



Crl.O.P.Nos. 24711 & 24715 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.Nos.24711 & 24715 of 2022

and

Crl.M.P.Nos.15542 & 15543 of 2022

D.Venmathi

... Petitioner in
Crl.O.P.No.24711/2022

PSK. Rajkumar Shankar

... Petitioner in
Crl.O.P.No.24715/2022

Vs.

Inspector of Police,
V6 Kolathur Police Station,
Kolathur, Chennai.

... Respondent in both Crl.O.P.s

Prayer in Crl.O.P.No.24711 of 2022: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to set aside the criminal proceedings, the framing of charges done against petitioner (A2) on 15.09.2022 in C.C.No.12 of 2019 in the file of Additional Mahila Metropolitan Magistrate, Egmore, Chennai, so that she can proceed with Discharge Petition



Crl.O.P.Nos. 24711 & 24715 of 2022

Crl.M.P.No. 1745 of 2019 (dismissed on 22.08.2022) related legal proceedings.

Prayer in Crl.O.P.No.24715 of 2022: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to set aside the criminal proceedings, the framing of charges done against petitioner (A1) on 15.09.2022 in C.C.No.12 of 2019 in the file of Honourable Court of Additional Mahila Metropolitan Magistrate, Egmore, Chennai, so that he can proceed with Discharge Petition Crl.M.P.No. 1746 of 2019 (dismissed on 22.08.2022) related legal proceedings.

For Petitioners in
both Crl.O.Ps : Parties in person

For Respondent in
both Crl.O.Ps : Mr. S. Vinoth Kumar
Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Original Petitions have been filed seeking to set aside the criminal proceedings, the framing of charges done for both petitioners in C.C.No.12 of 2019 on the file of Addl. Mahila Metropolitan Magistrate, Egmore, Chennai and to proceed with their discharge petitions in



Crl.O.P.Nos. 24711 & 24715 of 2022

Crl.M.P.Nos. 1745 and 1746 of 2019.

2. Heard both sides.

3. Both the petitioners are husband and wife and both of them appeared in person and submitted their oral as well as written arguments. Both the petitioners have approached this court praying to set aside the framing of charges made by the Addl. Mahila Metropolitan Magistrate Court, Egmore, Chennai. Against both petitioners, the final report was filed by the respondent police in Crime No.359 of 2017 under Sec. 294(b), 323, 354(c), 506(1) of I.P.C. and Sec.4 of Women Harassment Act. After taking cognizance of offence, taking case on file in C.C.No. 12 of 2019 and after furnishing all the copies under Sec.207 of Cr.P.C., the trial judge framed the charges. Challenging the said framing of charges, both petitioners have approached this court to quash the proceedings for the main reason that as per Sec.207 of Cr.P.C., entire documents have not been furnished to them, without which, they are unable to proceed with discharge petition filed by them. In fact, they have filed the petition to discharge them from the



Crl.O.P.Nos. 24711 & 24715 of 2022

proceedings in Crl.M.P.Nos. 1745 and 1746 of 2019. Those two petitions were dismissed by the trial judge in a common order dated 22.08.2022. Thereafter, the charges were framed and after framing of charges, both the petitioners have approached this court as they were not furnished with all the documents under Sec.207 of Cr.P.C. They would submit that since all the documents were not furnished under Sec.207 of Cr.P.C., they are unable to conduct discharge petition. Therefore, they are challenging the framing of charges and prayed to quash the same in order to proceed with the discharge petitions by filing the rejoinders.

4. The learned Government Advocate (Crl. Side) appearing for respondent argues that under Sec.207 of Cr.P.C., the documents, which are asked by them was already furnished to the petitioners, besides, they have also applied for copy application and obtained all the documents, which they have sought for from the court. He would also submit that to frame charges, it is the total discretion of the court based on the available materials. Therefore, the petitioners in order to drag on the proceedings approached this court to set aside the framing the charges.

5. On considering both side submissions, the fact reveals that the



Crl.O.P.Nos. 24711 & 24715 of 2022

defacto complainant, who was a previous landlord to the petitioners under whom they were tenants as they abused him, he lodged a complaint. Based on that, the F.I.R. in Crime No.359 of 2017 under Sec. 294(b), 323, 506(1) of I.P.C. and Sec.4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 and subsequently, final report was filed and taking cognizance of offence, the trial judge assigned the number as C.C.No. 12 of 2019. Thereafter, the copies were furnished to the petitioners/A1 and A2. But, according to the petitioners, all the documents were not furnished, more particularly, the other documents mentioned in the final report have not been furnished. To that effect, the report was called for from the Magistrate. According to Magistrate, they were furnished all the copies of relevant documents, which were filed along with final report on 15.03.2017 and both of them have received the same by affixing their signatures. According to the trial court, 17 documents were received by the petitioners, but the same was denied by the petitioners stating that only they have received 14 documents. The other 3 documents Nos. 15, 16, 17 are A1's arrest and remand related documents for F.I.R. v6, Cr. No.359/2017 for U/Sec.294(b), 323, 506(1) of I.P.C. and Sec.4 of TNPWH Act and all those documents also



CrI.O.P.Nos. 24711 & 24715 of 2022

been received by the petitioners by filing copy application before the trial court. Before the trial court, they have insisted to provide further documents and they wanted to peruse the records. Accordingly, they were permitted by the trial judge to peruse the bundle in the presence of court officer on 25.05.2022 and also on 07.07.2022. Thereafter, the Magistrate also explained what are the documents given to them and also explained that certain documents, which are claimed by the petitioners are not listed in the documents. So the trial court is not able to furnish the documents under Sec.207 Cr.P.C. as it was not listed. Thus, before the trial court also, they were permitted to peruse the bundles and documents, in which they have sought copies and the same was also furnished, which comes around 12 other documents and the same was received and annexed in the typed set of papers. In the rejoinder filed by the petitioners, they have enclosed what are all the documents received by them under Sec.207 of Cr.P.C. as well as by filing copy application and the same are extracted as follows:

- 1. Police final report dated 12.11.2019 titled as 5thh MM Court, V6 Crime No. 359/2017 Sec. 294(b), 323, 506(1) of I.P.C. and Sec.4 of TNPWH Act.*
- 2. List of witnesses dated 12.11.2019*



CrI.O.P.Nos. 24711 & 24715 of 2022

3. *First information report dated 26.02.2017*
4. *Complaint copy dated 26.02.2017*
5. *161(3) statement of witness No.1, Mrs.Besi Rajesh dated 26.02.2017*
6. *only issued 161(3) statement of witness No.2 Mr. Rajesh dated 26.02.2017 (but in the list mentioned as 161(3) statement of witness No.2 Mr. Rajesh)*
7. *161(3) of statement witness No.3 Mrs. Prema Moses dated 26.02.2017*
8. *161(3) of statement witness No.4 Mr.Umanath dated 26.02.2017*
9. *161(3) of statement witness No.5 Mr. Erol Johnson dated 26.02.2017*
10. *161(3) of statement witness No.6 Mr. Vijay Kumar dated 26.02.2017*
11. *161(3) of statement witness No.7 Mr. Kumar dated 26.02.2017*
12. *Rough sketch not dated*
13. *Observation mahazar dated 26.02.2017*
14. *Confession statement of A1 dated 26.02.2017 – A1's confession statement provided is for 4 section only i.e. 294(b), 323, 506(1) of I.P.C. And Sec. 4 of TNPWH Act.*
15. *Arrest report form 105 dated 26.02.2017*
16. *Arrest intimation dated 26.02.2017*



Crl.O.P.Nos. 24711 & 24715 of 2022

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17. Remand report dated 26.02.2017

These items – 15, 16, 17 are A1's arrest and remand related documents for FIR; v6 Cr.No.359/2017 for U/Sec.294(b), 323, 506(1) of I.P.C. and Sec.4 of TNPWH Act of I.P.C.

&

19. under item 19 Miscellaneous /other documents the following 12 documents (even made requests to give each page certified copies the copyist section issued item 19 miscellaneous / other documents as 14x without each page certified i.e. plain xerox copy given)

- 1. Police objection reply for A1's bail dated 02.03.2017 for Crl.M.P.No. 447/2017*
- 2. surety affidavit of Mr.Balamurugan for A1's bail release dated 03.03.2017 for Crl.M.P.No. 447 of 2017*
- 3. surety affidavit of Mr.Selvanathan for A1's bail release dated 03.03.2017 for Crl.M.P.No. 447 of 2017*
- 4. surety affidavit of Mr.Baskar for A2's surrender release dated 23.03.2017 for Crl.O.P.No. 5290 of 2017*
- 5. surety affidavit of Mr.Raja for A2's surrender release dated 23.03.2017 for Crl.O.P.No. 5290 of 2017*
- 6. A2's surrender release petition dated 23.03.2017 for Crl.O.P.No. 5290 of 2017*
- 7. A1's bail petition dated 27.02.2017 for Crl.M.P.No.447 of 2017*



Crl.O.P.Nos. 24711 & 24715 of 2022

8. *Affidavit of A1 filed for A1's condition bail relaxation dated 07.04.2017 for Crl.M.P.No. 747 of 2017*
9. *Petition filed by A1 for condition bail relaxation dated 07.04.2017 for Crl.M.P.No. 747 of 2017*
10. *Memorandum of appearance of Adv. Mr. Thirumoorthy dated 27.02.2017 for Crl.M.P.No.447 of 2017*
11. *Memo of appearance of Adv. Mr.Rajan dated 22.03.2017 for Crl.O.P.No. 5290 of 2017*
12. *Memorandum of appearance of Ad. Mr. Baskaran dated 23.03.2017 for Crl.O.P.No. 5290 of 2017*

The 18th document in the list – A2 Venmathi's anticipatory bail order not given when A2 asked about this to the records staff the staff told as it is high court's AB order copy and hence cannot be given. For this enclosed document No.8 true copy of true certified copy of list of documents for V6. Cr.No.359/2017 (294(b), 323, 354(C), 506(i) and Sec.4 of Woman Harassment Act) of C.C.No. 12 of 2019 and 29 documents of charge sheet for copy application No.7752/2019 in page No.52 in the typed set of relevant documents.”

6. On perusal of rejoinder, it reveals that they have received all the documents under Sec.207 of Cr.P.C., which is defined as follows :-

“207. Supply to the accused of copy of police report and other documents



CrI.O.P.Nos. 24711 & 24715 of 2022

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

- (i) the police report;*
- (ii) the first information report recorded under section 154;*
- (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under subsection (6) of section 173;*
- (iv) the confessions and statements, if any, recorded under section 164;*
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:*

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall,



Crl.O.P.Nos. 24711 & 24715 of 2022

instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court”

7. On perusal of list of documents annexed with the final report, 19 documents were mentioned. Now, as per the submissions on the side of petitioners, they have received only 14 documents, on the other hand, as per the report of the court, 17 documents were furnished. But however, even if the petitioners have received only 14 documents and other documents viz., arrest report form-105, arrest intimation dated 26.02.2017 and remand report 26.02.2017 also received by them as per the rejoinder filed by the petitioners. Another document is anticipatory bail order obtained by the petitioner viz., Venmathi, the copy might have with her. In respect of 19th document, it was mentioned as “other documents”. But, though it was not specifically mentioned, on filing of copy application by the petitioners, 19 documents were furnished to them. Therefore, as on date, the petitioners were furnished with all the copies of documents and there is no irregularity committed on the side of prosecution. As per the observation made by the trial court that on 25.05.2022 and 07.07.2022, it reveals that already they



Crl.O.P.Nos. 24711 & 24715 of 2022

were permitted to peruse the documents and they were explained what are the documents to be given. Thereafter only, the discharge petitions were taken on file by the trial court on 22.08.2022 for enquiry, but on that day, there is no representation on the side of petitioners as they were not ready for the enquiry. In fact, the said discharge petitions were pending for more than 6 months from 11.01.2022 till 18.08.2022. Therefore, considering the objections raised by the prosecution, the order passed in discharge petitions, the trial judge in paragraph 8 held as follows:-

“8. Under Sec.239, the court can discharge the accused, if after considering the reports submitted by police under Sec.173 and inspecting the facts and evidence.”

Therefore, it would clearly shows that from 19.03.2022, the documents were furnished. Thereafter only, the discharge petitions were taken on file by the trial judge nearly about 5 months later. Hence, on the date of disposal of discharge petitions, they were sufficiently provided with copies of documents, which were enclosed in the final report and the same are the relevant documents according to trial court.



CrI.O.P.Nos. 24711 & 24715 of 2022

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8. Furthermore, on considering submissions made on the side of prosecution, based upon the material evidence, the investigating agency had filed a final report as against the petitioners for an offence under Sec.294(b), 323, 506(1) of I.P.C. and Sec.4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 and the statement of defence witness was recorded and other incriminating materials were placed before the court and based upon available relevant documents, the trial judge is empowered to frame charges. Therefore, nearly about 3 years case was pending, discharge petitions were not in progress and subsequently it was dismissed by the trial judge on merits. So far, that order has not been challenged by the petitioners. Furthermore, the framing of charges is the discretion of the trial court. If the trial judge found any prima facie materials, the trial court is empowered to frame charges and relied the proposition laid down by the Apex Court reported in **2017 (3) SCC 347**, wherein in para 6, it has been held as follows

:-

“6. Having heard the learned counsel for the respective parties, we find force in the submissions of learned senior counsel for respondent 1. Section 216 Cr.P.C. empowers the court to alter or add any charge at any time



CrI.O.P.Nos. 24711 & 24715 of 2022

before the judgment is pronounced. It is now well settled that the power vested in the court is exclusive to the court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to knowledge of the court trying the offence, power is always vested in the court, as provided under Sec.216 Cr.P.C. to either alter or add the charge and that such power is available with the court at any time before the judgment is pronounced. It is an enabling provision for the court to exercise its power under certain contingencies, which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.”

Moreover, even the trial court time and again also instructed the petitioners to file a copy application, if they wanted any other documents and the same was also complied and obtained nearly 19 documents. Therefore, as per the reply of Magistrate to this court, necessary documents



Crl.O.P.Nos. 24711 & 24715 of 2022

were furnished to the petitioners. I do not find any irregularity in the proceedings followed by the trial judge. Accordingly, these Criminal Original Petitions are dismissed as no merits. The petitioners want to set aside the framing of charges in order to file rejoinder in discharge petitions. But, as discussed above, so far, order passed in discharge petitions are in force as on date. Petitioners are Doctors by profession, but contesting the case in person. Not aware of legal proceedings properly nor they inclined to get assistance from Legal Services Authority. Moreover they failed to maintain the decorum of the court during the enquiry. Even before the trial court, they threatened Presiding Officer that if they are not furnished with copies, they would commit suicide. This is not a proper way to address the court. Even party in person also bound to maintain the decorum of the court. On seeing conduct of parties, they need counseling. The relief sought by them as such is not maintainable in law. Till date, the order passed in discharge petitions are not challenged. Therefore, liberty granted to file appropriate petition before appropriate forum to challenge the said order within a period of four weeks from the date of receipt of copy of this order. Till then (4 weeks alone), the trial court is directed not to proceed further as



Crl.O.P.Nos. 24711 & 24715 of 2022

per manner known to law. Consequently, the connected Criminal
Miscellaneous Petitions are closed.

27.03.2024

Index : Yes / No

Internet : Yes / No

Speaking/Non-speaking order

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Note: Issue order copy on 18.04.2024

To

1. Inspector of Police,
V6 Kolathur Police Station,
Kolathur, Chennai.

2. The Public Prosecutor,
High Court, Madras.

16/18



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Crl.O.P.Nos. 24711 & 24715 of 2022

T.V.THAMILSELVI, J.

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Crl.O.P.Nos. 24711 & 24715 of 2022

Crl.O.P.Nos. 24711 & 24715 of 2022

27.03.2024