:

"4. The learned Counsel for the Respondent submits that in the compromise, the De facto Complainant was paid the amount as damages. It is the contention of the Petitioner that he is the original victim and the De facto Complainant is his Sister. Therefore, he seeks early disposal of the case."

6.That was relied by them before the learned Judicial Magistrate and also prevailing upon the learned Judicial Magistrate - II, Ramanathapuram, if he/she examined the List Witness - 1, it will treat as violation of the order of this Court. Therefore, the learned Magistrate prevented the L.W-1 cited in C.C.No.3/2022 from entering the witness box.

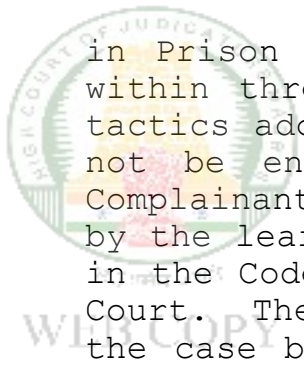
7.It is the further submission of the learned Counsel for the De facto Complainant that the Accused had filed Crl.O.P.(MD).



No.6101/2022 as though there was a statement, but after passing the statement and passing of the Common Order in CrI.O.P.(MD).Nos.14512 and 6101/2022, the Accused 2 and 3 failed to accede to the promise to the *De facto Complainant*. Instead they had utilized the order to escape from the Criminal liability and misguiding the learned Judicial Magistrate not to examine L.W-1 in the light of the order passed by this Court in CrI.O.P.(MD).Nos.14512 and 6101/2022 dated 13.10.2022.

8.Further, the learned Counsel for the *De facto Complainant* submitted that Accused 3 had filed another CrI.O.P.(MD).No.2155/2023 before the Madurai Bench of this Court seeking to quash the charge sheet on the ground that earlier order passed by the Madurai Bench of this Court in CrI.O.P.(MD).Nos.14512 and 6101/2022 dated 13.10.2022 during the hearing of the CrI.O.P.(MD).No.2155/2023. The learned Counsel for the *De facto Complainant* protested the filing of the Petition in CrI.O.P.(MD).No.2155/2023 stating that after passing of the order in CrI.O.P.(MD).Nos.14512 and 6101/2022 dated 13.10.2022, the Accused instead of paying the compensation for the damages caused to the *De facto Complainant* failed to pay, therefore, the learned Single Judge of this Court insisted the Accused to produce the document as proof of the payment of the compensation or to proceed with the argument on merits. Therefore, the case was adjourned. Instead of producing the receipt or document of proof of payment of compensation as damages to the *De facto Complainant*, the Accused 3 had withdrawn the Petition in CrI.O.P.(MD)No.2155/2023. Now, the learned Judicial Magistrate is not permitting the L.W-1 the victim to enter the witness box to depose evidence. Therefore, on behalf of the *De facto Complainant*, this Petition is filed seeking for clarification in the light of the developments subsequent to the passing of the order in CrI.O.P.(MD).No.14152 & 6101/2022.

9.Accepting the submission of the learned Counsel for the *De facto Complainant*, the conduct of the Accused before the various benches of the Madurai Bench of this Court cannot be accepted in the light of the fairness, equity which is the principle to exercise discretion under Section 482 of Cr.P.C. The learned Judicial Magistrate is directed to proceed with the trial by examining all the witnesses cited in the charge sheet by the Investigation Officer including the *De facto Complainant*. As per the order passed in CrI.O.P.(MD).Nos.14512 and 6101/2022 dated 13.10.2022, the discretion of the learned Judicial Magistrate as a trial Judge is not at all curtailed. He/she is within his/her power to record depositions and arrive at a just conclusion by the observation of this Court with "paragraph No.6" does not mean that the Complainant and the Accused had arrived at a settlement. It is to be put to test by the learned trial Judge during the course of trial, if the Accused states that they have paid the *De facto Complainant* for the damages caused, it is for the Accused to prove it before the Court. Now the trial had commenced. If the Accused fails to examine the witness and fails to co-operate with the Court, the learned Judicial Magistrate shall act in accordance with law by detaining the Accused



in Prison by ordering remand so that the trial can be completed within three months as was directed by this Court. The tactics adopted by the Accused and misguiding the trial Court shall not be entertained. What are all put to be test either the Complainant or the Accused shall furnish details as he was directed by the learned trial Judge by exercising power vested in him or her in the Code of Criminal Procedure. It cannot be curtailed by this Court. Therefore, the learned trial Judge is directed to dispose of the case by examining the Witnesses including L.W-1. The same is clarified.

Sd/-

Assistant Registrar(T&P)

// True Copy //

11/07/2023

Sub Assistant Registrar(CS)

TO

- 1.The Judicail Magistrate, No.II
Ramanathapuram
- 2.The Inspector of Police,
District Crime Branch, Ramanathapuram
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

Copy to:

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/s.Niranjan S.Kumar,Advocate(SR.No.33360)

ORDER DATED : 07/07/2023

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ORDER

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CRL MP(MD). No.4852 of 2023
in

CRL OP(MD).No.6101 of 2022

Giving direction and etc.
as stated within.

MGJ(11.07.2023) 4P 6C