



CRL.O.P.(MD) NO.8006 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

CRL. O.P.(MD) No.8006 of 2023

and

CRL. M.P.(MD)Nos.7014 & 7016 of 2023

1.Lathi Jenil Jose

2.July Bakiya.

... Petitioners/Accused Nos.2 & 3

vs.

1.State of Tamil Nadu,
rep. by the Sub Inspector of Police,
Thuckalay Police Station,
Kanniyakumari.
(Cr.No.822 of 2021)

... 1st respondent/complainant

2.Pinky Sinthiya.

... 2nd respondent/defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned charge sheet in Crl.M.P.No.5258 of 2022 in S.T.C.No.840 of 2022, dated 15.10.2022, on the file of the Judicial Magistrate Court No.1, Padmanabhapuram and to set aside the same.



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For petitioners :Mr.K.Vamanan
For respondents :Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor for R1
Mr.S.Ramakrishnan for R2

ORDER

This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the charge sheet in Crl.M.P.No.5258 of 2022 in S.T.C.No.840 of 2022, dated 15.10.2022, on the file of the Judicial Magistrate Court No.1, Padmanabhapuram and to set aside the same.

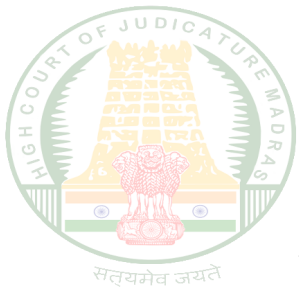
2.The second respondent herein is the defacto complainant. The case of the prosecution is that there was a previous dispute between the defacto complainant's husband and the petitioners, who are the brother and sister-in-law of the defacto complainant's husband. A1 in this case is the father of the second petitioner and the father-in-law of the first petitioner. The defacto complainant and her husband do not have children. Therefore, the petitioners often made derogatory comments against her, calling her “barren”.



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3. On 24.12.2021, during the night hours, the first petitioner (A2), along with his friends, had arranged a feast that included liquor on the terrace of their house, which is located near the house of the defacto complainant. The first petitioner and his friends created a disturbance by playing loud music through speakers for dancing and engaging in inappropriate conversations using filthy language. Even at 11:30 p.m., they did not stop the noise. When the defacto complainant's husband requested them to lower the volume of the speaker, they responded by abusing the defacto complainant and her husband using filthy language, including calling her “barren”. They also threw liquor bottles at the defacto complainant's husband. Due to their familial relationship, the defacto complainant and her husband did not file a complaint at that time.

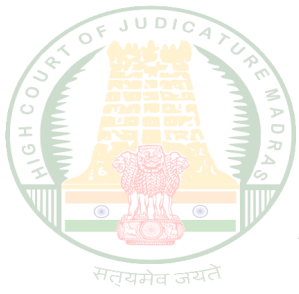
4. On 26.12.2021, when the defacto complainant and her husband were on their way to church, the accused persons again abused them using filthy language and issued threats. As a result, the de facto complainant's husband lodged a complaint against them with the respondent-police. The respondent-police called the accused persons to appear for an inquiry.



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5. On the same day, at about 01:00 p.m., when the defacto complainant was talking to her relatives near the church, the first petitioner arrived and slapped her on the cheek. On hearing her cry for help, the second petitioner and A1 arrived at the scene. The second petitioner then kicked her in the lower abdomen, pulled her hair, and pushed her to the ground. A1, the father of the second petitioner, abused her by calling her “barren”. They further threatened her, instructing her to withdraw the complaint, and warned her of dire consequences. During this incident, the defacto complainant sustained injuries and was subsequently admitted to the hospital by her husband. Based on the complaint given by the defacto complainant, an FIR in Crime No.822 of 2021, dated 29.12.2021 was registered for the offences under Section 294(b), 323 & 506(1) of IPC against the petitioners and the second petitioner's father.

6. After completion of investigation, the first respondent-police filed Final Report No.204 of 2022, dated 04.05.2022, deleting the petitioners in the array of accused persons. The first respondent-police filed charge sheet against the second petitioner's father alone, namely, John Lurthunathan under Sections 294(b), 323 & 506(1) of IPC.



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7. After receiving the Final Report, the learned Judicial Magistrate

No.1, Padmanabhapuram, issued a notice to the defacto complainant.

After knowing the contents of the Final Report, the defacto complainant filed protest petition seeking to order further investigation and the same was taken on file in Crl.M.P.No.5258 of 2022, by the learned Judicial Magistrate No.1, Padmanabapuram.

8. The learned Judicial Magistrate No.1, Padmanabapuram, after hearing both sides, passed an order, dated 15.10.2022 directing to include the petitioners as accused Nos.2 and 3. Feeling aggrieved the said order dated 15.10.2022, the petitioners filed this Criminal Original Petition.

9. Mr.K.Vamanan, the learned counsel appearing for the petitioners submits that the investigating agency collected materials and the materials would show that the petitioners did not commit any offence as alleged by the defacto complainant. i.e., there are no sufficient materials available on record to presume that the petitioners have committed offences. Hence, the Investigating Officer rightly deleted the name of the petitioners in the array of accused persons. The learned Judicial Magistrate, without recording any material, found fault with the Investigating Agency and,



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without any sufficient material available on record to substantiate the case against the petitioners, passed the impugned order, which is against the principles of law. Accordingly, the learned counsel for the petitioners prays to allow this petition and to quash the charge in respect of the petitioners/A2 and A3.

10. *Per contra*, Mr.S.Ramakrishnan, the learned counsel appearing for the second respondent/defacto complainant, submits that the second respondent gave a complaint against the petitioners and the second petitioner's father, who was involved in the crime. The Investigating Officer did not investigate the matter in a proper way. Hence, the defacto complainant filed protest petitions and the learned Judicial Magistrate, after scrutinizing the same, rightly included the petitioners as Accused Nos.2 and 3. There is no irregularity and illegality in the impugned order passed by the learned Judicial Magistrate. Accordingly, he prays to dismiss the Criminal Original Petition and sustain the impugned order passed by the learned Judicial Magistrate. To buttress his arguments, he relied upon the following judgments:

1. ***Selvakani vs. State rep. by the Inspector of Police, Kallikudi Police Station, Madurai*** (Crl.R.C.(MD)No.751 of 2024 decided



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on 29.10.2024);

WEB COPY 2. **R.Dharmalingam vs. State rep. by Inspector of Police, CBCID(South), Coimbatore** (Crl.R.C.No.967 of 2019 decided on 13.11.2019).

11. Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the first respondent-police, submits that the learned Judicial Magistrate has rightly considered the matter and took cognizance. He relied on the paragraph No.42 of the decision of the Apex Court rendered in **Vishnu Kumar Tiwari vs. State of UP** reported in **(2019) 8 SCC 27**, which reads as follows:

“In the facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the procedure prescribed under Section 200 and 202 of the Code if the latter Section also commends itself to the Magistrate. In other words, necessarily, the complainant and



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his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.”

12. This Court has considered both sides submissions and perused the Final Report and also the impugned order.

13. On perusal of the reports, it is seen that the Investigating Officer, totally examined nine witnesses. L.W.1 is the defacto complainant. L.W.2 is the husband of the defacto complainant. L.W.3 and 4 are the eye-witnesses to the occurrence. L.W.5 and 6 are observation



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mahazar witnesses. L.W.7 is the doctor, who gave treatment to the defacto complainant. L.W.8 is the headconstable, who has registered the FIR. L.W.9 is the Investigating Officer.

14. This Court has perused the depositions of L.W.3 and 4. A careful perusal of the depositions of L.W.3 and 4 reveals that L.W.3 and 4 did not state anything about the petitioners. Hence, the Investigating Officer has rightly deleted the names of the petitioners in the array of accused persons.

15. The defacto complainant, in her protest petitions, did not give any list of witnesses to be examined on her side. Further, she did not produce any witness before the learned Judicial Magistrate. The learned Judicial Magistrate also did not record statement of any witness. In the absence of material, this Court is of the view that the impugned order passed by the learned Judicial Magistrate is not in accordance with law. Hence, this Court is inclined to set aside the order impugned dated 15.10.2022 passed by the learned Judicial Magistrate Crl.M.P.No.5258 of 2022 in S.T.C.No.840 of 2022.



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16. In respect of the judgments relied on by the learned counsel for the second respondent/defacto complainant, this Court is of the view that the said judgments would not be applicable to the facts of this case.

17. In the result, this Criminal Original Petition is allowed. S.T.C.No.840 of 2022 shall proceed against the accused No.1, namely, John Lurthunathan alone. Consequently, connected miscellaneous petitions are closed.

10.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The Judicial Magistrate No.I,
Padmanabhapuram.

2.The Sub Inspector of Police,
Thuckalay Police Station,
Kanniyakumari.

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



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R.SAKTHIVEL,J

apd

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