

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2015

DELIVERED ON : 29.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.18217 of 2015
and M.P.No.1 of 2015

Lakshmi Lavanya Vasudevan .. Petitioner

Vs

1.State rep by its
Inspector of Police
W-26, A.W.P.S
Ashok Nagar, Chennai 83.

2.Lakshmi Narasiman
3.S.Sudalaimani

.. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by XVII Metropolitan Magistrate, Saidapet in CMP No.757 of 2015 in CC No.1165 of 2012 dated 02.07.2015 and direct the Magistrate to proceed with the 311 petition and to recall PW 1 for further chief examination in accordance with law.

For Petitioner
For R1

Mr.M.A.Muthalakan
Mr.C.Emalias
Addl. Public Prosecutor

सत्यमेव जयते
O R D E R

This petition has been filed to set aside the order passed by XVII Metropolitan Magistrate, Saidapet in CMP No.757 of 2015 in CC No.1165 of 2012 dated 02.07.2015 and direct the Magistrate to proceed with the 311 petition and to recall PW 1 for further chief examination in accordance with law.

2. On a complaint lodged by the petitioner, the respondent police registered a case in W-26 CrI.No.11 of 2012 under Sections 498A, 417 and 406 IPC against her husband [A1] and his mother [A2], and after completing the investigation, a Final Report was filed in C.C.No.1165 of 2012 before the XVII Metropolitan Magistrate, Saidapet, Chennai for offences under Sections 498A, 417 and 406 IPC.

3. Trial commenced in the year 2013 and the petitioner was examined as P.W.1 in chief for six months. On 23.06.2015, the petitioner and four other witnesses examined by the prosecution were cross examined by the accused. Thereafter, an application under Section 311 Cr.P.C. was filed by the prosecution at the instance of this petitioner for producing certain documents. This petition was numbered as M.P.No.757 of 2015 in C.C.No.1165 of 2012 and after hearing the prosecution and the accused, the trial Court dismissed the same on 02.07.2015, by a well considered order, challenging which the petitioner/defacto complainant is before this Court.

4. The learned counsel for the petitioner submitted that the marriage between the petitioner and the first accused never consummated, because the first accused was impotent and that factum was suppressed during marriage and therefore, an offence under Section 417 IPC has been made out, to prove, which some of the E-mails between the defacto complainant and the first accused should have to be marked.

5. The learned counsel also submitted that, a petition under Section 311 Cr.P.C. can be filed at any time before the judgment. This Court has no quarrel with the proposition that, an application under section 311 Cr.P.C can be filed at any time before judgment is passed, but it should be filed on the ground that the evidence is essential to the just decision of the case. In this case, MP No.757 of 2015 filed by the prosecution does not even disclose the details of the E-mail correspondence. Thereafter, the petition also does not say why those documents were not filed when the Final Report was filed in the year 2012. Even before this Court, the petitioner has not stated about the relevancy of the E-mails, except making a vague statement that the E-mail communications will be essential to prove the offences under Sections 498A and 417 IPC. The issue before the criminal Court is not whether the first accused was impotent. These questions may be relevant in matrimonial proceedings. Therefore, the trial Court was right in dismissing the application and the order requires no interference.

In the result, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petition is closed.

gms

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Inspector of Police
W-26, A.W.P.S, Ashok Nagar, Chennai 83.

2.The XVII Metropolitan Magistrate,
Saidapet, Chennai.

3.The Public Prosecutor
High Court, Madras.

+ 1 cc to Mr.M.A.Muthulakan, Advocate SR 38839

+ 1 cc to Mr.G.Govindarajan, Advocate SR 39276

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Cr1.O.P.No.18217 of 2015



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