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Crl.O.P.(MD).No.16626



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.16626 of 2023

and

Crl.M.P.(MD).Nos.13230 and 13232 of 2023

R.G.Rathina Velsamy @ R.G.Rethinam

...Petitioner

Vs.

1.Dhana Lakshmi

2.The State

Represented by
the Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
(Crime No.551 of 2021)

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to set aside the impugned order dated 17.10.2022 made in Crl.M.P.No.1106 of 2022 on the file of the learned Judicial Magistrate, Additional Mahila Court, Ramanathapuram.

For Petitioner

: Mr.M.S.Jeyakarthik

For R-1

: Mr.P.Praveen Kumar

For R-2

: Mr.A.Albert James,
Government Advocate (Crl. Side)



ORDER

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2. Heard the learned counsel on either side.

3. The first respondent gave a complaint to the second respondent Police on the ground that the first respondent's son and the petitioner's daughter were having an affair. The petitioner was taking steps to arrange for the marriage of his daughter. Hence, the first respondent went to the house of the petitioner and informed about the love affair. There was some wordy quarrel. Due to this previous enmity, on 18.07.2021 at about 04.00 p.m., the petitioner and others are said to have entered into the house of the first respondent and abused the first respondent and her mother in filthy language and also attacked the first respondent with iron rod and caused injury. Based on this complaint, the second respondent registered an FIR in Crime No.551 of 2021 against the petitioner and three unnamed persons for the alleged offences under Sections 294(b), 452, 323, 324, 506(2) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 2002.

4. On completion of investigation, a closure report was filed before the Court below. The RCS notice was also served on the defacto complainant. The first



respondent filed a protest petition in Crl.M.P.No.1106 of 2022. The Court below decided to convert the protest petition into a private complaint and accordingly, passed the cognizance order dated 17.10.2022 and issued process to the petitioner who has been arrayed as Accused No.1. Aggrieved by the same, the present petition has been filed before this Court.

5. This Court has repeatedly held that whenever a referred charge sheet is filed, three options are available to the Magistrate. The first option is to disregard the opinion of the police and to issue process to the accused persons, if there are sufficient *prima facie* materials to substantiate the charge. The second option available is to entertain the protest petition from the defacto complainant and to order for further investigation. The third option is to entertain the protest petition and deal it as a private complaint and proceed further in accordance with law. In the case on hand, the Court below has resorted to the third option by treating the protest petition as a private complaint.

6. While the Court below opted for the above procedure, the Court was duty bound to look into the closure report filed by the Police and also the materials collected by the Police in support of the closure report before taking cognizance of the private complaint. The Court below cannot completely disregard the closure report and the materials collected along with the closure report and only deal with



the sworn statement of the defacto complainant and the witnesses present whose sworn statement has also recorded. The sworn statement, the allegations made in the complaint, the closure report filed by the Police and the materials collected by the Police along with the closure report must all be looked into by the Magistrate before cognizance is taken.

7. The law on this issue was discussed in detail by this Court in the case of ***Narayanamma and Others Vs. Chikka Venkateshaiah*** reported **2019 (2) LW (Crl) 522**. Useful reference can also be made to the Hon'ble Supreme Court in the case of ***Vishnu Kumar Tiwari Vs. State of Uttar Pradesh, through Secretary Home, Civil Secretariat, Lucknow*** reported in **2019 (5) CTC 603**.

8. The cognizance order passed by the Court below does not reflect the application of mind on the closure report filed by the Police and the materials that were collected by the Police along with the closure report.

9. In view of the same, this Court has no other alternative remedy except to interfere with the order passed by the Court below in Crl.M.P.No.1106 of 2022 dated 17.10.2022. Accordingly, the same is hereby set aside.



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10. The matter is remanded back to the file of the learned Judicial Magistrate, Additional Mahila Court, Ramanathapuram with a direction to take into consideration the protest petition, sworn statements recorded, closure report and also the materials collected along with the closure report and thereafter, pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

11. It was brought to the notice of this Court that the case is now pending in C.C.No.250 of 2022 before the Court below. Since this Court has interfered with the cognizance order, the further proceedings will also automatically fall. Therefore, depending upon the orders to be passed by the Court below, the Court can direct reviving the Calender Case.

12. In the result, the Criminal Original Petition is disposed of with the above directions. Consequently, connected miscellaneous petitions are closed.

28.11.2024

Index : Yes / No
Internet : Yes / No
Speaking Order/Non Speaking Order
TSG

To
1.The Judicial Magistrate,
Additional Mahila Court, Ramanathapuram..



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2.The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.

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3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

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