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Crl.R.C.No.1039 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.R.C.No.1039 of 2019

Ramasamy

... Petitioner

vs.

1.The Station House Officer,
Auraville Police Station,
Villupuram District.
(Crime No.602/2016)

2.Adhimoolam

3.Gandhikumar

4.Kandhasamy

5.Janakiraman

... Respondents

PRAYER: Criminal Revision Case filed under Section 397 read with 401 Criminal Procedure Code, 1973, against the orders dated 05.03.2019 passed in C.C.No.261 of 2017 by Judicial Magistrate, Vanur.

For Petitioner : Mr.R.Sankarasubbu

For R1 : Mr.S.Raja Kumar
Additional Public Prosecutor

For R2 to R5 : Mr.M.Velan
for M/s.T.Sai Krishnan



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ORDER

Challenging the orders dated 05.03.2019 discharging the respondents 2 to 5/accused under Section 239 of the Code of Criminal Procedure in C.C.No.261 of 2017 by the Judicial Magistrate, Vanur, the present criminal revision is filed by the defacto complainant.

2. The defacto complainant set the criminal law into motion by lodging a complaint on 26.08.2016 with the Sub-Inspector of Police, Auroville Police Station, Villupuram District against the respondents 2 to 5 stating that he was abused in filthy language and attacked with an iron rod and an aruval and was also threatened with dire consequences. The Sub Inspector of Police received the written complaint from the defacto complainant and registered FIR in Crime No.602 of 2016 of Auroville Police Station.

3. The defacto complainant took treatment in Jipmer Hospital, Puducherry on 24.08.2016. Dr.Vamsidhar, attached to Jipmer Hospital, Puducherry examined the defacto complainant and found the following injuries on him:-



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- (i) Laceration size 3 cm over post scalp;
- (ii) Contusion over Rightforce Arm;
- (iii) Abrasion over left knee;

In the opinion of the doctor, the injuries sustained by the defacto complainant were simple in nature.

4. The Investigation Officer, after completing the investigation, laid a final report before the Judicial Magistrate, Vanur against the respondents 2 to 5 for the offences punishable under Sections 294(b), 324 and 506(ii) IPC in C.C.No.261 of 2017. The accused filed a petition under Section 239 of the Code of Criminal Procedure praying to discharge them from the offences punishable under Sections 294(b), 324 and 506(ii) IPC in Crl.M.P.No.31 of 2019. The said petition was allowed by the Judicial Magistrate on the following grounds:-

- (i) There is a delay of two days in lodging the complaint with the police and the defacto complainant had not properly explained the same.
- (ii) The defacto complainant has not mentioned the abusive words in his complaint.



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(iii) The defacto complainant went to Jipmer Hospital, Puducherry after crossing Auroville Police Station. However, he did not lodge any complaint with the police on the same day and this creates a doubt in the mind of the Court.

(iv) The weapons allegedly used by the accused have not been recovered by the Investigation Officer.

(v) In the complaint, the defacto complainant had stated that he was attacked with an iron rod and an aruval, but did not mention this before the doctor who gave him treatment. On the other hand, he had stated that he was attacked with a wooden log.

(vi) The wound certificate has not been filed before the Court, immediately after the treatment taken by the defacto complainant in Jipmer Hospital on 24.08.2016.

(vii) There was a previous enmity between the defacto complainant and accused and therefore, it can be easily inferred that a false case has been foisted against the accused.



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5. It is pertinent to point out that FIR is not an encyclopaedia and though the defacto complainant had not specified the abusive words uttered by the respondents 2 to 5, he had elaborated the same in his statement before the police under Section 161(3) Cr.P.C. He had also taken treatment in Jipmer Hospital, Puducherry and the doctor had certified that the injuries sustained by the defacto complainant were simple in nature.

6. The Trial Court has given much emphasis to the delay in lodging the complaint by the defacto complainant. It is settled law that all delays in lodging the complaint would not affect the case of the prosecution. In the instant case, it is true that there is a delay of two days in lodging the complaint and unless the defacto complainant is given an opportunity to explain the same, it cannot be concluded that the delay in lodging FIR is fatal to the case of the prosecution and that too before framing charges against the accused. The trial court should have considered the final report which includes statement of the witnesses, medical report etc. The allegations in the FIR and the final report *prima facie* shows commission offence by the accused. It is also settled law that the statement made before the doctor is only a previous statement and at



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the most it can be used for contradicting the witnesses and the trial court had erroneously discharged the accused on the basis of the defacto complainant's statement before doctor. It is also not known as to wherefrom the trial Court got the evidence that there was a prior enmity between the defacto complainant and the accused and that a false case has been foisted against them. All the observations of the Trial Court Judge perverse and the same has to be set aside.

7. In the result,

- (i) The Criminal Revision Case is allowed. No costs.
- (ii) The Judicial Magistrate, Vanur, is directed to take the case on file and proceed with framing of charges, conduct trial of the case and complete the same within a period of three months from the date of receipt of a copy of the order/uploading of the order.

05.07.2024

Index : yes/no
Speaking /Non speaking Order
Neutral Citation : yes / no
dm



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To

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- 1.The Judicial Magistrate,
Vanur.
- 2.The Station House Officer,
Auraville Police Station,
Villupuram District.
- 3.The Additional Public Prosecutor,
High Court, Madras.
- 4.The Section Officer,
Criminal Section,
High Court, Madras.



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R.HEMALATHA, J.

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