



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WEB COPY

Criminal Original Petition (MD).No.17465 of 2013
and M.P(MD)Nos.1 & 2 of 2013

N.Kanagaraj ... Petitioner/Sole Accused
Vs.

1.The State of Tamil Nadu, The Inspector of Police,
All Women Police Station, Rajapalayam,
Virudhunagar District,
(Crime NO.15/2011) ...Respondent/Complainant

2.A.Alagurani ... Respondent/defacto
complainant

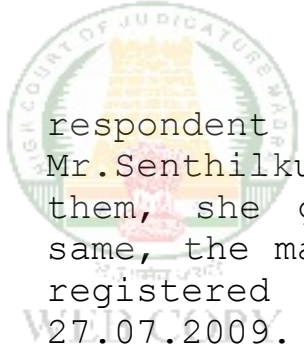
Prayer: Criminal Original Petition filed under Section 482
Cr.P.C. to call for the records pertaining to the charge sheet in
C.C.No.19 of 2013 on the file of the Judicial Magistrate No.II,
Srivilliputhur, and quash the same.

For Petitioner : Mr.G.R.Swaminathan
for Mr.T.Antony Ärul Raj.
For R1 : Mr.K.Anbarasan
Govt. Advocate (Crl.side)
For R2 : Mr.R.Alagumani

O R D E R

The petitioner approaches this Court with a prayer to call
for the records pertaining to the charge sheet in C.C.No.19 of
2013 on the file of the Judicial Magistrate No.II,
Srivilliputhur, and quash the same.

2.On 03.11.2011, a complaint has been registered against
the petitioner in pursuant to the intimation given by the second
respondent on 05.10.2011 for the alleged offences under Sections
417, 294(b) and 506(i) of IPC. The allegation is to the effect
that the second respondent, who is working as Police Constable
from the year 2003, was cheated by the petitioner promising to
marry her, apart from physically misusing her, he received money
from her. Thereafter, on 12.09.2011, the petitioner informed to
the second respondent that he has proposed to marry an another
person. In the statement given in 161(3) of Cr.P.C., the second



respondent has stated that she was married earlier to one Mr.Senthilkumar in the year 2004 and as dispute arose between them, she gave a complaint on 07.07.2009. In pursuant to the same, the marriage has been annuled between them by way of an un-registered document in the presence of the family elders on 27.07.2009.

3.Incidentally, the second respondent has also filed H.M.O.P.No.53 of 2011 before the Sub Court, Virudhunagar on 20.09.2011 seeking annulment of marriage under Section 13(1)(1-A) & 13(1) 1-B of the Hindu Marriage Act 1956. In the said petition, she has not made any mention about the alleged Dissolution of the marriage. On the contrary, she has specifically stated that the respondent in H.M.O.P., has promised to live with her in pursuant to the earlier complaint, dated 07.07.2009, the allegation is to the effect that he has committed cruelty by suspecting her character and physically assaulting her. Divorce was granted by the Court below on 10.01.2013. These are the facts surrounding in this case.

4.The learned counsel appearing for the petitioner submitted that the offence alleged under Section 420 of IPC has not been made out. The intention to cheat must be available at the time of inception. The second respondent was having a relationship through illicitly by consent and voluntarily. Even assuming it is true, admittedly, she was married at the time of complaint. She being a Police Officer, cannot plead ignorance of law. The complaint given is totally contrary to the stand taken before the Court in H.M.O.P.No.53 of 2011, pursuant to which, a divorce was granted on 10.01.2013. As the Second respondent was a married woman at the time of complaint, the entire proceedings are liable to be quashed. In support of his contention, the learned counsel appearing for the petitioner relied on the following judgments:-

i)2012-2 L.W. (Crl.) 101 (K.U.Prabhu Raj v. State & another)

ii) 2013 Cri.L.J. 4286 (Babu v. State of Kerala)

5. Per contra, the learned counsel appearing for the second respondent submitted that it is a case of an innocent lady having been cheated and she was forced to make the averments in H.M.O.P.No.53 of 2011 at the instigation of the petitioner. There was a customary divorce which took place between the second respondent and her first husband. The petitioner was aware of the factual position. Having used the defacto complainant both physically and financially, the petitioner is trying to get away from her. The question as to whether the alleged offence is true or not is a matter for trial. Therefore, no interference

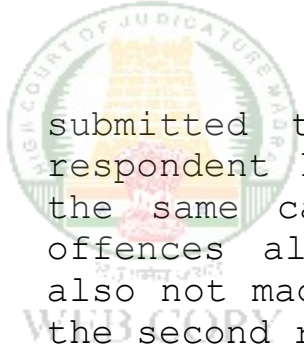
required.

6.The facts, as narrated above, are not in dispute. Admittedly, at the time of complaint on 05.10.2011 the second respondent was married. Though in the statement given under Section 161(3) of Cr.P.C., she has stated about the customary divorce for the first time, curiously no reference has been made in the H.M.O.P, petition filed before the Court. In the complaint, she has stated that the petitioner has informed about the decision to marry somebody else by having a betrothal on 12.09.2011.

7.From the records, it is seen that H.M.O.P., was filed on 20.09.2011, though the counsel for the petitioner submitted that the said fact may not be correct one. In the H.M.O.P., filed by the petitioner she has taken a contrary stand. She has specifically stated that after her first complaint against her erstwhile husband a compromise has been made between the parties to live together. This is contrary to the subsequent statement made on 03.11.2011 under Section 161(3) Statement wherein she has stated that there was a customary divorce in pursuant to the complaint given by her. In the statement it is specifically stated by her that during the enquiry before the police, it was decided that she and her erstwhile husband would live separately by mutual customary divorce. This statement is a subsequent one to the petition before the Sub Court, Virudhunagar in H.M.O.P.No.53 of 2011.

8. Be that as it may, there is no dispute that the second respondent has obtained a divorce only on 10.01.2013. This fact would be sufficient to hold that the alleged promise said to have been made by the petitioner cannot be true as legally the second respondent was the wife of some one else at the relevant point of time. It is not as if the second respondent is a rustic lady as she has been working as a Constable from the year 2003 onwards. She was able to agitate her rights even against her husband by giving a complaint as early as on 07.07.2009. Therefore, the very case of promise to marry cannot stand the scrutiny of law with the second respondent being a legally wedded wife of somebody else at the relevant point of time. The said position continued till the date of divorce of decree granted on 10.01.2013. There is no proper explanation for not making any mention of alleged customary divorce before the Court in H.M.O.P.No.53 of 2011. There is also no explanation as to why she did file the said petition, if she is of the view that there was a customary divorce earlier. Curiously she has relied upon the alleged customary divorce through her 161(3) Statement for the first time.

9.The learned counsel appearing for the second respondent



submitted that there are materials to hold that the second respondent has helped the petitioner. This Court is afraid that the same cannot be a basis to charge the petitioner for the offences alleged. The alleged offence Under Section 506(i) is also not made out against the petitioner as it is not the case of the second respondent that he threatened her.

10. On considering the above facts, this Court is inclined to quash the proceedings in C.C.No.19 of 2013 on the file of the learned Judicial Magistrate No.II, Srivilliputhur.

11. In the result, this petition is allowed and the proceedings in C.C.No.19 of 2013 on the file of the learned Judicial Magistrate No.II, Srivilliputhur is hereby quashed. Consequently, connected M.P(MD)Nos.1 & 2 of 2015 are also closed.

Sd

ASST REGISTRAR (CO)

TRUE COPY

SUB ASST REGISTRAR

am

To

1. The Judicial Magistrate No.II,
Srivilliputhur.

2 The Inspector of Police,
All Women Police Station,
Rajapalayam, Virudhunagar District.

3 The Addl.Public Prosecutor,
Madurai Bench of Madras HighCourt, Madurai.

1cc to MR. T. ANTONY ARUL RAJ, ADV SR:36433

1CC TO MR. R. ALAGUMANI ADV SR: 36486

DM 15 JULY 2015 - 4P 6C

Cr1.O.P.(MD)No.17465 of 2013
06.07.2015