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Crl.R.C.(MD) No.1158 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2025

Delivered on : 03.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1158 of 2024
and
Crl.M.P(MD)No.12283 of 2024

1.Ashokar

2.Bharath Kumar

... Petitioners

Vs.

1.State rep.by the Sub-Inspector of Police,
Chinnamanur Police Station,
Chinnamanur, Theni District.
Crime No.1 of 2010.

2.Kasthuri

... Respondents

Prayer : This Criminal Revision has been filed under Section 397 & 401 of of Cr.P.C, to call for the records pertaining to the order, dated 19.09.2023 in Cr.M.P.No.6234 of 2023 in C.C.No.451 of 2023 on the file of the learned Judicial Magistrate, Uthamapalayam and set aside the same as illegal.

For Petitioners : Ms.M.Nila
for Mr.R.Manoharan.

For Respondents : Mrs.M.Aasha,
Government Advocate (Criminal Side) for R1.

: Mr.A.Joseph Jerry, for R2.



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ORDER

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The Criminal Revision is directed against the order passed in Cr.M.P.No.6234 of 2023 in C.C.No.451 of 2023, dated 19.09.2023 on the file of the learned Judicial Magistrate, Uthamapalayam, issuance of summons to the accused including the petitioners.

2.The case of the second respondent/defacto complainant is that on 11.11.2021 when she went to her sister's daughter's house as she was not well, their relative Santhi, her husband Ashokar and their son Bharathkumar had abused the defacto complainant and her sister Selvi in filthy language and when the same was questioned, the said Santhi had attacked the defacto complainant and her sister with a long wooden log and caused injuries and that all of them had caused criminal intimidation. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.1288 of 2021 on 17.12.2021 against the three persons including the petitioners for the alleged offence under Sections 294(b), 323 and 506(i) IPC. The first respondent, after completing the investigation, has filed the final report against the first accused Santhi alone for the alleged offence under Sections 294(b), 323 and 506(i) IPC and thereby deleting the accused 2 and 3 / petitioners herein. The learned Judicial Magistrate, upon receiving



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the charge sheet, sent a notice to the defacto complainant calling her objections for the deletion of the accused. The second respondent, after receipt of notice from the concerned Court, has filed a protest petition in Cr.M.P.No.6234 of 2023. The learned Judicial Magistrate, upon perusing the final report and on hearing both the parties, allowed the said petition on 19.09.2023 and ordered to take the case on file in C.C.No.451 of 2023 and also ordered for issuance of summons to all the accused 1 to 3. Aggrieved by the impugned order, the accused 2 and 3 have preferred the present revision.

3.The learned counsel for the petitioners would mainly contend that the Magistrate, without assigning any reasons, has passed a non-speaking order in a casual and cursory manner; that the impugned order does not say as to why the Magistrate was not satisfied with the final report and the order is silent about the availability of materials to proceed against the petitioners; that the learned Magistrate, without any materials has taken cognizance against the petitioners and that therefore, the impugned order, which is legally unsustaiable, is liable to be set aside.

4.The learned counsel for the second respondent would submit that on the basis of the complaint given by the first accused in C.C.No.451 of 2023, FIR came to be registered in Crime No.1289 of 2021 on 17.12.2021 against



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the five persons including the second respondent herein for the alleged offence under Sections 147, 148, 448, 294(b), 323 and 506(i) IPC and the first respondent police, after completing the investigation, has filed the final report against four persons including the second respondent, that the learned Magistrate in Cr.No.1288 of 2021, vide order, dated 17.04.2024 has taken the charge sheet on file and ordered issuance of summons to all the five persons including the petitioners named in the FIR and that the learned Magistrate considering the materials available on record and finding that there are materials to proceed against the petitioners herein, has taken cognizance against all the accused including the petitioners and that therefore, there is nothing to interfere with the order passed by the learned Magistrate.

5.No doubt, as rightly contended by the learned counsel for the second respondent, the second respondent in her complaint has narrated about the involvement of the petitioners in the alleged occurrence and the way in which, they had committed the offences.

6.But as rightly pointed out by the learned counsel appearing for the petitioners, the defacto complainant as well as the other witnesses in their statement under Section 161(3) Cr.P.C., have not stated anything about the involvement of the petitioners in the occurrence and more particularly, they have stated that the petitioners were not involved in the alleged occurrence.



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7.As rightly contended by the learned counsel for the petitioners, no eye witness has given statement implicating the petitioners in the alleged commission of offence and on that basis, the first respondent has filed the charge sheet only against the first accused Santhi and thereby deleted the petitioners.

8.The second respondent in the protest petition has stated that the Investigating Officer has filed the final report falsely alleging that the petitioners were not involved in the occurrence and the deletion of the petitioners is one sided decision of the Investigating Officer and that therefore, the petitioners have to be added as accused in the above case.

9.As rightly pointed out by the learned counsel for the petitioners, the second respondent in the protest petition has nowhere stated that herself and other eye witnesses have not stated in the statement under Section 161(3) Cr.P.C that the petitioners were not involved in the occurrence and that the Investigating Officer has recorded that statement by himself. Moreover, except filing of the protest petition, the petitioners have not shown any material in the charge sheet and the documents filed along with the charge sheet that reveal the involvement of the petitioners in the alleged occurrence.



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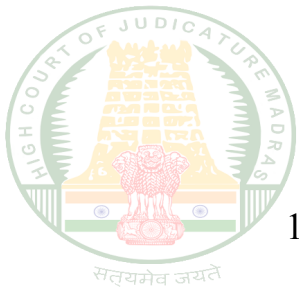
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10. At this juncture, it is necessary to refer the impugned order passed by the learned Magistrate for better appreciation :

“Enquiry heard. Both side heard. Final report perused. No statement recorded from defacto complainant and on perusal of records. Hence, the final report not satisfied. Petition filed by D/C is allowed. Issue summons to the A1 to A3.”

11. It is pertinent to mention that in the charge sheet, the investigating officer has also enclosed the statement recorded from the defacto complainant Kasthuri and other eye witnesses Tmt.Selvi, Tmt.Krishnaveni and as rightly pointed out by the learned counsel for the petitioners, this Court is at loss to understand as to how the learned Magistrate has observed that no statement was recorded from the defacto complainant.

12.As noted earlier, the investigating officer has failed to produce any material evidence linking the petitioners to the alleged incident. Given this lack of evidence, it is unclear how the learned Magistrate concluded that there is no reason to delete the accused. On the contrary, as the petitioners' counsel rightly argued, without any incriminating material, there is no justification for adding the petitioners as accused.



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13. The learned Magistrate has failed to disclose any evidence available against the petitioners or provide reasons for their inclusion as accused. The impugned order is indeed cryptic and non-speaking, as rightly contended by the petitioners' counsel. Given the absence of any material evidence, the order adding the petitioners as accused is unsustainable and liable to be set aside. However, if evidence emerges during the trial, the Court or the defacto complainant can invoke Section 319 of Cr.P.C. to array the petitioners as accused. Consequently, the impugned order is liable to be set aside.

14. In the result, the Criminal Revision Case is allowed and the impugned order, dated 19.09.2023 in Cr.M.P.No.6234 of 2023 in C.C.No.451 of 2023 on the file of the learned Judicial Magistrate, Uthamapalayam, is set aside. The trial Court as well as the defacto complainant are at liberty to invoke Section 319 of Cr.P.C., if required during the trial. Consequently, connected Miscellaneous Petition is closed.

03.06.2025

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

das

To

- 1.The Judicial Magistrate, Uthamapalayam.
- 2.The Sub-Inspector of Police,
Chinnamanur Police Station,
Chinnamanur, Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.R.C.(MD)No.1158 of 2024
and
Crl.M.P(MD)No.12283 of 2024

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