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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

CRL.O.P (MD) Nos.10286, 23100 and 15777 of 2014
and
M.P (MD) Nos.1,1,1,2 and 2 of 2014

CRL.O.P (MD) No.10286 of 2014

M.Prabhu @ Prabhakar ...Petitioner/Respondent NO.1
.vs.

Kavitha ..Respondent/Petitioner

CRL.O.P (MD) No.23100 of 2014

Prabhu @ Prabhakaran ...Petitioner/Petitioner/Respondent
.vs.

Kavitha ..Respondent/Respondent/Petitioner

CRL.O.P (MD) No.15777 of 2014

1.Prabhu @ Prabhakar

2.Mariyathanam

3.Kulanthaiyammal ...Petitioner/Accused No.1 to 3
.vs.

1.The Inspector of Police,
All Women Police Station,
Madurai South,
Madurai. ..1ST Respondent/Complainant

2.Kavitha ..Second Respondent/De-facto complainant

PRAYER in CRL.OP(MD)10286 OF 2014: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying this Court to call for the records from the Lower Court and quash all the further proceedings in M.C.No.6 of 2014 pending on the file of the Judicial Magistrate, Kumbakonam, Tanjore District.

PRAYER in CRL.OP(MD)No.23100 OF 2014: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying this Court to call for the records pertaining to the impugned order in Crl.M.P.No.16197 of



2014 in M.C.No.6 of 2014, dated 19.11.2014 on the file of the Judicial Magistrate Court, Kumbakonam and to set aside the same in the nature and circumstances of the case and in the interests of justice, equity and good conscience.

PRAYER in CRL.OP(MD)No.15777 OF 2014: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying this Court to call for the records of the case in C.C.No.538 of 2014 pending on the file of Additional Mahila Court, Madurai and quash the same.

CRL.O.P(MD)No.15777 of 2014

For Petitioners : M/s.T.K.Gopalan

For Respondent-1 : Mr.M.Ramasubramanian

For Respondent-2 : Mr.C.Ramesh
Additional Public Prosecutor

CRL.O.P(MD)Nos.10286 and 23100 of 2014

For Petitioner : M/s.T.K.Gopalan

For Respondent : Mr.M.Ramasubramanian

COMMON ORDER

Cr1.O.P(MD)No.15777 of 2014 has been filed challenging the proceedings in C.C.No.538 of 2014 for the alleged offence under Sections 498(A), 406 and 294(b) of IPC.

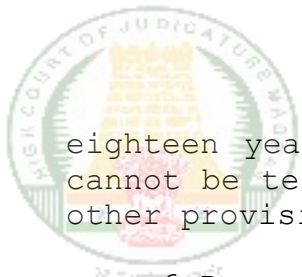
2.Cr1.O.P(MD)No.10286 of 2014 has been filed challenging the proceedings initiated under M.C.No.6 of 2014.

3.Cr1.O.P(MD)No.23100 of 2014 has been filed challenging the order made in Cr1.M.P.No.16197 of 2014 in M.C.No.6 of 2014 dated 19.11.2014 on the file the Judicial Magistrate Court, Kumbakonam, by which the application filed to reject the proof affidavit was rejected.

4.In all these Petitions, the Petitioner/first Petitioner is the husband. The case of the respondent/De-facto complainant in C.C.No.538 of 2014 is that her husband along with other petitioners namely his parents have committed the alleged offence. The Petitioner is said to have developed suspicion after seeing the obscene photographs in the cellphone of the de-facto complainant allegedly sent by her brother-in-law. The allegation is that in pursuance to the said suspicion developed, the first Petitioner husband has been harassing her. He is supported by his parents and other petitioners as well.

Cr1.O.P(MD)No.15777 of 2014

5.The learned counsel for the Petitioner submitted that at least the fact that the cellphone belonging to the de-facto complainant disclosed the obscenity is not in dispute as it was done at the behest of her brother in law. It was questioned by the first Petitioner/husband for



eighteen years. There is no dispute between the parties and the said act cannot be termed as an act attracting the offence under Section 498(A) and other provisions as well.

6. Per contra, the learned counsel for the respondent submitted that a perusal of the complaint was so that after the alleged occurrence, the first Petitioner has continuously harassing the respondent. The harassment is both oral and physical. As it continues, a complaint has been given. Therefore no interference is required.

7. Insofar as the Petitioners 2 and 3 are concerned, they are residing far away from their residence and they have no role to play in the alleged occurrence except the bald allegation, there is nothing to implicate them.

8. Per contra, the learned counsel for the respondent submitted that though the first Petitioner is the main accused, he had the support of other Petitioners.

9. Insofar as the CrI.O.P(MD)Nos.10286 and 23100 of 2014 are concerned, the learned counsel for the Petitioner submitted that an affidavit is not an affidavit under Section 3 of the Evidence Act and in the absence of any provision under the Domestic Violence Act, accepting the affidavit as an evidence and the Court below is wrong in dismissing the application. He had also submitted that the application is filed with an ulterior motive and the respondent has got sufficient means

10. The learned counsel for the respondent submitted that the proceedings are summary in nature and therefore, the order passed does not require any interference. Moreover, the allegations are factual which can only be decided by the lower Court.

11. This Court has perused the complaint as well as the relevant records.

12. Though it has been stated by the respondent that there was an obscene picture depicted in her cellphone is seen by the first Petitioner/husband, it is the specific case that it was not sent by her in-law.

13. On the contrary, it is the case that it is sent by somebody without the knowledge of her. This is a disputed question of fact. Therefore on the admitted fact, this Court cannot quash the proceedings. Similarly, there are sufficient allegations that after the alleged incident, the Petitioner harassed the respondent both physically and mentally. The question as to whether the allegations are true or not is a matter for investigation. Hence the Petition as against the first Petitioner in CrI.O.P(MD)No.15777 of 2014 is dismissed. Insofar as the Petitioners 2 and 3 in CrI.O.P(MD)No.15777 of 2014 are concerned, they are the aged parents of the first Petitioner, aged 75 and 71 years and they have been living separately. This fact is not in dispute. The allegation against them is not serious and it is not supported by any evidence. Therefore this Court is of the view that interest of justice needs to quash the proceedings against the Petitioners 2 and 3/parents of the first Petitioner.



Accordingly, the proceedings against the Petitioners 2 and 3 in CrI.O.P (MD) No.15777 of 2014 in C.C.No.538 of 2014 on the file of Additional Mahila Court, Madurai is quashed.

14. Coming to the other two Criminal Original Petitions I.e., CrI.M.P (MD) Nos.10286 and 23100 of 2014 are concerned, this Court does not find any merit in them and the proceedings under the Domestic Violence Act is summary in nature and it is a proceeding under Section 125 of Cr.P.C. and once it becomes a proceeding, then the offence is mandatory and requires to be taken. Section 12 of the Act deals with an application and based on the application an order can be passed. Section 28 of the Act deals with the proceedings. Under Section 28(2) of the Act, the Court can laid down proceedings laid down under Section 12 of the Act. As per the rules of the Protection of Women from the Domestic Violence Act, an application under Section 12 shall be part with and orders passed in the same manner as enshrined under Section 125 of Cr.P.C. That is the reason why an outer limit has been fixed for disposal of the case. This Court does not find any merit to quash the proceedings pending against the Petitioner/husband and the proceedings are summary in nature and that the Petitioner cannot question before this Court the facts which are summary in nature.

15. Accordingly, the Criminal Original Petitions in CrI.O.P(MD) Nos.10286 and 23100 of 2014 are hereby dismissed and a direction is issued to the learned Judicial Magistrate, Kumbakonam, Thanjavur District to dispose of M.C.No.6 of 2014 within a period of six (**) months from the date of receipt of a copy of this order. Insofar as the petitioners 2 and 3 in CrI.O.P(MD) Nos.15777 of 2014 are concerned, they are father and mother of the first Petitioner and in the proceedings initiated against them under the Domestic Violence Act, their appearance before the Court below is dispensed with until and unless the same is specifically required by the Court below and the Court below is also directed to take their affidavit as an evidence, if the same is filed before the court.

16. Consequently, all the connected Miscellaneous Petitions in all the Criminal Original Petitions are closed.

Sd/-
Assistant Registrar

(**) Corrected as per order of this
Court dated 22.07.2015 made in
CrI.OP(MD) .Nos.10286,23100 and
9577 of 2014 /True Copy/

Sub Assistant Registrar

To

(To be substituted for the order already despatched on 29.06.2015)

1. The Judicial Magistrate Additional Mahila Court, Madurai.
2. The Judicial Magistrate, Kumbakonam, Thanjavur District.
3. The Inspector of Police, All Women Police Station,
Madurai South, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+lcc to M/S. T.K.Gopalan, Advocate in SR.No 40424

+lcc to M/S. M.Ramasubramanian, Advocate in SR.No 29936

<https://hcservices.ecourts.gov.in/hcservices/>
TS/25.06.2015/4P -7C

AA/11.08.2015/ 4p- 7c/ (Corrected Order)

CRL.O.P(MD) Nos.10286,23100 and 15777 of 2014 and

M.P(MD) Nos.1,1,1,2 and 2 of 2014

10.06.2015