

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.07.2016

PRONOUNCED ON: 03.08.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.10051 of 2016 and Crl.M.P. No.5347 of 2016

M. Sundar		Petitioner
	vs.	
1	The Inspector of Police All Women Police Station (East) Coimbatore (Crime No.15 of 2013)	
2	Ramya	Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the entire records connected with the proceedings of the charge sheet in C.C. No.16 of 2014 pending trial on the file of the Additional Mahila Magistrate, Coimbatore.

For petitioner	Mr. K. Thilageswaran
For R1	Mr. C. Emalias Addl. Public Prosecutor
For R2	Mr. S. Kumara Devan (Amicus Curiae)

ORDER

This Criminal Original Petition has been filed to call for the entire records connected with the proceedings of the charge sheet in C.C. No.16 of 2014, pending trial on the file of the Additional Mahila Court (Magisterial level) Coimbatore.

2 For the sake of convenience, the parties will be referred to by their name.

3 On the complaint lodged by Ramya (the second respondent-de facto complainant), the first respondent police registered a case in Crime No.15 of 2013 on 27.07.2013 and after completing the investigation, filed a final report in C.C. No.16 of 2014 before the Additional Mahila Court (Magisterial level), Coimbatore against (1) Philip Joseph-(A1) (2) Mary-(A2), (3) Usha-(A2) and (4) Sundar-(A4), for offences under Sections 498-A, 406, 495 and 420 IPC, challenging which, Sundar (A4) is before this Court.

4 On notice, Ramya (the second respondent-de facto complainant) was present before this Court on 11.07.2016 and when she was asked whether she has the means to engage a lawyer or a lawyer has to be engaged by the Court for her, she requested the Court to engage a lawyer to defend her case. Therefore, this Court appointed Mr. S. Kumara Devan, learned advocate, to represent Ramya, *pro bono* and adjourned the case to 20.07.2016 for final hearing.

5 Heard Mr. K. Thilageswaran, learned counsel for Sundar (A4), Mr.C.Emalias, learned Additional Public Prosecutor appearing for the first respondent-State and Mr. S. Kumara Devan, learned counsel for Ramya (second respondent-de facto complainant).

6 It is the case of the prosecution that Ramya got married to Philip Joseph on 18.11.2010 and after marriage, Ramya came to know that Philip Joseph is a Casanova, having married earlier once and also subsequently after marriage with Ramya. It is also the prosecution case that Ramya was subject to cruelty by Philip Joseph (A1), his mother, Mary (A2) and his sister, Usha (A3). As regards Sundar (A4), the petitioner herein, he is the husband of Usha (A3) and admittedly, he is an Army man.

7 Mr. Thilageswaran, learned counsel for Sundar (A4) submitted that though the allegation against A1 to A3 are indeed very serious, yet, there is no iota of material to implicate Sundar (A4) in the offences inasmuch as Sundar (A4) had come on a week's leave to attend Ramya's wedding and after attending the wedding, he had left to his post.

8 In oppugnation, Mr. Kumara Devan, learned counsel for Ramya, in support of his contention that the prosecution against Sundar (A4) should not be quashed, placed strong reliance upon the following judgments of the Supreme Court:

- i Medchl Chemicals and Pharma Pvt. Ltd. vs. Biological E.Ltd. and others, [AIR 2000 SC 1869];
- ii HMT Watches Ltd. vs. M.A. Abiba and another, [2015 (2) CTC 446];
- iii Vijayander Kumar and others vs. State of Rajasthan, [(2014) 3 SCC 389]; and
- iv Ajay Kumar Das vs. State of Jharkhand and another [(2011) 12 SCC 319]

9 It is true that in the aforesaid judgments, the Supreme Court has clearly held that this Court should be slow in quashing a prosecution and even if there are *prima facie* materials for the Trial Court to frame charges, this Court should not exercise its jurisdiction under Section 482, Cr.P.C. and quash the prosecution.

10 However, in **Arnesh Kumar vs. State of Bihar [(2014) 8 SCC 273]**, the Supreme Court has noticed the recent trend, where, all the family members of the husband are roped in and are made to face prosecution in matrimonial offences. Therefore, this Court has to draw a fine balance between two contesting claims, *viz.*, the claim of the complainant for sustaining the prosecution and the plea of the accused to quash the prosecution.

11 A reading of the complaint given by Ramya, which forms the basis of F.I.R., would reveal that Sundar (A4) came for the wedding and a week later, he

went back to the Army post and that, once when he came, she complained to him about the conduct of his wife Usha (A3) and her mother-in-law Mary (A2), for which, he had allegedly replied that they would be behaving like that only and that she has to keep going adjusting with them. In the 161 Cr.P.C. statement of Ramya, besides reiterating what she had stated in her complaint, she has added that Sundar (A4) has allegedly said that if she is inclined to be there, she could be there, and if not, she could go away from home. Apart from this, there is no other allegation worth its salt in the final report against Sundar (A4).

12 In such view of the matter, the prosecution in C.C. No.16 of 2014 on the file of the Additional Mahila Court (Magisterial level), Coimbatore, as against Sundar (A4) alone is hereby quashed.

13 Before parting with the matter, this Court places on record, its deep appreciation to the services rendered by Mr. S. Kumara Devan, learned counsel, who argued *pro bono* for the second respondent-de facto complainant.

In the result, this Criminal Original Petition is allowed. Connected CrI.M.P. is closed.

03.08.2016

cad

P.N. PRAKASH, J.

cad

To

- 1 The Inspector of Police
All Women Police Station (East)
Coimbatore
(Crime No.15 of 2013)
- 2 The Judicial Magistrate
(Additional Mahila Court)
Coimbatore
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104

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