



Crl.O.P.(MD)No.15417 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.09.2024

Pronounced on : 28.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15417 of 2024

and

Crl.M.P.(MD)No.9652 of 2024

Divyapriya

... Petitioner

Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Ramnad,
Ramanathapuram District.

2.The Inspector of Police,
All Women Police Station,
Paramakudi.
(Crime No.18 of 2023)

3.Ranjithkumar

... Respondents

Prayer : This Criminal Original Petition filed under Section 528 B.N.S.S., to call for the records with regard to the final report in C.C.No.681 of 2023 on the file of the learned Judicial Magistrate, Paramakudi and set aside the same and direct the second respondent to conduct further



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investigation of the case in Crime No.18 of 2023 pending on the file of the second respondent within a stipulated period as prescribed by this Court.

For Petitioner : Mr.S.Karthikeyan

For R1 & R2 : Mr.P.Kottai Chamy
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to set aside the final report in C.C.No.681 of 2023 pending on the file of the Judicial Magistrate Court, Paramakudi and to direct the second respondent to conduct further investigation of the case in Crime No.18 of 2023 pending on the file of the second respondent within a period stipulated by this Court.

2. On the basis of the complaint lodged by the petitioner, FIR came to be registered in Crime No.18 of 2023 against the third respondent for the alleged offences under Sections 498(A) and 506(2) IPC and the second respondent, after completing the investigation, has filed a final report for the same offences under Sections 498(A) and 506(2) IPC and the case was taken on file in C.C.No.681 of 2023 and the same is pending on the file of the Judicial Magistrate, Paramakudi.



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3. Admittedly, the petitioner is the wife of the third respondent.

4. The case of the petitioner is that on 25.07.2023 at about 11.30 p.m., dispute arose between the petitioner and the third respondent as the third respondent demanded and tortured the petitioner to get a mobile phone for him, that since the petitioner refused, the third respondent attacked the petitioner with aluminium pipe and aluminium slate, pulled her hair, stampeded on her neck and thereby attempted to kill her and that since the petitioner pushed the third respondent's leg and escaped from him, or otherwise the petitioner would have been killed on the hands of the third respondent.

5. It is the further case of the petitioner that since no one from the matrimonial home had enquired about the incident occurred on the previous day, the petitioner herself with the help of a neighbour went to the hospital and she has been admitted as inpatient, that though intimation has been sent to the Paramakudi Town Police Station, they have not registered FIR immediately, that the petitioner, after taking inpatient treatment for three days, has sent a complaint to the first respondent on



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30.08.2023 and thereafter only FIR came to be registered on 03.09.2023 in Crime No.18 of 2023 for the offences under Sections 498(A) and 506(2) IPC, that the police have not included all the offences of the crime in the FIR, that the third respondent was not arrested but they have advised him to move for anticipatory bail, that when anticipatory bail was taken up for hearing before the District Court, Ramanathapuram, the police has suppressed the material facts and submitted that the petitioner had taken treatment as outpatient, that though the petitioner has produced all the documents, the second respondent did not receive the documents including the photos but filed the charge sheet mechanically on 12.12.2023, that the second respondent did not investigate the case in a fair and proper manner, that the second respondent has failed to seize the medical report nor examined the Doctor, who had treated the petitioner, that since there is ample evidence to show that the petitioner was assaulted, the second respondent has failed to investigate the case in that regard and that therefore the petitioner was constrained to approach this Court for setting aside the final report and for further investigation.

6. Heard the learned counsel appearing for the petitioner and the



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learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2.

7. It is evident from the records that the marriage between the petitioner and the third respondent was solemnized 9 years prior to the filing of the case and both were blessed with two male children, that the petitioner is working as a lecturer in Ayira Vaisiyar College, Paramakudi and that the third respondent was working as an Assistant Professor in Syed Ammal Arts and Science College, Ramanathapuram.

8. It is not in dispute that there existed matrimonial dispute between the parties and for the alleged incident occurred on 25.07.2023, complaint came to be lodged.

9. The main contention of the petitioner is that the petitioner was attacked by the third respondent with aluminium pipe and aluminium slate, stampeded her neck and attempted to kill her and that though the petitioner has lodged a complaint narrating the incident, the second respondent police has not taken any action and after sending complaint to



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the first respondent, the second respondent has registered the case and that too only for the offences under Sections 498(A) and 506(2) IPC and for the reasons best known to them, omitted the major offence of attempting to kill her.

10. The learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 would submit that even as per the medical records produced by the petitioner, she had sustained only simple injury and that since she has given complaint in an exaggerated manner, the police, after conducting enquiry, has rightly registered the case for the offences under Sections 498(A) and 506(2) IPC and after completing the investigation, has rightly filed the charge sheet.

11. It is pertinent to note that the petitioner has produced the copy of the accident register and discharge summary given by the Government Hospital, Paramakudi. It is evident from the accident register that the petitioner was shown to have mild abrasion over the right forearm and except the above said abrasion, no other injury was noticed. More importantly, the medical officer has noted in the accident register that the



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patient/petitioner wanted admission in the hospital. It is evident from the discharge summary that the medical officer has given his opinion that the injury suffered by the petitioner is simple injury over the right forearm and that she was discharged on 28.07.2023.

12. As rightly contended by the learned Government Advocate (Criminal Side), considering the medical records, it is clearly evident that the petitioner had only sustained one abrasion over the right forearm and only at her instance, she was admitted in the hospital and that the injuries suffered by her is of simple in nature.

13. It is pertinent to note that the petitioner has not produced any material to show *prima facie* that she was attacked with aluminium pipe and aluminium slate all over her body and caused internal injuries.

14. It is pertinent to note that the police has registered the case for the offences under Section 498(A) IPC, which attracts the maximum punishment of three years and under Section 506(2) IPC, which attracts the maximum punishment of seven years.



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15. No doubt, as rightly contended by the learned counsel appearing for the petitioner, since the petitioner has averred in her complaint that she was attacked and she was admitted in the hospital, the police should have taken steps to get the medical records and examine the medical officer, but that was not done in the case on hand. As rightly contended by the learned Government Advocate (Criminal Side), that by itself is not a ground to set aside the entire charge sheet and to order for further investigation.

16. As already pointed out, the charge sheet was already taken on file and the case is now pending in C.C.No.681 of 2023 on the file of the Judicial Magistrate, Paramakudi.

17. Section 302 Cr.P.C. contemplates that a Magistrate trying a case can permit the prosecution to be conducted by any person and that any person conducting the prosecution may do so personally or by a pleader. Hence, the petitioner can very well invoke Section 302 Cr.P.C. and seek permission to take part in the prosecution and at the time of seeking permission, she can very well produce the medical records now produced before this Court. Since the petitioner is having remedy under Section 302



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Cr.P.C. and in the absence of any material to show that investigation was not conducted properly and in the absence of any other valid reason or ground, this Court is not inclined to grant the relief claimed. Hence, this Court concludes that the petition is absolutely devoid of merits and the same is liable to be dismissed.

18. In the result, this Criminal Original Petition stands dismissed. The petitioner is at liberty to file an application invoking Section 302 Cr.P.C. before the jurisdictional Court and if such an application is filed, the learned Magistrate is directed to consider the same and pass appropriate orders in accordance with law. Consequently, connected Miscellaneous Petition is closed.

28.10.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

csn

To

- 1.The Superintendent of Police,
Office of the Superintendent of Police,
Ramnad,
Ramanathapuram District.
- 2.The Inspector of Police,
All Women Police Station,
Paramakudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order made in
Crl.O.P.(MD)No.15417 of 2024
and
Crl.M.P.(MD)No.9652 of 2024

Dated :28.10.2024